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Summary of Loan Guarantee Provisions in House and Senate Energy Bills

The Senate-passed energy bill (H.R.6) and the House-passed energy bill (H.R. 3221) both contain sweeping provisions that would dramatically alter the U.S. Department of Energy's Loan Guarantee Program. Title XVII of the Energy Policy Act of 2005 authorizes DOE to provide loan guarantees for 10 types of new or improved technologies that reduce greenhouse gas emissions. "Advanced nuclear energy facilities" are included in the list.

Senate Energy Bill (H.R. 6)

Sec. 124(b). Improvements To Underlying Loan Guarantee Authority

This section redefines "commercial technology" to allow loan guarantees to be given to more than one project to construct an existing nuclear power design, despite the fact that the loan guarantees are supposed to apply to "new or significantly improved technologies." This provision also means that taxpayer-backed loans are committed to more than one of the same risky design.

This section also exempts DOE's loan guarantee program from Sec 504(b) of the Federal Credit Reform Act of 1990, which requires that any federal loan guarantees must get new budget authority and a limitation on the use of funds for the cost of a loan guarantee specified in an appropriations act. Appropriators would no longer have the authority to limit the amount of loan guarantees, thereby allowing DOE to give out unlimited amounts without congressional oversight. NEI wants a total of more than \$50 billion in loan guarantees in FY08 and FY09 (see Rep. Visclosky's floor statement at http://frwebgate.access.gpo.gov/cgi-bin/getpage.cgi?position=all&page=H6713&dbname=2007_record).

This section requires that DOE *must* guarantee up to 100% of the cost of the loan, as long as the loan is no more than 80% of the cost of the project. The DOE's current draft rule allows guarantees up to 90 percent of the cost of loan, which means that 10 percent of the loan would not be guaranteed.

This section also establishes a fund, as authorized in EPACT 2005, to be known as the "Incentives For Innovative Technologies Fund. DOE is given unfettered access to these funds without requiring appropriations or any fiscal year limitation.

Sec. 124. Loan Guarantees For Renewable Fuel Facilities

This provision allows the first six biofuel projects to receive loan guarantees before DOE has finalized its regulations for the program. According to a January 2007 report by the Government Accountability Office, “DOE’s efforts to date have focused on expediting program implementation—for example, issuing guidelines and soliciting preapplications for loan guarantees—rather than ensuring the department has in place the critical policies, procedures, and mechanisms necessary to better ensure the program’s success.” Allowing DOE to proceed with granting loan guarantees before these policies and procedures are in place is a recipe for disaster for U.S. taxpayers.

House Energy Bill (H.R. 3221)

Sec. 9201. Amount of Loans Guaranteed

This section restates that loan guarantees (including to coal and nuclear) cannot exceed 80% of the cost of the project, as authorized in EPACT 2005), but also adds to the EPACT language that the percentage must be at least sufficient to attract nonguaranteed investment.

The section provides that DOE can guarantee up to 100% of the cost of the loan, as long as the loan is no more than 80% of the cost of the project, and may not establish a lower percentage limit within its regulations. DOE’s current draft rule allows guarantees up to only 90% of the cost of loan, which means that 10% of the loan would not be guaranteed. According to the Nuclear Energy Institute, “One-hundred-percent loan coverage is essential to support the financing for the first wave of nuclear projects in the United States.[...] Without 100 percent coverage under the Title XVII loan guarantee program, the capital markets are unwilling, now and for the foreseeable future, to provide on commercially viable terms the financing necessary to support the level of nuclear nuclear plant construction...” (from NEI’s comments to DOE on its draft rule).

This section also requires that the borrower provide DOE with “reasonable assurances” that contract and subcontract workers are paid prevailing wages (Davis-Bacon Act).

Sec. 9202. Exclusion of Categories

This section prevents appropriators from being able to exclude any category of eligible projects from receiving loan guarantees. This language was inserted in response to the loan guarantee section of the House FY2008 Energy & Water Appropriations bill, which does not allow for any loan guarantees to be used for new nuclear plants. The Bush Administration specified in its budget request that \$4 billion of the total \$9 billion be provided for new coal and nuclear plants.