# Title XI Popular

**Title XI loan guarantees empirically have insanely high bipartisan support—overcomes the McCain link**

**Wayne ’01** [25 June 2001, Leslie Wayne, New York Times “Bush's Vow to Cut Ship Program Gets Strong Resistance From Lott,” http://www.nytimes.com/2001/06/25/business/bush-s-vow-to-cut-ship-program-gets-strong-resistance-from-lott.html?pagewanted=all&src=pm, AZhang]

First on the list, and the test case for the president's effort, is a loan guarantee program designed to encourage commercial shipbuilding. Called the Title XI Maritime Guarantee Loan Subsidy Program, it provides government guarantees so that shipbuilders can borrow from investors at low cost and with little risk. The Bush administration wants no new money spent on the program, which has helped finance some $6 billion in commercial shipbuilding projects since 1993. But a total of 38 senators from both parties, including 10 members of the Senate appropriations committee, have signed a letter circulated by Senator Lott saying they want to triple funds for the program in the next budget, to $100 million, which would be its highest-ever level. Between these two numbers, zero and $100 million, lies a debate over the role of government in private businesses, a potentially bruising battle in Congress, a larger discussion over whether commercial shipbuilding is needed to protect the military industrial base and much handwringing over the inability of many United States commercial shipyards to compete in the world marketplace without government help. Some say the program is essential to protect domestic shipbuilding. Others say that is exactly the problem -- the government is propping up an industry that is commercially uncompetitive. "This is a corporate subsidy that everyday taxpayers should not have to support," said Chris Ullman, a spokesman for the Office of Management and Budget, which is leading the administration's effort. Announcing that the shipbuilding program will be cut is the easy part; **fighting influential members of Congress seeking to triple its size is another.** "**Congress's record in cutting corporate subsidies has been pretty unimpressive**," said Steven Moore, senior fellow at the Cato Institute in Washington. "These programs are **important in home districts**. The shipbuilding program will probably be preserved because of the people of Mississippi. You've got two powerful senators who will fight vigorously to protect the subsidies." The passenger cruise ship program -- called Project America -- is an example of both the support the administration wants to cut, and of the industry's power in Congress. Government loan guarantees are being used to back up more than $1 billion in debt issued by the American Classic Voyages Company, which is building the two ships at Ingalls Shipbuilding in Pascagoula, Miss., to carry tourists around the Hawaiian islands. Should American Classic default on its debt, the guarantees mean that the government would pick up the tab. The guarantee saves American Classic money by enabling the company to issue debt at a lower cost and for a longer term than it could without it. In fact, given how risky the project is, American Classic probably would not have otherwise been able to borrow at all. Moreover, when American Classic, whose chairman and leading investor is Sam Zell, a Chicago billionaire best-known for investing in distressed companies, decided in 1997 to build the two ships, it got a powerful push from Congress. Tucked into the fine print of a military appropriations measure was language giving American Classic a 30-year monopoly on the cruise ship trade in Hawaii. No other United States-flagged cruise ship can call on Hawaii, although foreign-flagged carriers sailing from distant, less-attractive ports in Mexico or Canada still can. "Title XI loan guarantees were critical to our shipbuilding project," said Cornel Martin, vice president for corporate affairs at American Classic. "Without them, I'm not sure the project would have been feasible." The backers of loan guarantees are mobilizing their forces. A newly founded "Title XI Coalition" of shipyards, maritime unions, ship owners and operators and maritime suppliers, is making the rounds of Congress, lining up support. In New York last week, at a meeting of maritime financiers, the rallying cry was issued during a panel discussion, as that well-heeled crowd was urged not to let the administration "take out the long knives."

# AT: Loan Guarantees DA

**Recently passed transportation bill using loan guarantees proves no link uniqueness— prefer evidence in the context of transportation**

**O’Grady, June 29** [29 June 2012, Jim O’Grady, Reporter for Transportation Nation, “After Long Fight, Congress Passes 2-Yr Surface Transportation Bill,” http://transportationnation.org/2012/06/29/after-long-fight-congress-passes-2-yr-surface-transportation-bill/, AZhang]

Congress approved a two-year, $100 billion transportation and infrastructure bill just days before the federal highway trust fund was set to expire. The legislation comes after more than 1,000 days of wrangling by Republicans and Democrats over issues like Keystone oil pipeline approval allowing transit agencies to use federal capital funds for operating expenses during periods of high unemployment. (Neither provision made it into the final bill.) Senator Barbara Boxer praised the legislation, after leading the Democratic side of negotiations in the Senate. She said it would save about 1.8 million jobs by keeping aid for highway and transit construction flowing to states and create another 1 million jobs by using federal loan guarantees to leverage private sector investment in infrastructure projects. U.S. Transportation Secretary Ray LaHood called it “a good, bipartisan bill that will create jobs, strengthen our transportation system and grow our economy.”

**Lawmakers are fundamentally misunderstanding loan guarantees, which would still exist if the legislation passed—their evidence is in the context of energy, not transportation**

**Voegele, July 26** [26 July 2012, Erin Voegele, Associate Editor for Biomass Magazine, and Pellet Mill Magazine, and has written for several other BBI International publications in the past, “Solyndra failure strikes again as lawmakers try to cripple loan guarantee programs,” http://biomassmagazine.com/blog/article/2012/07/solyndra-failure-strikes-again-as-lawmakers-try-to-cripple-loan-guarantee-programs, AZhang]

The DOE would **still be allowed** to consider 1703 and 1705 applications that were received in 2011. However, the department would be prevented from granting a guarantee until a written recommendation is received from the Secretary of Treasury. The Secretary of Energy would have to take the recommendation into consideration. If a guarantee is made that doesn’t conform to the written recommendation of the Treasury, the Secretary of Energy would be required to supply the House Committee on Energy and Commerce and the Committee on Energy and Natural Resources with a written explanation of why the Treasury’s advice was not followed. A second report would also have to be filed that provides the committees with a review of the decision making process. The DOE would also have to consult with the Treasury regarding any restructure of the terms and conditions of the loan guarantee and would not be allowed to subordinate the interests of the U.S. government to any other financing for the project. In my opinion, the bill, which was written by Fred Upton, R-Mich., is yet another example of our elected lawmakers **destroying programs that they don’t understand**. The legislation totally misses the point of the loan guarantee programs. The DOE is not a bank, and its loan guarantee programs—by definition—are not designed to finance projects that can attract commercial lending. The whole point of the program is to help fund revolutionary, game-changing, first-of-kind, innovative projects. In other words, loan guarantees help attract funding for technologies considered “bad risks” by commercial lenders, primarily because new technologies are considered “risky” by the private sector. That means that the DOE does not—and should not—use the same factors that a bank does to determine eligibility. Loan guarantees are not designed to finance a standard power plant or petrochemical refinery. They are specifically designed to provide support to new innovations that might change the entire landscape of the U.S. energy industry. While the push for this bill is obviously the Solyndra loan guarantee failure, these lawmakers are missing a very important point; the 1703 and 1705 programs are designed to absorb some losses. When you are supporting the financing of revolutionary, game-changing, first-of-kind, innovative projects, some projects are going to fail. Period. That’s just how it is. Failure is an integral part of innovation. The important thing, as a society, is to **keep trying until we get it right.** Diversifying our energy sector is absolutely necessary for the long-term success of our nation. Crippling one of the few programs we have that is designed specifically to support that innovation is shortsighted and just plain wrong.

# AT: McCain DA

**McCain isn’t influential— Security reforms prove**

**Kerrey, July 25** [25 July 2012, Bob Kerrey, represented Nebraska as a U.S. senator from 1989 to 2001. He is currently the Democratic nominee for his former Senate seat, The Atlantic, “Congress Can't Be Trusted to Fix Itself,” http://www.theatlantic.com/politics/archive/2012/07/congress-cant-be-trusted-to-fix-itself/260297/, AZhang]

Perhaps the best example to make the case that Congress will not reform itself occurred in 2004, when the National Commission on Terrorist Attacks on the United States, aka the 9/11 Commission, made a set of recommendations to reform the executive branch and a set of recommendations to reform the legislative branch. Congress quickly and impressively moved to change the executive branch but did nothing to change itself. The House never voted on the recommendations; Sen. McCain could not persuade a majority in the Senate to improve the quality of oversight of executive branch intelligence agencies.

# AT: GAO Reports

**MARAD has already accounted for and solved all the weaknesses identified by the flawed GAO Report**

**GAO ’03** [Government Accountability Office, June 2003, “Weaknesses Identified in Management of the Title XI Loan Guarantee Program,” p. 34-35, http://www.gao.gov/assets/240/238839.pdf, AZhang]

We provided a draft of this report to DOT for its review and comment. We received comments from the department’s Assistant Secretary for Administration, who noted that MARAD has already begun to take steps to improve the operations of the Title XI program consistent with several of our recommendations. The department disagreed with the manner in which we characterized some report findings and provided additional information and data that we have incorporated into our analyses and report as appropriate. We also provided a copy of the draft report to OMB for its review and comment. We received comments from OMB’s Program Associate Director for General Government Programs, and its Assistant Director for Budget, who agreed that recent recovery expectations should be incorporated into future reestimates, but disagreed that OMB had provided little or no oversight over the program’s subsidy cost estimates. The department noted that its Office of Inspector General recently identified a number of issues raised in our report and that MARAD is already addressing these issues. MARAD recognized that aspects of the program’s operation need improvement and said it is working to fine tune program operations and create additional safeguards. Specifically, MARAD has agreed to improve procedures for financial review, seek authorization for outside assistance in cases of unusual complexity, and expand, within resource constraints, its processes for monitoring company financial condition and the condition of assets. The department pointed out that MARAD is permitted, under Title XI regulations, to modify or waive financial criteria for loan guarantees. Before issuing waivers in the future, DOT reported that MARAD will identify any needed compensatory measures to mitigate associated risks. MARAD also agreed to consider using outside financial advisors to review uniquely complicated cases. In addition, DOT reported that MARAD is working to improve its financial monitoring processes by developing procedures to better document its regular assessments of each company’s financial health. The department stated that MARAD plans to highlight the results of these assessments to top agency management for any Title XI companies experiencing financial difficulties. The department also reported that MARAD is developing a system that leverages limited staff resources for providing more extensive monitoring of Title XI vessel condition. In this regard, DOT said MARAD is establishing a documentation process for each vessel that would include improved record keeping of annual certificates from the U.S. Coast Guard, vessel classification societies, and insurance underwriters. MARAD hopes to use this system, together with company financial condition assessments, to determine whether additional inspections are necessary. In addition, DOT indicated that MARAD has begun an analysis of the program’s results covering the full 10-year period since FCRA was implemented to improve the accuracy of subsidy cost estimates. We agree that MARAD should conduct this analysis as part of its annual reestimate process to determine if estimated loan performance is reasonably close to actual performance and are encouraged that MARAD has been able to obtain the historical data to conduct such an analysis. We had attempted to perform a similar analysis to assess the basis MARAD used for its default and recovery assumptions, but MARAD was unable to provide us with this data.

**MARAD has responded and corrected the issues identified in the 2003 recommendations report**

**MARAD ’04** [28 September 2004, Maritime Administration, “TITLE XI LOAN GUARANTEEPROGRAM Report Number: CR-2004-095,” p. 3-5, http://www.oig.dot.gov/sites/dot/files/pdfdocs/cr2004095.pdf, AZhang]

The following is a summary of MARAD’s actions in response to our March 2003 audit report. **Risk Mitigation.** MARAD strengthened its procedures for review and approval of new loan guarantee applications. For any waivers or modifications to the standard loan approval criteria, MARAD performs a risk analysis and determines whether compensating measures are available or necessary, as set forth in the governing Title XI regulation.3 Once this review is completed, MARAD presents the results of its analysis of the application to the Department of Transportation Credit Council (Credit Council).4 The Credit Council assesses the financial viability of the application and its consistency with Departmental credit policies, Federal requirements, and DOT regulations on credit assistance. The Credit Council will provide a recommendation to the Maritime Administrator for consideration in approving or disapproving the application. **External Review Process**. Regarding the establishment of an external review process, MARAD originally required that all new and pending applications would undergo an external review before approval, as a supplement to MARAD’s internal review process. As a result of subsequent reauthorization legislation, MARAD and the Credit Council are working on a revision to this requirement. MARAD has suggested general guidelines that would require external reviews for applications from companies for start-up operations; for starting a new service, applying new technologies, or employing more complex finance transactions; and for large dollar transactions that represent a significant portion of the potential borrower’s debt. In the interim, until this revision is complete, MARAD will seek Credit Council concurrence for any application that MARAD believes does not require an external review. **Financial Monitoring**. By far, the most difficult area for MARAD to address was the establishment of a formal process for monitoring the financial condition of its Title XI portfolio companies. The process includes establishing an administrative file for each portfolio company and assigning an analyst to monitor each file. MARAD also established a requirement for more frequent and timely financial reporting for new Title XI loan guarantees. MARAD re-established a “Credit Watch” process. The Credit Watch is a monitoring system primarily for those companies experiencing some form of financial difficulty. MARAD established criteria to determine the conditions that warrant inclusion on Credit Watch and more detailed and timely analyses are to be performed on these companies. MARAD assigns Credit Watch companies to one of three categories, depending upon a company’s relative risk: “high” (risk of default within 1 year), “medium” (risk of default within 2 years) and “low” (risk of default within 3 years). As of June 30, 2004, MARAD placed 25 of its 70 borrowers on Credit Watch (high risk – 9 borrowers; medium risk – 8 borrowers; low risk – 8 borrowers). These borrowers had outstanding loan guarantees valued at more than $935 million, or approximately 26 percent of the more than $3.6 billion total Title XI loan guarantee portfolio. The nine borrowers considered high risk accounted for $563 million in outstanding loan guarantees. During our review, we observed that MARAD’s analysts were, in many cases, 6 months or more behind in performing analyses of borrowers’ financial statements. Timelier financial monitoring will continue to be a challenge for MARAD, especially as new loan guarantees are approved and more frequent reporting requirements are imposed on borrowers and their affiliates. MARAD must focus its efforts on catching up with financial analyses of the borrowers in its current portfolio before expending significant resources on new loan guarantee applications. **Asset Monitoring**. Regarding our recommendation to more closely monitor the physical condition of guaranteed assets, MARAD established a more formal process to monitor whether or not a company is current with respect to its marine insurance, classification, Coast Guard inspection, and other required certifications related to the physical condition of vessels. Additionally, following private sector practices, future Title XI transactions will give MARAD the right to select an independent entity to inspect the vessel or shipyard on an annual basis at the company’s expense if the company is not meeting its financial tests. MARAD will use this inspection right if there is concern that the owner is not adequately maintaining the vessel or shipyard. **Defaulted Asset Monitoring.** MARAD also developed a better process for documenting the actions taken with respect to seized assets and to maximize recoveries from their disposal. When appropriate, MARAD obtains the services of marine consultants to assist in conducting appraisals, surveys, and market analyses for the disposition of foreclosed assets. In addition, MARAD now requires monthly written reports on custodial activities and asset condition as another means of monitoring the condition of the vessels in its possession. At the time of our review, three vessels (Cape May Light, Cape Cod Light, and Columbia Queen) remained in MARAD’s possession as a result of the foreclosure process. MARAD has appointed a technical representative to monitor each vessel and has contracted with outside parties to ensure that the vessels receive appropriate maintenance and security measures.

**MARAD has responded and corrected the issues identified in the September 2004 recommendations report**

**MARAD ’04** [28 September 2004, Maritime Administration, “TITLE XI LOAN GUARANTEEPROGRAM Report Number: CR-2004-095,” p. 3-5, http://www.oig.dot.gov/sites/dot/files/pdfdocs/cr2004095.pdf, AZhang]

MARAD’s Response to New Recommendations On September 3, 2004, MARAD set forth its action plan with milestones for satisfying the new recommendations (see Appendix). The following summarizes MARAD’s implementation commitment. **Fully Fund Reserve Fund Requirements and Enforce Financial Agreements.** MARAD has established a plan to review each company’s Reserve Fund requirements and other significant defaults. MARAD has promised to complete these reviews for all companies on the Credit Watch by December 31, 2004, and anticipates completing the reviews for the remaining Title XI borrowers by March 1, 2005. Once these reviews are completed, MARAD has promised to take the necessary actions, utilizing all remedies available, to cure any defaults. **Establish Effective Default Management**. In coordination with the Credit Council, MARAD will work with staff representing the other credit programs within the Department of Transportation to develop a statement of work for advisors outside of MARAD and the funding options for such advisors. MARAD anticipates that a detailed action plan to secure access to advisors outside MARAD with the requisite capacity and technical sophistication to negotiate solutions to distressed loans can be developed by mid-December 2004. **Acquire Suitable Financial Monitoring Software**. MARAD has been advised by the Office of the Secretary that the Department wants to implement a monitoring system that can be used by all of the Department credit programs for purposes of efficiency and consistency. MARAD has set forth a three phase action plan consisting of: (1) developing a requirements definition and analysis of alternatives; (2) developing a solutions definition; and (3) acquiring and implementing the selected system. MARAD has set milestones to complete the first and second phase of the project by March 2005 and an additional 18 months for the acquisition and implementation of the system.

**More Evidenceeeeee**

**MARAD ’04** [28 September 2004, Maritime Administration, “TITLE XI LOAN GUARANTEEPROGRAM Report Number: CR-2004-095,” p. 26-31, http://www.oig.dot.gov/sites/dot/files/pdfdocs/cr2004095.pdf, AZhang]

Recommendation 1: Perform a full accounting of each borrower’s Reserve Fund, and require all borrowers to cure any defaults under the requirements of their Reserve Fund and Financial Agreements, including full funding of Reserve Funds. MARAD Accounting. MARAD will initiate a review of each current Title XI company to determine whether, over the life of their respective Title XI transaction(s), any company has failed to make the required Reserve Fund deposits. To accomplish this, we will send a letter to each current Title XI shipowner requiring that it submit a certification for each year of its loan guarantee as to whether a Reserve Fund deposit was required or not, the amount of deposit due, and the amount actually paid. These letters will be sent by October 1, 2004, with a request that the companies respond by November 1, 2004. We will pursue the certifications and failure to make Reserve Fund deposits beginning with the companies in the highest risk category on the Credit Watch Report. After the responses are received, we will determine the appropriate course of action to cure any defaults, taking into consideration such factors as the company’s current financial condition, years remaining on the guarantee, and the date on which the Reserve Fund deposit(s) should have been made. We will utilize the means discussed later in this section. We will also review our records to determine whether any Title XI company has failed to file financial statements over the last three calendar years (2001, 2002, 2003). To the extent that additional financial statements are needed, MARAD will demand that the companies provide them by October 15. Finally, we will also review each company’s financial statements for the same time period to determine whether it has committed any defaults that have any substantial adverse financial impact on, or increase the financial risk to MARAD, such as impermissible dividends or redemptions of capital. We will aggressively demand that a company found to be in default rectify any of the above defaults by promptly complying with the requirements imposed by the Title XI documentation. MARAD will require explanations in writing and demand prompt compliance, followed by demands for face to face meetings here in Washington. A failure to redress the default will be met by MARAD taking timely and appropriate enforcement action. Prospectively, we will require that all companies observe each of their obligations under their Title XI documentation. In response to the five recommendations contained in your March 27, 2003, audit report, MARAD worked with your staff to develop new forms and procedures to implement these recommendations. We believe that following these procedures is an important function. This effort will continue as the staff works on the review of the prior years’ financial statements as outlined above, in response to your latest recommendation. The same MARAD staff will also be working with the DOT Credit Council and its staff on various aspects of program administration, including Credit Watch briefings. We anticipate completing the overall financial review for all companies by March 1, 2005. However, in order to ensure that the most problematic companies do not have egregious defaults that increase the financial risk to the Government, MARAD will perform a complete review of the companies on the Credit Watch Report by December 31, 2004. Enforcement Based on Existing Remedies. Enforcement actions, as determined on a case-by-case basis, currently can include: 1. Calling a default and demanding that the Company, among other things, cure the default and amend its Title XI documents to include new, more effective remedial rights for MARAD (see discussion below for more information). 2. MARAD hiring private auditors to review the company’s records and complete an outside audit, as a company payable. 3. Reporting the existence of the defaults to applicable credit rating agencies and other members of the shipping industry by the issuance of a public statement from MARAD that the company is in default. 4. Assuming the guaranteed obligations and transferring the vessels and the obligations to another ship owner and commencing available creditor remedies against the company. 5. Seizing the vessels and laying them up or operating them in the name of MARAD to collect the revenue stream. 6. Debarring the Company from other Federal programs, grants, contracts, loans and loan guarantees. 7. Sending a notice to the Indenture Trustee instructing it to call upon the guaranteed obligations and the commencement of all available creditor remedies against the company. 8. Referral for prosecution pursuant to 18 U.S.C. 1001 in the event that the Company has made willful written misrepresentations to MARAD. MARAD will execute these remedies, as appropriate, to protect the Government’s financial and maritime interests, against any existing Title XI company that fails or refuses to comply promptly and in good faith with MARAD’s demand that the company cure its defaults. **Enforcement Based on New Remedies. Effective immediately,** each new Title XI guarantee that MARAD issues will add new remedies to the existing Title XI documentation to ensure that, upon a company’s default pursuant to the Title XI documents, the Government can immediately employ a full range of creditor remedies available under the law. These remedies can be put in place in the Title XI documentation without the creation of new statutory or regulatory authority. As noted above, MARAD will demand that existing defaulters (and all Title XI companies that seek to renegotiate the terms of their current transaction) agree to include these new remedies as part of their existing Title XI documentation. These new remedies will: 1. Clearly spell out that MARAD may exercise the full range of creditor remedies immediately upon the occurrence of a Default whether or not MARAD has paid under the guarantee or assumed the debt. These remedies will include, for instance, the right to bring suit in law and in equity to obtain compliance even before MARAD has paid out one dollar under its guarantee. 2. Ensure that MARAD is authorized to take immediate steps to protect its interests fully if the Company fails to make its Reserve Fund deposits or any other payment or to take any other action required by the Security Agreement for the benefit of MARAD. 3. Require shareholders of closely held Title XI companies and board members and other key officials of all Title XI companies to be financially responsible, as appropriate, to MARAD if they cause the Title XI Company to violate its Title XI duties. Recommendation 2. In coordination with the Department of Transportation Credit Council, secure access to advisors outside MARAD with the requisite capacity and technical sophistication to negotiate solutions to distressed loans, including appropriate compensating provisions to mitigate risk. MARAD will work with the Credit Restructuring Working Group (CRWG) to develop a statement of work for advisors outside of MARAD that could be used for any of the Department’s credit programs, including Title XI, and to evaluate the funding options for such advisors. This issue will be presented to the Department of Transportation Credit Council at its next meeting scheduled to occur in September 2004. MARAD will draft a statement of work in conjunction staff representing the other credit programs within the Department. The CRWG will then present the results of its analysis to the Department of Transportation Credit Council for its decision as to how to proceed. We would expect that this decision could be made by mid-November and that a detailed action plan for implementation of the decision could be developed by mid-December. Recommendation 3. With the concurrence of the Department of Transportation Credit Council, seek appropriations language allowing the use of as much of the $25 million wartime supplemental appropriation as necessary to develop a comprehensive computer-based financial monitoring system.

The Office of the Secretary has advised that the Department wants to implement a monitoring system that can be used by all the Department credit programs for purposes of efficiency and consistency. The CRWG has already met with MARAD’s Chief Information Officer (CIO) and a representative of the Department’s CIO to discuss this matter and to determine the funding necessary from each mode for development of a requirements definition and analysis of alternatives. This phase is anticipated to take 120 days. The Department anticipates that the funding needed to complete this phase will be obligated prior to the end of the current fiscal year and MARAD has already obligated its share. The MARAD CIO has already developed a preliminary statement of work for the first phase of the project and will finalize the statement of work after reaching full agreement with all members of the CRWG. After completion of the first phase described above, the CRWG will determine the funding necessary to continue with the project. If necessary to make funding decisions, the CRWG will ask for guidance from the Department Credit Council. In view of the fact that the number of outstanding Title XI guarantees make up a major portion of the Department’s total credit portfolio and recognizing that a portion of the supplemental appropriation will be required to fund a major portion of the project to completion, the Department has begun to investigate means for obtaining appropriations language to allow the use of a portion of the supplemental appropriation for this purpose. After securing the necessary funding, the next phase of the project will be the solutions definition, expected to take 90 days. In this phase, the method for accomplishing the requirements within the selected alternative will be developed. After completion of the first two phases, 18 months will be allowed for the acquisition and implementation of the selected system. The approach will be phased with incremental installations of software.