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EDITOR'S NOTE: YES, DATA CENTERS

Victoria Prussen Spears

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U.S. Department of Energy Issues Revised Title 17 Loan Program Guidance

*By Benjamin Y. Cooper and Douglas L. Dua**

In this article, the authors discuss the U.S. Department of Energy's updated Program Guidance for the Title 17 Energy Financing Program.

The Office of Energy Dominance Financing (OEDF) of the U.S. Department of Energy (DOE) has issued updated Program Guidance (the Program Guidance) for the Title 17 Energy Financing Program (the Title 17 Program).

The Title 17 Program, which was originally conceived in Title 17 of the Energy Policy Act of 2005 (the Energy Policy Act) and which has been periodically expanded and refined since, enables DOE acting through OEDF to guarantee third party loans made in support of a variety of qualifying energy-related projects. Most recently, the One Big Beautiful Bill Act (the OBBB) amended Section 1706 of the Energy Policy Act to establish a new financing program supporting Energy Dominance Financing (EDF).

The Program Guidance serves as a comprehensive, user-friendly guidance document for potential loan guarantee applicants and others seeking to better understand the Title 17 Program and the opportunities available thereunder. OEDF's revisions to the Program Guidance also provide valuable insight into how the Title 17 Program has changed as a result of the passage of the OBBB and the priorities of the Trump Administration. For instance, whereas the description of the purpose of the Program Guidance in the previous iteration described the Title 17 Program as a "critical tool for accelerating the deployment of clean energy and decarbonization technologies," the revised Program Guidance describes the Title 17 Program as a "critical tool for accelerating the deployment of high-impact energy and manufacturing projects."

The key changes to the Title 17 Program reflected in the new Program Guidance are as follows:

- Changes to Project Eligibility Requirements;
- Extension of Funding Availability through September 30, 2028 for EDF Projects;
- Decrease in Facility Fee;
- Shift Away from NEPA; and
- Elimination of Community Benefits Plan Requirements.

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ELIGIBLE PROJECT CATEGORIES

As before, the revised Program Guidance describes the four types of projects that OEDF has the authority to support under the Title 17 Program:

- Innovative Energy Projects (Section 1703);
- Innovative Supply Chain Projects (Section 1703);
- State Energy Financing Institution (SEFI)-Supported Projects (Section 1703); and
- Energy Dominance Financing Projects (Section 1706).

However, it is important to bear in mind that Section 50402 of the OBBB rescinded the unobligated amounts appropriated via Section 50141 of the Inflation Reduction Act of 2022 to Section 1703 projects. Consequently, while there may be statutory authority under the Energy Policy Act for each of these four categories of projects, there may not be sufficient appropriation available for OEDF to lend to Section 1703 projects.

We believe that the Energy Dominance Financing program pursuant to Section 1706 will be the most active category of Title 17 financings conducted by OEDF given its expansive categories for eligibility and given that it was recently established and appropriated new funding by the OBBB. Under the new Energy Dominance Financing program authority, OEDF may guarantee loans that:

1. retool, repower, repurpose or replace energy infrastructure that has ceased operations;
2. enable operating energy infrastructure to increase capacity or output; or
3. support or enable the provision of known or forecastable electric supply at time intervals necessary to maintain or enhance grid reliability or other system adequacy needs.

The OBBB also redefined the term “energy infrastructure” as used in Section 1706 to mean “a facility, and associated equipment, used for enabling the identification, leasing, development, production, processing, transportation, transmission, refining, and generation needed for energy and critical minerals.”¹

As before, the revised Program Guidance provides examples of projects that could be eligible for financing under each of the four categories under the Title 17 Program. However, the example projects highlighted have been changed to ones that are aligned with the Trump Administration’s priorities, such as critical

¹ OBBB Section 50403(a).

minerals² and advanced nuclear.³ So, for instance, the revised Program Guidance identifies a mine build out with a vertically integrated refinery as an example of a possible Innovative Energy Project under Section 1703, a nuclear build out involving the installation of two Generation 3+ light water reactors as an example of a possible Energy Dominance Financing project under Section 1706, and the restart of a dormant critical minerals mine as another possible Energy Dominance Financing project. In addition to nuclear and critical minerals projects, the revised Program Guidance suggests other possible project areas for Energy Dominance Financings, including dispatchable or base load power generation via coal or gas facilities, transmission projects, oil and gas pipelines, and upgrades or retrofits for refineries, among others.

The revised Program Guidance highlights one additional benefit for possible Energy Dominance Financing projects under Section 1706: the extension of funding availability from September 30, 2026 to September 30, 2028.

FACILITY FEE DECREASE

One significant change highlighted by the revised Program Guidance is the reduction in the size of the Facility Fee, a nonrefundable fee that must be paid by borrowers to DOE on the closing date of the relevant Loan Guarantee Agreement regardless of any draw. Previously, the Facility Fee was calculated as an amount equal to 0.6% of the first \$2 billion of guaranteed loan principal committed under the facility, plus 0.1% of any additional amount in excess of \$2 billion. The revised Program Guidance announces a reduction in the facility fee to 0.6% of the first \$1 billion of guaranteed loan principal committed under the facility, plus an additional 0.1% of any additional amount in excess of \$1 billion. For the largest loan guarantees, this change will result in savings of \$5 million in upfront fees.

SHIFT AWAY FROM NEPA

Section E.i. of Part V of the revised Program Guidance reflects another significant change impacting the type of environmental review required of projects under the Title 17 Program. The previous iteration of the Program Guidance stated that all projects must undergo the appropriate environmental review pursuant to the National Environmental Policy Act (NEPA). On the other hand, the new Program Guidance makes no reference to NEPA, instead

² See the Immediate Measures to Increase American Mineral Production Executive Order issued on March 20, 2025, available at <https://www.whitehouse.gov/presidential-actions/2025/03/immediate-measures-to-increase-american-mineral-production/>.

³ See the Deploying Advanced Nuclear Reactor Technologies for National Security Executive Order issued on May 23, 2025, available at <https://www.whitehouse.gov/presidential-actions/2025/05/deploying-advanced-nuclear-reactor-technologies-for-national-security/>.

stating that certain environmental statutes may be applicable to activities under the Title 17 Program that may require certain consultations (e.g., under the Endangered Species Act or National Historic Preservation Act) between DOE and other federal agencies, as well as state, tribal, and local governments. This suggests that OEDF will no longer require a NEPA review for every project under the Title 17 Program and is consistent with a significant “course correction” that has occurred across the federal government under the Trump Administration.

COMMUNITY BENEFIT PLAN REQUIREMENTS

The revised Program Guidance also reflects the elimination of the previous requirement that Title 17 applicants submit a Community Benefits Plan with their financing applications. Such Community Benefits Plans were required to show, among other things, how the project was expected to contribute to President Biden’s Justice40 Initiative. Pursuant to the Initial Rescissions of Harmful Executive Orders and Actions Executive Order⁴ issued on January 20, 2025, the Justice40 Initiative has since been terminated. However, the elimination of the Community Benefits Plan requirement should not be confused with the end customer / community benefit requirement applicable to electric utilities, which has not been eliminated. This requirement, set forth in 42 U.S.C. §1706(c)(2) and discussed in the new Program Guidance, states that an electric utility applying for Energy Dominance Financing under Section 1706 must demonstrate that it will pass on any financial benefit from the loan guarantee to the customers of, or associated communities served by, such electric utility.

LENDING TERMS LARGELY UNCHANGED

The revised Program Guidance makes clear that most of the key lending terms applicable to financings under the Title 17 Program have not changed materially:

- The Program Guidance indicates that projects borrowing from the Federal Financing Bank under the Program should typically expect a fixed interest rate pegged to US Treasury rates (matched to loan tenor), plus 0.375% and a “Risk-Based Charge” that generally allows OEDF flexibility to increase interest rates to reflect borrower creditworthiness. See the discussion below regarding how applicants can receive loans from the Federal Financing Bank. OEDF may require a credit assessment or credit rating at its discretion.

⁴ <https://www.whitehouse.gov/presidential-actions/2025/01/initial-rescissions-of-harmful-executive-orders-and-actions/>.

- Loan guarantees may cover up to 80% of eligible project costs (ineligible project costs include, among other things, research, development and demonstration costs in respect of readying innovative technologies, costs incurred during the project's operating period and any ability to finance the credit subsidy cost and certain other federal fees described below) and up to 90% of loans from commercial lenders (or up to 100% of the loan if the lender is the Federal Financing Bank). The impact of these two restrictions is that the effective maximum guaranteed obligation in respect of commercial loans is 72% of eligible project costs. However, cash flow and credit are considered in calculating leverage ratios, and many projects ultimately receive guarantees for 40% to 60% of project costs. Note that the previous Program Guidance suggested a range of 50 to 70% of project costs would be more typical, which may suggest a more conservative approach to leverage ratios for projects by OEDF.
- The maximum tenor of the guaranteed debt and other debt of the borrower is the lesser of 30 years or (for projects other than Energy Dominance Financing projects) 90% of the project's expected useful life, but tenors are frequently shorter.
- Guaranteed loans may not be subordinated in payment or lien priority to other financing and are typically secured (although they may share first-lien position *pari passu* with other lenders). Based on Hunton's experience advising utilities seeking Title 17 funding over the past several years, we have found that electric utilities can use the Title 17 Program to replace some of their standard debt capital markets financing activity to provide savings to their customers. OEDF has worked with its applicants and borrowers to develop a number of security structures that satisfy this requirement while accommodating existing capital structures at the borrower, including sharing in first mortgage bondholders' collateral and providing unsecured loans to utility borrowers that have an unsecured capital structure.
- Only term debt may be guaranteed—i.e., revolving loans may not be guaranteed.
- Guaranteed loans are typically structured as limited recourse project financings, but other structures may be used (including secured and unsecured corporate lending, securitizations and transactions involving tax equity).
- There is no minimum guaranteed loan size, but due to the fixed costs of utilizing the Program, loan guarantees are typically in excess of \$500

million. Note that this figure has increased from \$100 million in the previous Program Guidance.

- Borrowers must comply with various federal and programmatic requirements, including prevailing-wage requirements, the Cargo-Preference Act, and, for borrowers who are “non-federal entities” (i.e., states, local governments, Indian tribes, institutions of higher education and non-profit organizations, but generally not for-profit organizations), requirements under the Build America, Buy America Act. In our experience, it is useful for applicants to understand and plan to address these requirements as early as possible in the Title 17 process, as attempting to resolve these issues after applying can cause delays.
- Project sponsors must provide significant equity to the project, although not necessarily at the time of financial closing or in the form of cash.
- Loans must be made by an “Eligible Lender”—generally, the Federal Financing Bank or a commercial institution satisfying certain regulatory requirements. Applicants can work with OEDF to receive a direct loan from the Federal Financing Bank. OEDF handles all coordination with the Federal Financing Bank and no action is required of the applicant beyond the OEDF application and approval process.
- Participation in the Title 17 Program is disallowed insofar as applicable projects have benefited directly or indirectly from certain other forms of federal support, including grants, cooperative agreements or other loan guarantees from federal agencies or entities (including DOE), federal agencies or entities serving as a customer or off-taker of the project’s products or services, or other federal contracts, including acquisitions, leases and other arrangements, that support the project. Specific exceptions apply to the disallowance, including, most importantly, the project’s ability to benefit from federal tax credits (including by direct payment). OEDF has shown some flexibility in considering the application of this requirement in unique circumstances on a case-by-case basis. For instance, projects that have previously benefitted from federal support but no longer do (because, for instance, the federal grant has been exhausted) may not violate the restriction on federal support.

The application and evaluation process is largely unchanged by the new Program Guidance; applicants can still expect a two-part application process where, in Part I, OEDF establishes the project’s eligibility and the applicant’s readiness to proceed and in Part II, OEDF conducts a comprehensive due

diligence review of the project and the applicant. The Program Guidance also notes that there is no need for an applicant that has already submitted an application to resubmit its application, although OEDF may require additional information from the applicant to the extent consistent with the Program Guidance.

Participants in the energy and critical minerals industries should consider whether their projects might qualify for funding under the Title 17 Program and, in particular, the Energy Dominance Financing under Section 1706.