

**SENATOR DOMENICI'S ENERGY LOAN GUARANTEE PROVISION WILL
REDUCE CONGRESSIONAL OVERSIGHT AND PUT TAXPAYERS AT RISK FOR
BILLIONS OF DOLLARS**

Domenici Provision Eliminates Congressional Appropriations Authority

Section 124(b) is a little noticed provision inserted into the Senate Energy bill (H.R. 6) Senator Pete Domenici (R-NM). This provision would exempt the Department of Energy's (DOE) loan guarantee program from Sec 504(b) of the *Federal Credit Reform Act of 1990 (FCRA)*, which requires that new federal loan guarantee commitments may be made only to the extent that specific budget authority to cover their costs has been provided in advance in an appropriations act.

Under the Domenici provision, the Secretary of Energy would no longer be required to obtain, and appropriators would no longer be required to provide, this specific budget authority before the Secretary obligates the full faith and credit of the United States government to guaranteeing the payoff of private debt for nuclear reactors and other energy projects worth tens of billions of dollars. The Nuclear Energy Institute, the trade association representing the nuclear industry, wants more than \$50 billion in loan guarantees in FY08 and FY09 (see Rep. Pete Visclosky's floor statement at http://frwebgate.access.gpo.gov/cgi-bin/getpage.cgi?position=all&page=H6713&dbname=2007_record).

Domenici Provision Opposed by the Administration

Senator Domenici's provision is actually opposed by the Administration as specified in the Administration's Statement of Policy on June 12, 2007.

EPACT Title XVII Loan Guarantee Program: The Administration strongly opposes the bill's modifications to the EPAct Title XVII loan guarantee program, many of which are inconsistent with the Federal Credit Reform Act of 1990 (FCRA) and long-standing Federal credit policy. For example, certain provisions would remove appropriate controls over the size of the program and significantly increase potential taxpayer liability, namely those provisions that would waive the FCRA requirement that authority be provided in advance in an appropriations act in situations where the borrower pays the subsidy cost.

Furthermore, this policy was reaffirmed by the Department of Energy in issuing its loan guarantee rulemaking on October 4, 2007:

While the Act [EPACT 2005] authorizes payment from a borrower as an alternative source of funding, any such alternative source of funding does not relieve DOE from the necessity of obtaining authority in an appropriations act for the issuance of any loan guarantees, even in cases where the Credit Subsidy Cost will be paid by the borrower or project sponsor and no appropriations are used to pay such costs. Congress acted

consistent with this interpretation of Title XVII and Section 504 of FCRA when, in section 20320 of P.L. 110-5 it authorized a \$4 billion in loan guarantee limitation and required the use of the self-pay authority of Title XVII [of EPACT] for the loan guarantee authority provided by P.L. 110-5.....Title XVII and FCRA, read together, require DOE to obtain authority in an appropriations act to issue loan guarantees, even when employing the Title XVII self-pay authority.

Domenici Provision IS NOT a Reaffirmation of Current Law

Under current law there are two issues, first the general requirement, contained in FCRA but also independently in 42 U.S.C Sec. 7278 and the Anti-Deficiency Act, that DOE loan guarantee authority must be provided *in appropriations bills* -- and second, the narrower question of whether the actual “credit subsidy cost” of the guarantees is paid up front by the borrowers themselves or covered by funds appropriated by Congress. The original EPACT provision, an *authorization* act, speaks to the differences in these two methods of financing the guarantees, both of which are deemed acceptable, **but it did not invalidate the larger legal requirement that Congress regulate and oversee the overall level of risk taken on by taxpayers by specifically making loan guarantee authority available in appropriations bills.** 42 U.S.C. Sec. 7278 states: “None of the funds made available to the Department of Energy under this Act or subsequent Energy and Water Development Appropriations Acts shall be used to implement or finance ...loan guarantee programs unless specific provision is made for such programs in an appropriation Act. And the Anti-Deficiency Act constitutes a general requirement, applying to all obligations of funds by federal agencies, that these must be tied to corresponding congressional budget authority for that year.

Domenici Provision to Primarily Benefit Nuclear Projects

If approved the Domenici provision would open up the federal spigot by allowing the Secretary of Energy on his own authority to put future federal taxpayers on the hook for loans to the nuclear industry that could be worth upwards of \$50 billion over the next two years, and who knows how much after that. The Domenici provision further paves the way for this open-ended liability by excluding nuclear reactor designs that receive loan guarantees from the statutory definition of deployed “commercial technology,” which does not qualify for federally guaranteed credit support.

This sleight of hand opens the way for DOE to guarantee multiple nuclear follow-on units of the same design, even if this particular technology is already operating commercially in the U.S. marketplace. It would transform a program intended to subsidize the “first mover” unit of unproven new designs into an across-the-board subsidy for the deployment of subsequent commercial power reactors, without regard to whether they represent innovative low-carbon technology when compared to what is commercially deployed. Current DOE regulations already allow commercially-deployed reactor designs from other countries, such as France and Japan, to qualify for loan guarantee support as “innovative technology” if they have yet to be deployed in the U.S. market. Domenici’s provision would force U.S. taxpayers to underwrite *multiple deployments* of such foreign-designed and manufactured nuclear units.