

## §611.108

years after the date on which the Eligible facility that is built or installed as a result of the Eligible Project first begins operations, as determined by the Secretary.

(d)(1) The performance of all of the Borrower's obligations under the Loan Documents shall be secured by, and shall have the priority in, such Security as provided for within the terms and conditions of the Loan Documents.

(2) Accordingly, the rule states that the Secretary must have a first lien or security interest in all property acquired with loan funds. This requirement may be waived only by the Secretary on a non-delegable basis. DOE must also have a lien on any other property of the applicant pledged to secure the loan.

(3) In the event of default, if recoveries from the property and revenues pledged to the repayment of the loan are insufficient to fully repay all principal and interest on the loan, then the Federal Government will have recourse to the assets and revenues of the Borrower to the same extent as senior unsecured general obligations of the Borrower.

(e) The Borrower will be required to pay at the time of the closing of the loan a fee equal to 10 basis points of the principal amount of the loan.

## §611.108 Perfection of liens and preservation of collateral.

(a) The Agreement and other documents related thereto shall provide that:

(1) DOE and the Applicant, in conjunction with the Federal Financing Bank if necessary, will take those actions necessary to perfect and maintain liens, as applicable, on assets which are pledged as collateral for the loan; and

(2) Upon default by the Borrower, the holder of pledged collateral shall take such actions as DOE may reasonably require to provide for the care, preservation, protection, and maintenance of such collateral so as to enable the United States to achieve maximum recovery from the pledged assets. DOE shall reimburse the holder of collateral for reasonable and appropriate expenses incurred in taking actions required by DOE.

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(b) In the event of a default, DOE may enter into such contracts as the Secretary determines are required to preserve the collateral. The cost of such contracts may be charged to the Borrower.

## §611.109 Audit and access to records.

(a) The Agreement and related documents shall provide that:

(1) DOE in conjunction with the Federal Financing Bank, as applicable, and the Borrower, shall keep such records concerning the project as are necessary, including the Application, Term Sheet, Conditional Commitment, Agreement, mortgage, note, disbursement requests and supporting documentation, financial statements, audit reports of independent accounting firms, lists of all project assets and non-project assets pledged as security for the loan, all off-take and other revenue producing agreements, documentation for all project indebtedness, income tax returns, technology agreements, documentation for all permits and regulatory approvals and all other documents and records relating to the Eligible Project, as determined by the Secretary, to facilitate an effective audit and performance evaluation of the project; and

(2) The Secretary and the Comptroller General, or their duly authorized representatives, shall have access, for the purpose of audit and examination, to any pertinent books, documents, papers and records of the Borrower or DOE, as applicable. Such inspection may be made during regular office hours of the Borrower or DOE, as applicable, or at any other time mutually convenient.

(b) The Secretary may from time to time audit any or all statements or certificates submitted to the Secretary. The Borrower will make available to the Secretary all books and records and other data available to the Borrower in order to permit the Secretary to carry out such audits. The Borrower should represent that it has within its rights access to all financial and operational records and data relating to the project financed by the loan, and agrees that it will, upon request by the Secretary, exercise such rights in

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order to make such financial and operational records and data available to the Secretary. In exercising its rights hereunder, the Secretary may utilize employees of other Federal agencies, independent accountants, or other persons.

(c) Loan funds are being expended efficiently and effectively if documentation submitted and audits conducted under this section demonstrate that the borrower is making appropriate progress toward achieving the purpose for which the loan was originally made.

### **§611.110 Assignment or transfer of loans.**

(a) The Loan Documents may not be modified, in whole or in part, without the prior written approval of DOE.

(b) Upon prior written approval by DOE and the Federal Financing Bank, a certification by the assignor that the assignee is an Eligible Applicant as described in §611.100 of this part, and subject to paragraph (c) of this section and other provisions of this part, a Borrower may assign or transfer its interest in a loan provided under this part, including the loan documents, to a party that qualifies as an Eligible Applicant.

(c) The provisions of paragraph (b) of this section shall not apply to transfers which occur by operation of law.

### **§611.111 Default, demand, payment, and collateral liquidation.**

(a) In the event that the Borrower has defaulted in the making of required payments of principal or interest, and such default has not been cured within the period of grace provided in the Agreement, DOE may cause the principal amount of the loan, together with accrued interest thereon, and all amounts owed to the United States by Borrower pursuant to the Agreement, to become immediately due and payable by giving the Borrower written notice to such effect.

(b) In the event that the Borrower is in default as a result of a breach of one or more of the terms and conditions of the Agreement, note, mortgage, or other contractual obligations related to the transaction, other than the Borrower's obligation to pay principal or interest on the loan, and DOE deter-

mines, in writing, that such a default has materially affected the rights of the parties, the Borrower shall be given the period of grace provided in the Agreement to cure such default. If the default is not cured during the period of grace, DOE may cause the principal amount of the loan, together with accrued interest thereon, and all amounts owed to the United States by Borrower pursuant to the Agreement, to become immediately due and payable by giving the Borrower written notice to such effect.

(c) In the event that the Borrower has defaulted as described in paragraphs (a) or (b) of this section and such default is not cured during the grace period provided in the Agreement, DOE shall notify the U.S. Attorney General. DOE, acting through the U.S. Attorney General, may seek to foreclose on the collateral assets and/or take such other legal action as necessary for the protection of the Government.

(d) If DOE is awarded title to collateral assets pursuant to a foreclosure proceeding, DOE may take action to complete, maintain, operate, or lease the Eligible Facilities, or otherwise dispose of any property acquired pursuant to the Agreement or take any other necessary action which DOE deems appropriate.

(e) In addition to foreclosure and sale of collateral pursuant thereto, the U.S. Attorney General shall take appropriate action in accordance with rights contained in the Agreement to recover costs incurred by the Government as a result of the defaulted loan or other defaulted obligation. Any recovery so received by the U.S. Attorney General on behalf of the Government shall be applied in the following manner: First to the expenses incurred by the U.S. Attorney General and DOE in effecting such recovery; second, to reimbursement of any amounts paid by DOE as a result of the defaulted obligation; third, to any amounts owed to DOE under related principal and interest assistance contracts; and fourth, to any other lawful claims held by the Government on such process. Any sums remaining after full payment of the foregoing shall be available for the benefit