

109TH CONGRESS
1ST SESSION

S. 887

To amend the Energy Policy Act of 1992 to direct the Secretary of Energy to carry out activities that promote the adoption of technologies that reduce greenhouse gas intensity and to provide credit-based financial assistance and investment protection for projects that employ advanced climate technologies or systems, and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 21, 2005

Mr. HAGEL (for himself, Ms. LANDRIEU, Mr. ALEXANDER, Mr. PRYOR, Mr. CRAIG, Mrs. DOLE, and Ms. MURKOWSKI) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

A BILL

To amend the Energy Policy Act of 1992 to direct the Secretary of Energy to carry out activities that promote the adoption of technologies that reduce greenhouse gas intensity and to provide credit-based financial assistance and investment protection for projects that employ advanced climate technologies or systems, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Climate Change Tech-
3 nology Deployment and Infrastructure Credit Act of
4 2005”.

5 **SEC. 2. GREENHOUSE GAS INTENSITY REDUCING TECH-
6 NOLOGY STRATEGIES.**

7 Title XVI of the Energy Policy Act of 1992 (42
8 U.S.C. 13381 et seq.) is amended by adding at the end
9 the following:

10 **“SEC. 1610. GREENHOUSE GAS INTENSITY REDUCING
11 STRATEGIES.**

12 “(a) DEFINITIONS.—In this section:

13 “(1) CARBON SEQUESTRATION.—The term ‘car-
14 bon sequestration’ means the capture of carbon diox-
15 ide through terrestrial, geological, biological, or
16 other means, which prevents the release of carbon
17 dioxide into the atmosphere.

18 “(2) COMMITTEE.—The term ‘Committee’
19 means the Interagency Coordinating Committee on
20 Climate Change Technology established under sub-
21 section (c)(1).

22 “(3) GREENHOUSE GAS.—The term ‘greenhouse
23 gas’ means—

24 “(A) carbon dioxide;

25 “(B) methane;

26 “(C) nitrous oxide;

1 “(D) hydrofluorocarbons;

2 “(E) perfluorocarbons;

3 “(F) sulfur hexafluoride; and

4 “(G) any other gas that the Director of the
5 Office of Science and Technology Policy, in con-
6 sultation with the National Academy of
7 Sciences, defines as a greenhouse gas for pur-
8 poses of this section, based on credible scientific
9 research.

10 “(4) GREENHOUSE GAS INTENSITY.—The term
11 ‘greenhouse gas intensity’ means the ratio of green-
12 house gas emissions to economic output.

13 “(5) NATIONAL LABORATORY.—The term ‘Na-
14 tional Laboratory’ means a laboratory owned by the
15 Department of Energy, including the following:

16 “(A) Argonne National Laboratory.

17 “(B) Idaho National Laboratory.

18 “(C) Brookhaven National Laboratory.

19 “(D) Oak Ridge National Laboratory.

20 “(E) Los Alamos National Laboratory.

21 “(F) Sandia National Laboratory.

22 “(G) Lawrence Livermore National Lab-
23 oratory.

24 “(H) National Energy Technology Labora-
25 tory.

1 “(I) National Renewable Energy Labora-
2 tory.

3 “(J) Pacific Northwest National Labora-
4 tory.

5 “(6) WORKING GROUP.—The term ‘Working
6 Group’ means the Climate Change Technology
7 Working Group established under subsection (g)(1).

8 “(b) OFFICE OF SCIENCE AND TECHNOLOGY POLICY
9 STRATEGY.—

10 “(1) IN GENERAL.—Based on the recommenda-
11 tions of the report submitted under subsection
12 (f)(2), the Director of the Office of Science and
13 Technology Policy shall develop a national strategy
14 to promote greenhouse gas intensity reducing tech-
15 nologies and practices developed through research
16 and development programs conducted by National
17 Laboratories, other Federal research facilities, uni-
18 versities, and the private sector.

19 “(2) REPORT.—The Director of the Office of
20 Science and Technology Policy shall annually submit
21 to the President and make available to the public a
22 report on the activities carried out in furtherance of
23 the strategy developed under paragraph (1).

24 “(c) INTERAGENCY COORDINATING COMMITTEE ON
25 CLIMATE CHANGE TECHNOLOGY.—

1 “(1) IN GENERAL.—Not later than 180 days
2 after the date of enactment of this section, the Sec-
3 retary shall establish an Interagency Coordinating
4 Committee on Climate Change Technology to coordi-
5 nate Federal climate change activities and programs
6 carried out in furtherance of the strategy developed
7 under subsection (b)(1).

8 “(2) MEMBERSHIP.—The Committee shall be
9 composed of at least 6 members, including—

10 “(A) the Secretary;

11 “(B) the Secretary of Commerce;

12 “(C) the Chairman of the Council on Envi-
13 ronmental Quality;

14 “(D) the Secretary of Agriculture;

15 “(E) the Administrator of the Environ-
16 mental Protection Agency; and

17 “(F) the Secretary of Transportation.

18 “(3) STAFF.—The Secretary shall provide such
19 personnel as are necessary to enable the Committee
20 to perform the duties of the Committee.

21 “(d) CLIMATE CHANGE SCIENCE PROGRAM AND CLI-
22 MATE CHANGE TECHNOLOGY PROGRAM.—

23 “(1) CLIMATE CHANGE SCIENCE PROGRAM.—

24 Not later than 180 days after the date on which the
25 first report is submitted under subsection (b)(2), the

1 Secretary of Commerce, in cooperation with the
2 Committee, shall establish within the Department of
3 Commerce the Climate Change Science Program to
4 assist the Committee in the interagency coordination
5 of climate change science research and related activi-
6 ties, including—

7 “(A) the assessments of the state of knowl-
8 edge on climate change; and

9 “(B) carrying out supporting studies, plan-
10 ning, and analyses of the science of climate
11 change.

12 “(2) CLIMATE CHANGE TECHNOLOGY PRO-
13 GRAM.—Not later than 180 days after the date on
14 which the first report is submitted under subsection
15 (b)(2), the Secretary, in cooperation with the Com-
16 mittee, shall establish within the Department of En-
17 ergy, the Climate Change Technology Program to
18 assist the Committee in the interagency coordination
19 of climate change technology research, development,
20 demonstration, and deployment to reduce greenhouse
21 gas intensity.

22 “(e) TECHNOLOGY INVENTORY.—

23 “(1) IN GENERAL.—The Secretary shall con-
24 duct an inventory and evaluation of greenhouse gas
25 intensity reducing technologies that have been devel-

1 oped, or are under development, by the National
2 Laboratories to determine which technologies are
3 suitable for commercialization and deployment.

4 “(2) REPORT.—Not later than 180 days after
5 the completion of the inventory under paragraph (1),
6 the Secretary shall submit to the Secretary of Com-
7 merce and Congress a report that includes the re-
8 sults of the completed inventory and any rec-
9 ommendations of the Secretary.

10 “(3) USE.—The Secretary, in consultation with
11 the Secretary of Commerce, shall use the results of
12 the inventory as guidance in the commercialization
13 of greenhouse gas intensity reducing technologies.

14 “(f) GREENHOUSE GAS INTENSITY REDUCING TECH-
15 NOLOGY STUDY.—

16 “(1) STUDY.—As soon as practicable after the
17 date of enactment of this section, the Committee
18 shall conduct and submit to the Secretary a study
19 on—

20 “(A) the commercialization and diffusion
21 of new and existing technologies to reduce
22 greenhouse gas intensity; and

23 “(B) ways to increase the development and
24 deployment of cost-effective technologies and
25 practices.

1 “(2) REPORT.—Not later than 180 days after
2 the completion of the study under paragraph (1), the
3 Secretary shall submit to Congress and the Director
4 of the Office of Science and Technology Policy a re-
5 port that describes—

6 “(A) the results of the study; and

7 “(B) any recommendations of the Com-
8 mittee to—

9 “(i) increase commercialization of the
10 technologies and practices described in
11 paragraph (1); and

12 “(ii) promote the long-term commer-
13 cialization and deployment of those tech-
14 nologies and practices.

15 “(g) CLIMATE CHANGE TECHNOLOGY WORKING
16 GROUP.—

17 “(1) IN GENERAL.—The Secretary, in consulta-
18 tion with the Committee, shall establish a Climate
19 Change Technology Working Group to identify stat-
20 utory, regulatory, and economic barriers to the com-
21 mercialization of greenhouse gas intensity reducing
22 technologies and practices.

23 “(2) COMPOSITION.—The Working Group shall
24 be composed of the following members, to be ap-

1 pointed by the Secretary, in consultation with the
2 Committee:

3 “(A) 1 representative from each National
4 Laboratory.

5 “(B) 3 members shall be representatives of
6 energy-producing trade organizations.

7 “(C) 3 members shall represent energy-in-
8 tensive trade organizations.

9 “(D) 3 members shall represent groups
10 that represent end-use energy and other con-
11 sumers.

12 “(E) 3 members shall be employees of the
13 Federal Government who are experts in energy
14 technology, intellectual property, tax, and regu-
15 lation.

16 “(F) 3 members shall be representatives of
17 universities with expertise in energy technology
18 development that are recommended by the Na-
19 tional Academy of Engineering.

20 “(3) REPORT.—Not later than 1 year after the
21 date of enactment of this section and annually there-
22 after, the Working Group shall submit to the Com-
23 mittee a report that describes—

24 “(A) the findings of the Working Group;
25 and

1 “(B) any recommendations of the Working
2 Group for the removal of barriers to commer-
3 cialization and increasing the use of greenhouse
4 gas intensity reducing technologies.

5 “(4) COMPENSATION OF MEMBERS.—

6 “(A) NON-FEDERAL EMPLOYEES.—A
7 member of the Working Group who is not an
8 officer or employee of the Federal Government
9 shall be compensated at a rate equal to the
10 daily equivalent of the annual rate of basic pay
11 prescribed for level IV of the Executive Sched-
12 ule under section 5315 of title 5, United States
13 Code, for each day (including travel time) dur-
14 ing which the member is engaged in the per-
15 formance of the duties of the Working Group.

16 “(B) FEDERAL EMPLOYEES.—A member
17 of the Working Group who is an officer or em-
18 ployee of the Federal Government shall serve
19 without compensation in addition to the com-
20 pensation received for the services of the mem-
21 ber as an officer or employee of the Federal
22 Government.

23 “(C) TRAVEL EXPENSES.—A member of
24 the Working Group shall be allowed travel ex-
25 penses, including per diem in lieu of subsist-

1 ence, at rates authorized for an employee of an
2 agency under subchapter I of chapter 57 of title
3 5, United States Code, while away from the
4 home or regular place of business of the mem-
5 ber in the performance of the duties of the
6 Commission.

7 “(h) GREENHOUSE GAS INTENSITY REDUCING
8 TECHNOLOGY DEPLOYMENT.—

9 “(1) IN GENERAL.—Based on the strategy de-
10 veloped under subsection (b)(1), the technology in-
11 ventory conducted under subsection (e)(1), and the
12 greenhouse gas intensity reducing technology study
13 report submitted under subsection (e)(2), the Com-
14 mittee shall develop a program for implementation
15 by the Climate Credit Board established under sec-
16 tion 1611(b)(2)(A) that would provide for the re-
17 moval of domestic barriers to the deployment of
18 greenhouse gas intensity reducing technologies.

19 “(2) REQUIREMENTS.—In developing the pro-
20 gram under paragraph (1), the Committee shall con-
21 sider in the aggregate—

22 “(A) the cost-effectiveness of the tech-
23 nology;

24 “(B) fiscal and regulatory barriers;

25 “(C) statutory barriers; and

1 “(D) intellectual property issues.

2 “(3) REPORT.—Not later than 1 year after the
3 date of enactment of this section, the Committee
4 shall submit to the President and Congress a report
5 that—

6 “(A) identifies the barriers to, and the
7 commercial risks associated with, the deploy-
8 ment of greenhouse gas intensity reducing tech-
9 nologies;

10 “(B) includes a plan for carrying out eligi-
11 ble projects with Federal financial assistance
12 under section 1611; and

13 “(C) describes the program developed
14 under paragraph (1).

15 “(i) PROCEDURES FOR CALCULATING, MONITORING,
16 AND ANALYZING GREENHOUSE GAS INTENSITY.—

17 “(1) IN GENERAL.—Using the guidelines issued
18 under section 1605(b), the Committee, in collabora-
19 tion with the Administrator of the Energy Informa-
20 tion Administration and the National Institute of
21 Standards and Technology, shall develop and pro-
22 pose standards and best practices for calculating,
23 monitoring, and analyzing greenhouse gas intensity.

1 “(2) CONTENT.—The standards and best prac-
2 tices shall address measurement of greenhouse gas
3 intensity by industry sector.

4 “(3) PUBLICATION.—To provide the public with
5 an opportunity to comment on the standards and
6 best practices proposed under paragraph (1), the
7 standards and best practices shall be published in
8 the Federal Register.

9 “(4) APPLICABLE LAW.—To ensure that high
10 quality information is produced, the standards and
11 best practices developed under paragraph (1) shall
12 conform to the guidelines established under section
13 515 of the Treasury and General Government Ap-
14 propriations Act, 2001 (commonly known as the
15 ‘Data Quality Act’) (44 U.S.C. 3516 note; 114 Stat.
16 2763A–1543), as enacted into law by section 1(a)(3)
17 of Public Law 106–554.

18 “(j) DEMONSTRATION PROJECTS.—

19 “(1) IN GENERAL.—The Secretary shall con-
20 duct and participate in demonstration projects ap-
21 proved by the Committee, including demonstration
22 projects relating to—

23 “(A) coal gasification and coal liquefaction;

24 “(B) carbon sequestration;

25 “(C) cogeneration technology initiatives;

1 “(D) advanced nuclear power projects;

2 “(E) lower emission transportation;

3 “(F) renewable energy; and

4 “(G) transmission upgrades.

5 “(2) CRITERIA.—The Committee shall approve
6 a demonstration project under paragraph (1) if the
7 proposed demonstration project would—

8 “(A) increase the reduction of the green-
9 house gas intensity to levels below that which
10 would be achieved by technologies being used in
11 the United States as of the date of enactment
12 of this section;

13 “(B) maximize the potential return on
14 Federal investment;

15 “(C) demonstrate distinct roles in public-
16 private partnerships;

17 “(D) produce a large-scale reduction of
18 greenhouse gas intensity if commercialization
19 occurred; and

20 “(E) support a diversified portfolio to miti-
21 gate the uncertainty associated with a single
22 technology.

23 “(k) COOPERATIVE RESEARCH AND DEVELOPMENT
24 AGREEMENTS.—In carrying out greenhouse gas intensity
25 reduction research and technology deployment, the Sec-

1 retary may enter into cooperative research and develop-
2 ment agreements under section 12 of the Stevenson-
3 Wydler Technology Innovation Act of 1980 (15 U.S.C.
4 3710a).

5 “(l) AUTHORIZATION OF APPROPRIATIONS.—There
6 are authorized to be appropriated such sums as are nec-
7 essary to carry out this section (other than subsection (j)).

8 “(m) TERMINATION OF AUTHORITY.—The authority
9 provided by this section terminates effective December 31,
10 2010.”.

11 **SEC. 3. CLIMATE INFRASTRUCTURE CREDIT.**

12 Title XVI of the Energy Policy Act of 1992 (42
13 U.S.C. 13381 et seq.) (as amended by section 2) is
14 amended by adding at the end the following:

15 **“SEC. 1611. CLIMATE INFRASTRUCTURE CREDIT.**

16 “(a) DEFINITIONS.—In this section:

17 “(1) ADVANCED CLIMATE TECHNOLOGY OR SYS-
18 TEM.—The term ‘advanced climate technology or
19 system’ means a climate technology or system that
20 is not in general usage as of the date of enactment
21 of this section.

22 “(2) BOARD.—The term ‘Board’ means the Cli-
23 mate Credit Board established under subsection
24 (b)(2)(A).

1 “(3) DIRECT LOAN.—The term ‘direct loan’ has
2 the meaning given the term in section 502 of the
3 Federal Credit Reform Act of 1990 (2 U.S.C. 661a).

4 “(4) ELIGIBLE PROJECT.—The term ‘eligible
5 project’ means a demonstration project that is ap-
6 proved under section 1610(j)(1).

7 “(5) ELIGIBLE PROJECT COST.—The term ‘eli-
8 gible project cost’ means any amount incurred for an
9 eligible project that is paid by, or on behalf of, an
10 obligor, including the costs of—

11 “(A) pre-construction activities, includ-
12 ing—

13 “(i) detailed project engineering and
14 design work;

15 “(ii) environmental reviews and per-
16 mitting; and

17 “(iii) other pre-construction activities,
18 as determined by the Secretary;

19 “(B) construction activities, including—

20 “(i) the acquisition of capital equip-
21 ment;

22 “(ii) construction management; and

23 “(iii) construction contingencies; and

1 “(C) acquiring land (including any im-
2 provements to the land) relating to the eligible
3 project; and

4 “(D) financing the eligible project, includ-
5 ing—

6 “(i) providing capitalized interest nec-
7 essary to meet market requirements;

8 “(ii) maintaining reasonably required
9 reserve funds;

10 “(iii) capital issuance expenses; and

11 “(iv) other carrying costs during con-
12 struction.

13 “(6) FEDERAL FINANCIAL ASSISTANCE.—The
14 term ‘Federal financial assistance’ means any credit-
15 based financial assistance, including a direct loan,
16 loan guarantee, a line of credit (which serves as
17 standby default coverage or standby interest cov-
18 erage), production incentive payment under sub-
19 section (g)(1)(B), or other credit-based financial as-
20 sistance mechanism for an eligible project that is—

21 “(A) authorized to be made available by
22 the Secretary for an eligible project under this
23 section; and

1 “(B) provided in accordance with the Fed-
2 eral Credit Reform Act of 1990 (2 U.S.C. 661
3 et seq.).

4 “(7) INVESTMENT-GRADE RATING.—The term
5 ‘investment-grade rating’ means a rating category of
6 BBB minus, Baa3, or higher assigned by a rating
7 agency for eligible project obligations offered into
8 the capital markets.

9 “(8) LENDER.—The term ‘lender’ means any
10 non-Federal qualified institutional buyer (as defined
11 in section 230.144A(a) of title 17, Code of Federal
12 Regulations (or any successor regulation), known as
13 Rule 144A(a) of the Securities and Exchange Com-
14 mission and issued under the Securities Act of 1933
15 (15 U.S.C. 77a et seq.)), including—

16 “(A) a qualified retirement plan (as de-
17 fined in section 4974(c) of the Internal Revenue
18 Code of 1986) that is a qualified institutional
19 buyer; and

20 “(B) a governmental plan (as defined in
21 section 414(d) of the Internal Revenue Code of
22 1986) that is a qualified institutional buyer.

23 “(9) LOAN GUARANTEE.—The term ‘loan guar-
24 antee’ means any guarantee or other pledge by the
25 Secretary to pay all or part of the principal of and

1 interest on a loan or other debt obligation that is
2 issued by an obligor and funded by a lender.

3 “(10) OBLIGOR.—The term ‘obligor’ means a
4 person or entity (including a corporation, partner-
5 ship, joint venture, trust, or governmental entity,
6 agency, or instrumentality) that is primarily liable
7 for payment of the principal of, or interest on, a
8 Federal credit instrument.

9 “(11) PROJECT OBLIGATION.—The term
10 ‘project obligation’ means any note, bond, debenture,
11 or other debt obligation issued by an obligor in con-
12 nection with the financing of an eligible project,
13 other than a Federal credit instrument.

14 “(12) RATING AGENCY.—The term ‘rating
15 agency’ means a bond rating agency identified by
16 the Securities and Exchange Commission as a Na-
17 tionally Recognized Statistical Rating Organization.

18 “(13) REGULATORY FAILURE.—The term ‘regu-
19 latory failure’ means a situation in which, because of
20 a breakdown in a regulatory process or an indefinite
21 delay caused by a judicial challenge to the regulatory
22 consideration of a specific eligible project, the Fed-
23 eral or State regulatory or licensing process gov-
24 erning the siting, construction, or commissioning of
25 an eligible project does not produce a definitive de-

1 termination that the eligible project may go forward
2 or stop within a predetermined and prescribed time
3 period, as determined by the Secretary.

4 “(14) SECURED LOAN.—The term ‘secured
5 loan’ means a loan or other secured debt obligation
6 issued by an obligor and funded by the Secretary in
7 connection with the financing of an eligible project.

8 “(15) STANDBY DEFAULT COVERAGE.—The
9 term ‘standby default coverage’ means a pledge by
10 the Secretary to pay all or part of the debt obliga-
11 tion issued by an obligor and funded by a lender,
12 plus all or part of obligor equity, if an eligible
13 project fails to receive an operating license in a pe-
14 riod of time established by the Secretary because of
15 a regulatory failure or other specific issue identified
16 by the Secretary.

17 “(16) STANDBY INTEREST COVERAGE.—The
18 term ‘standby interest coverage’ means a pledge by
19 the Secretary to provide to an obligor, at a future
20 date and on the occurrence of 1 or more events, a
21 direct loan, the proceeds of which shall be used by
22 the obligor to maintain the current status of the ob-
23 ligor on interest payments due on 1 or more loans
24 or other project obligations issued by an obligor and
25 funded by a lender for an eligible project.

1 “(17) SUBSIDY AMOUNT.—The term ‘subsidy
2 amount’ means the amount of budget authority suf-
3 ficient to cover the estimated long-term cost to the
4 Federal Government of a Federal credit instrument
5 issued by the Secretary to an eligible project, cal-
6 culated on a net present value basis, excluding ad-
7 ministrative costs and any incidental effects on gov-
8 ernmental receipts or outlays in accordance with the
9 Federal Credit Reform Act of 1990 (2 U.S.C. 661
10 et seq.).

11 “(18) SUBSTANTIAL COMPLETION.—The term
12 ‘substantial completion’ means that an eligible
13 project has been determined by the Board to be in,
14 or capable of, commercial operation.

15 “(b) DUTIES OF THE SECRETARY.—

16 “(1) IN GENERAL.—The Secretary shall make
17 available to eligible project developers and eligible
18 project owners, in accordance with this section, such
19 financial assistance as is necessary to supplement
20 private sector financing for eligible projects.

21 “(2) CLIMATE CREDIT BOARD.—

22 “(A) IN GENERAL.—Not later than 120
23 days after the date of enactment of this section,
24 the Secretary shall establish within the Depart-

1 ment of Energy a Climate Credit Board com-
2 posed of—

3 “(i) the Under Secretary of Energy,
4 who shall serve as Chairperson;

5 “(ii) the Chief Financial Officer of the
6 Department of Energy;

7 “(iii) the Assistant Secretary of En-
8 ergy for Policy and International Affairs;

9 “(iv) the Assistant Secretary of En-
10 ergy for Energy Efficiency and Renewable
11 Energy; and

12 “(v) such other individuals as the Sec-
13 retary determines to have the experience
14 and expertise (including expertise in cor-
15 porate and project finance and the energy
16 sector) necessary to carry out the duties of
17 the Board.

18 “(B) DUTIES.—The Board shall—

19 “(i) implement the program developed
20 under section 1610(h)(1) in accordance
21 with paragraph (3);

22 “(ii) issue regulations and criteria in
23 accordance with paragraph (4);

1 “(iii) conduct negotiations with indi-
2 viduals and entities interested in obtaining
3 assistance under this section;

4 “(iv) recommend to the Secretary po-
5 tential recipients and amounts of grants of
6 assistance under this section;

7 “(v) carry out such other projects and
8 activities as the Interagency Coordinating
9 Committee on Climate Change Technology
10 may recommend; and

11 “(vi) establish metrics to indicate the
12 progress of the greenhouse gas intensity
13 reducing technology deployment program
14 and individual projects carried out under
15 the program toward meeting the criteria
16 established by section 1610(j)(2).

17 “(3) GREENHOUSE GAS INTENSITY REDUCING
18 TECHNOLOGY DEPLOYMENT PROGRAM.—Not later
19 than 1 year after the date of enactment of this sec-
20 tion, the Board shall implement the greenhouse gas
21 intensity reducing technology deployment program
22 developed under section 1610(h)(1).

23 “(4) REGULATIONS AND CRITERIA.—

24 “(A) IN GENERAL.—Not later than 1 year
25 after the date of enactment of this section, the

1 Board shall issue and publish in the Federal
2 Register such regulations and criteria as are
3 necessary to implement this section.

4 “(B) REQUIREMENTS.—The regulations
5 and criteria shall provide for, at a minimum—

6 “(i) a competitive process and the
7 general terms and conditions for the provi-
8 sion of assistance under this section;

9 “(ii) the procedures by which eligible
10 project owners and eligible project devel-
11 opers may request financial assistance
12 under this section; and

13 “(iii) the collection of any other infor-
14 mation necessary for the Secretary to carry
15 out this section, including a process for ne-
16 gotiating the terms and conditions of as-
17 sistance provided under this section.

18 “(C) ELIGIBILITY AND CRITERIA.—The de-
19 termination of eligibility of, and criteria for se-
20 lecting, eligible projects to receive assistance
21 under this section shall be carried out in ac-
22 cordance with subsection (c).

23 “(D) CONDITIONS FOR PROVISION OF AS-
24 SISTANCE.—The Board shall not provide assist-
25 ance under this section unless the Board deter-

1 mines that the terms, conditions, maturity, se-
2 curity, schedule, and amounts of repayments of
3 the assistance are reasonable and meet such
4 standards as the Board determines are appro-
5 priate to protect the financial interests of the
6 United States.

7 “(5) REPORTS TO THE PRESIDENT AND CON-
8 GRESS.—Not later than 4 years after the date of en-
9 actment of this section, and every 2 years thereafter,
10 the Board shall submit to the Secretary, for trans-
11 mittal to the President and Congress, a report that
12 describes—

13 “(A) the progress in carrying out this sec-
14 tion;

15 “(B) the financial performance of the eligi-
16 ble projects that are receiving, or have received,
17 assistance under this section as of the date of
18 the report; and

19 “(C) the progress and value to the United
20 States of the program under this section, in-
21 cluding a recommendation as to whether the ob-
22 jectives of this section are best served by—

23 “(i) continuing the program under the
24 authority of the Secretary;

1 “(ii) establishing a Federal Govern-
2 ment corporation or Federal Government-
3 sponsored enterprise to administer the pro-
4 gram; or

5 “(iii) phasing out the program and re-
6 lying on the capital markets to fund the
7 kinds of energy infrastructure investments
8 assisted by this section without Federal
9 participation.

10 “(6) CONFIDENTIALITY.—The Board shall pro-
11 tect the confidentiality of any information provided
12 by an applicant for assistance under this section
13 that the applicant certifies to be commercially sen-
14 sitive or that is protected intellectual property.

15 “(c) GENERAL REQUIREMENTS REGARDING ASSIST-
16 ANCE, DETERMINATION OF ELIGIBILITY, AND PROJECT
17 SELECTION.—

18 “(1) IN GENERAL.—The Board shall not pro-
19 vide assistance to an eligible project under this sec-
20 tion unless the Board first determines that the
21 amount of assistance to be provided for the eligible
22 project is not greater than the amount of assistance
23 required to achieve the criteria established under
24 section 1610(j)(2) with respect to the eligible
25 project.

1 “(2) ELIGIBILITY.—To be eligible to receive as-
2 sistance under this section, an eligible project shall,
3 as determined by the Board—

4 “(A) be supported by an application that
5 contains all information required to be included
6 by, and is submitted to and approved by the
7 Board in accordance with, the regulations and
8 criteria issued by the Board under subsection
9 (b)(4);

10 “(B) be nationally or regionally significant
11 by—

12 “(i) reducing greenhouse gas inten-
13 sity;

14 “(ii) generating economic benefits;

15 “(iii) contributing to energy security;

16 “(iv) contributing to energy and tech-
17 nology diversity in the energy economy of
18 the United States;

19 “(v) contributing to energy and elec-
20 tricity price stability; or

21 “(vi) otherwise enhancing national or
22 regional energy efficiency, reliability, and
23 robustness of performance;

24 “(C) contain an advanced climate tech-
25 nology or system that could—

1 “(i) significantly improve the effi-
2 ciency, security, reliability, and environ-
3 mental performance of the energy economy
4 of the United States; and

5 “(ii) reduce greenhouse gas emissions;

6 “(D) have revenue sources dedicated to re-
7 payment of credit support-based project financ-
8 ing, such as revenue—

9 “(i) from the sale of sequestered car-
10 bon;

11 “(ii) from the sale of energy, elec-
12 tricity, or other products from eligible
13 projects that employ advanced climate
14 technologies and systems;

15 “(iii) from the sale of transportation
16 of commerce;

17 “(iv) from the sale of electricity or
18 generating capacity, in the case of elec-
19 tricity infrastructure;

20 “(v) from the sale or transmission of
21 energy;

22 “(vi) associated with energy efficiency
23 gains, in the case of other energy projects;

24 or

1 “(vii) from other dedicated revenue
2 sources;

3 “(E) include a project proposal and agree-
4 ment for project financing repayment that dem-
5 onstrates to the satisfaction of the Board that
6 the dedicated revenue sources described in sub-
7 paragraph (D) will be adequate to repay project
8 financing provided under this section;

9 “(F) reduce greenhouse gas intensity on a
10 national or regional basis; and

11 “(G) if the eligible project involves new
12 transmission capacity, link to low-emission
13 projects.

14 “(3) LIMITATIONS.—Except as otherwise pro-
15 vided in this section—

16 “(A) the total cost of an eligible project
17 provided Federal financial assistance under this
18 section shall be at least \$40,000,000;

19 “(B) the Federal share of an eligible
20 project provided Federal financial assistance
21 under this section shall be not more than 20
22 percent of the total cost of carrying out the eli-
23 gible project;

1 “(C) not more than \$200,000,000 in Fed-
2 eral financial assistance shall be provided to
3 any individual eligible project; and

4 “(D) an eligible project shall not be eligible
5 for financial assistance from any other Federal
6 program during any period that Federal finan-
7 cial assistance is provided to the eligible project
8 under this section.

9 “(4) SELECTION AMONG ELIGIBLE PROJECTS.—

10 “(A) ESTABLISHMENT OF SELECTION CRI-
11 TERIA.—The Board shall establish criteria for
12 selecting which eligible projects will receive as-
13 sistance under this section.

14 “(B) REQUIREMENTS.—The selection cri-
15 teria shall include a determination by the Board
16 of the extent to which—

17 “(i) the eligible project reduces green-
18 house gas intensity beyond reductions
19 achieved by technology available as of Oc-
20 tober 15, 1992;

21 “(ii) financing for the eligible project
22 has appropriate security features, such as
23 a rate covenant, to ensure repayment;

24 “(iii) assistance under this section for
25 the eligible project would foster innovative

1 public-private partnerships and attract pri-
2 vate debt or equity investment;

3 “(iv) assistance under this section for
4 an eligible project would enable the eligible
5 project to proceed at an earlier date than
6 would otherwise be practicable;

7 “(v) the eligible project uses new tech-
8 nologies that enhance the efficiency, reduce
9 the environmental impact, improve the reli-
10 ability, or improve the safety, of the eligi-
11 ble project;

12 “(vi) the eligible project helps to
13 maintain or protect the environment, espe-
14 cially with respect to having a low level of
15 emissions to the atmosphere;

16 “(vii) assistance for the eligible
17 project provided under this section could
18 reduce the contribution of other Federal
19 grant or funding assistance to the eligible
20 project; and

21 “(viii) the eligible project is nationally
22 or regionally significant in terms of gener-
23 ating economic benefits, supporting inter-
24 national commerce, or otherwise enhancing
25 national energy efficiency, security, reli-

1 ability, robustness, and environmental per-
2 formance.

3 “(C) FINANCIAL INFORMATION.—An appli-
4 cation for assistance for an eligible project
5 under this section shall include such informa-
6 tion as the Secretary determines to be nec-
7 essary concerning—

8 “(i) the amount of budget authority
9 required to fund the Federal credit instru-
10 ment requested for the eligible project;

11 “(ii) the estimated construction costs
12 of the proposed eligible project;

13 “(iii) estimates of construction and
14 operating costs of the eligible project;

15 “(iv) projected revenues from the eli-
16 gible project; and

17 “(v) any other financial aspects of the
18 eligible project, including assurances, that
19 the Board determines to be appropriate.

20 “(D) PRELIMINARY RATING OPINION LET-
21 TER.—The Board shall require each applicant
22 seeking assistance for an eligible project under
23 this section to provide a preliminary rating
24 opinion letter from at least 1 credit rating
25 agency indicating that the senior obligations of

1 the eligible project have the potential to achieve
2 an investment-grade rating.

3 “(E) RISK ASSESSMENT.—Before entering
4 into any agreement to provide assistance for an
5 eligible project under this section, the Board, in
6 consultation with the Secretary, the Director of
7 the Office of Management and Budget, and
8 each credit rating agency providing a prelimi-
9 nary rating opinion letter under subparagraph
10 (D), shall determine and maintain an appro-
11 priate capital reserve subsidy amount for each
12 line of credit established for the eligible project,
13 taking into account the information contained
14 in the preliminary rating opinion letter.

15 “(F) INVESTMENT-GRADE RATING RE-
16 QUIREMENT.—

17 “(i) IN GENERAL.—The funding of
18 any assistance under this section shall be
19 contingent on the senior obligations of the
20 eligible project receiving an investment-
21 grade rating from at least 1 credit rating
22 agency.

23 “(ii) CONSIDERATIONS.—In deter-
24 mining whether an investment-grade rating
25 is appropriate under clause (i), the credit

1 rating agency shall take into account the
2 availability of Federal financial assistance
3 under this section.

4 “(5) MAXIMUM AVAILABLE CLIMATE CREDIT
5 SUPPORT.—Notwithstanding any assistance limita-
6 tion under any other provision of this section, the
7 Secretary shall not provide energy credit support to
8 any eligible project in the form of a secured loan or
9 loan guarantee under subsection (f), production in-
10 centive payments under subsection (g), or other
11 credit-based financial assistance under subsection
12 (h), the combined total of which exceeds 20 percent
13 of eligible project costs, excluding the value of stand-
14 by default coverage under subsection (d) and stand-
15 by interest coverage under subsection (e), as deter-
16 mined by the Secretary.

17 “(d) STANDBY DEFAULT COVERAGE.—

18 “(1) AGREEMENTS; USE OF PROCEEDS.—

19 “(A) AGREEMENTS.—

20 “(i) IN GENERAL.—Subject to sub-
21 paragraph (B), the Board, in consultation
22 with the Secretary, may enter into agree-
23 ments to provide standby default coverage
24 for advanced climate technologies or sys-
25 tems of an eligible project.

1 “(ii) RECIPIENTS.—Coverage under
2 clause (i) may be provided to 1 or more ob-
3 ligors and debt holders to be triggered at
4 future dates on the occurrence of certain
5 events for any eligible project selected
6 under subsection (c).

7 “(B) USE OF PROCEEDS.—The proceeds of
8 standby default coverage made available under
9 this subsection shall be available to reimburse
10 all or part of the debt obligation for an eligible
11 project issued by an obligor and funded by a
12 lender, plus all or part of obligor equity, in the
13 event that, because of a regulatory failure or
14 other event specified by the Secretary pursuant
15 to this section, an eligible advanced climate
16 technology or system for an eligible project fails
17 to receive an operating license in a period of
18 time specified by the Board in accordance with
19 this subsection.

20 “(2) TERMS AND LIMITATIONS.—

21 “(A) IN GENERAL.—Standby default cov-
22 erage under this subsection with respect to an
23 eligible project shall be on such terms and con-
24 ditions and contain such covenants, representa-
25 tions, warranties, and requirements (including

1 requirements for audits) as the Board deter-
2 mines to be appropriate.

3 “(B) MAXIMUM AMOUNTS.—The total
4 amount of standby default coverage provided
5 for an eligible project shall not exceed 100 per-
6 cent of the reasonably anticipated eligible
7 project costs, including debt and equity.

8 “(C) EXERCISE.—Any exercise on the
9 standby default coverage shall be made only if
10 a facility involved with the eligible project fails,
11 because of regulatory failure or other specific
12 issues specified by the Secretary, to receive an
13 operating license by such deadline as the Sec-
14 retary shall establish.

15 “(D) COST OF COVERAGE.—The cost of
16 standby default coverage shall be assumed by
17 the Secretary subject to the risk assessment
18 calculation required under subsection (c)(4)(E)
19 and the availability of funds for that purpose.

20 “(E) FEES.—In carrying out this section,
21 the Secretary may—

22 “(i) establish fees at a level sufficient
23 to cover all or a portion of the administra-
24 tive costs incurred by the Federal Govern-

1 ment in providing standby default coverage
2 under this subsection; and

3 “(ii) require that the fees be paid
4 upon application for a standby default cov-
5 erage agreement under this subsection.

6 “(F) PERIOD OF AVAILABILITY.—In the
7 event that regulatory approval to operate a fa-
8 cility is suspended as a result of regulatory fail-
9 ure or other circumstances specified by the Sec-
10 retary, standby default coverage shall be avail-
11 able beginning on the date of substantial com-
12 pletion and ending not later than 5 years after
13 the date on which operation of the facility is
14 scheduled to commence.

15 “(G) RIGHTS OF THIRD-PARTY CREDI-
16 TORS.—

17 “(i) AGAINST FEDERAL GOVERN-
18 MENT.—A third-party creditor of an obli-
19 gor shall not have any right against the
20 Federal Government with respect to any
21 amounts other than those specified in sub-
22 paragraph (B).

23 “(ii) ASSIGNMENT.—An obligor may
24 assign all or part of the standby default
25 coverage for an eligible project to 1 or

1 more lenders or to a trustee on behalf of
2 the lenders.

3 “(H) RESULT OF EXERCISE OF STANDBY
4 DEFAULT COVERAGE.—If standby default cov-
5 erage is exercised by the obligor of an eligible
6 project—

7 “(i) the Federal Government shall be-
8 come the sole owner of the eligible project,
9 with all rights and appurtenances to the el-
10 igible project; and

11 “(ii) the Board shall dispose of the as-
12 sets of the eligible project on terms that
13 are most favorable to the Federal Govern-
14 ment, which may include continuing to li-
15 censing and commercial operation or resale
16 of the eligible project, in whole or in part,
17 if that is the best course of action in the
18 judgment of the Board.

19 “(I) ESTIMATE OF ASSETS AT TIME OF
20 TERMINATION.—If standby default coverage is
21 exercised and an eligible project is terminated,
22 the Board, in making a determination of wheth-
23 er to dispose of the assets of the eligible project
24 or continue the eligible project to licensing and
25 commercial operation, shall obtain a fair and

1 impartial estimate of the eligible project assets
2 at the time of termination.

3 “(J) RELATIONSHIP TO OTHER CREDIT IN-
4 STRUMENTS.—An eligible project that receives
5 standby default coverage under this subsection
6 may receive a secured loan or loan guarantee
7 under subsection (f), production incentive pay-
8 ments under subsection (g), or assistance
9 through a credit-based financial assistance
10 mechanism under subsection (h).

11 “(K) OTHER CONDITIONS AND REQUIRE-
12 MENTS.—The Secretary may impose such other
13 conditions and requirements in connection with
14 any insurance provided under this subsection
15 (including requirements for audits) as the Sec-
16 retary determines to be appropriate.

17 “(e) STANDBY INTEREST COVERAGE.—

18 “(1) IN GENERAL.—

19 “(A) AGREEMENTS.—Subject to subpara-
20 graph (B), the Board may enter into agree-
21 ments to make standby interest coverage avail-
22 able to 1 or more obligors in the form of loans
23 for advanced climate or energy technologies or
24 systems to be made by the Board at future
25 dates on the occurrence of certain events for

1 any eligible project selected under subsection
2 (c)(4).

3 “(B) USE OF PROCEEDS.—Subject to sub-
4 section (c)(3), the proceeds of standby interest
5 coverage made available under this subsection
6 shall be available to pay the debt service on
7 project obligations issued to finance eligible
8 project costs of an eligible project if a delay in
9 commercial operations occurs due to a regu-
10 latory failure or other condition determined by
11 the Secretary.

12 “(2) TERMS AND LIMITATIONS.—

13 “(A) IN GENERAL.—Standby interest cov-
14 erage under this subsection with respect to an
15 eligible project shall be made on such terms and
16 conditions (including a requirement for an
17 audit) as the Secretary determines appropriate.

18 “(B) MAXIMUM AMOUNTS.—

19 “(i) TOTAL AMOUNT.—The total
20 amount of standby interest coverage for an
21 eligible project under this subsection shall
22 not exceed 20 percent of the reasonably
23 anticipated eligible project costs of the eli-
24 gible project.

1 “(ii) 1-YEAR DRAWS.—The amount
2 drawn in any 1 year for an eligible project
3 under this subsection shall not exceed 20
4 percent of the total amount of the standby
5 interest coverage for the eligible project.

6 “(C) PERIOD OF AVAILABILITY.—The
7 standby interest coverage for an eligible project
8 shall be available during the period—

9 “(i) beginning on a date following
10 substantial completion of the eligible
11 project that regulatory approval to operate
12 a facility under the eligible project is sus-
13 pended as a result of regulatory failure or
14 other condition determined by the Sec-
15 retary; and

16 “(ii) ending on a date that is not later
17 than 5 years after the eligible project is
18 scheduled to commence commercial oper-
19 ations.

20 “(D) COST OF COVERAGE.—Subject to
21 subsection (c)(4)(E), the cost of standby inter-
22 est coverage for an eligible project under this
23 subsection shall be borne by the Secretary.

24 “(E) DRAWS.—Any draw on the standby
25 interest coverage for an eligible project shall—

1 “(i) represent a loan;

2 “(ii) be made only if there is a delay
3 in commercial operations after the sub-
4 stantial completion of the eligible project;
5 and

6 “(iii) be subject to the overall credit
7 support limitations established under sub-
8 section (c)(5).

9 “(F) INTEREST RATE.—

10 “(i) IN GENERAL.—Subject to clause
11 (ii), the interest rate on a loan resulting
12 from a draw on standby interest coverage
13 under this subsection shall be established
14 by the Secretary.

15 “(ii) MINIMUM RATE.—The interest
16 rate on a loan resulting from a draw on
17 standby interest coverage under this sub-
18 section shall not be less than the current
19 average market yield on outstanding mar-
20 ketable obligations of the United States
21 with a maturity of 10 years, as of the date
22 on which the standby interest coverage is
23 obligated.

24 “(G) SECURITY.—The standby interest
25 coverage for an eligible project—

1 “(i) shall be payable, in whole or in
2 part, from dedicated revenue sources gen-
3 erated by the eligible project;

4 “(ii) shall require security for the
5 project obligations; and

6 “(iii) may have a lien on revenues de-
7 scribed in clause (i), subject to any lien se-
8 curing project obligations.

9 “(H) RIGHTS OF THIRD-PARTY CREDI-
10 TORS.—

11 “(i) AGAINST FEDERAL GOVERN-
12 MENT.—A third-party creditor of the obli-
13 gor shall not have any right against the
14 Federal Government with respect to any
15 draw on standby interest coverage under
16 this subsection.

17 “(ii) ASSIGNMENT.—An obligor may
18 assign the standby interest coverage to 1
19 or more lenders or to a trustee on behalf
20 of the lenders.

21 “(I) SUBORDINATION.—A secured loan for
22 an eligible project made under this subsection
23 shall be subordinate to senior private debt
24 issued by a lender for the eligible project.

1 “(J) NONRECOURSE STATUS.—A secured
2 loan for an eligible project under this subsection
3 shall be nonrecourse to the obligor in the event
4 of bankruptcy, insolvency, or liquidation of the
5 eligible project.

6 “(K) FEES.—The Board may impose fees
7 at a level sufficient to cover all or part of the
8 costs to the Federal Government of providing
9 standby interest coverage for an eligible project
10 under this subsection.

11 “(3) REPAYMENT.—

12 “(A) TERMS AND CONDITIONS.—The Sec-
13 retary shall establish a repayment schedule and
14 terms and conditions for each loan for an eligi-
15 ble project under this subsection based on the
16 projected cash flow from revenues for the eligi-
17 ble project.

18 “(B) REPAYMENT SCHEDULE.—Scheduled
19 repayments of principal or interest on a loan
20 under this subsection shall—

21 “(i) commence not later than 5 years
22 after the end of the period of availability
23 specified in paragraph (2)(C); and

1 “(ii) be completed, with interest, not
2 later than 10 years after the end of the pe-
3 riod of availability.

4 “(C) SOURCES OF REPAYMENT FUNDS.—
5 The sources of funds for scheduled loan repay-
6 ments under this subsection shall include—

7 “(i) the sale of electricity or gener-
8 ating capacity;

9 “(ii) the sale or transmission of en-
10 ergy;

11 “(iii) revenues associated with energy
12 efficiency gains; or

13 “(iv) other dedicated revenue sources,
14 such as carbon use.

15 “(D) PREPAYMENT.—

16 “(i) USE OF EXCESS REVENUES.—At
17 the discretion of the obligor, any excess
18 revenues that remain after satisfying
19 scheduled debt service requirements on the
20 project obligations and secured loan, and
21 all deposit requirements under the terms of
22 any trust agreement, bond resolution, or
23 similar agreement securing project obliga-
24 tions, may be applied annually to prepay
25 the secured loan without penalty.

1 “(ii) USE OF PROCEEDS OF REFI-
2 NANCING.—The secured loan may be pre-
3 paid at any time without penalty from the
4 proceeds of refinancing from non-Federal
5 funding sources.

6 “(f) SECURED LOANS AND LOAN GUARANTEES.—

7 “(1) IN GENERAL.—

8 “(A) AGREEMENTS.—Subject to subpara-
9 graph (B), the Board may enter into agree-
10 ments with 1 or more obligors to make secured
11 loans for eligible projects involving advanced cli-
12 mate technologies or systems.

13 “(B) USE OF PROCEEDS.—Subject to
14 paragraph (2), the proceeds of a secured loan
15 for an eligible project made available under this
16 subsection shall be available, in conjunction
17 with the equity of the obligor and senior debt
18 financing for the eligible project, to pay for eli-
19 gible project costs.

20 “(2) TERMS AND LIMITATIONS.—

21 “(A) IN GENERAL.—A secured loan under
22 this subsection with respect to an eligible
23 project shall be made on such terms and condi-
24 tions (including requirements for an audit) as

1 the Board, in consultation with the Secretary,
2 determines appropriate.

3 “(B) MAXIMUM AMOUNT.—Subject to sub-
4 section (c)(5), the total amount of the secured
5 loan for an eligible project under this subsection
6 shall not exceed 20 percent of the reasonably
7 anticipated eligible project costs of the eligible
8 project.

9 “(C) PERIOD OF AVAILABILITY.—The
10 Board may enter into a contract with the owner
11 or operator of an eligible project to provide a
12 secured loan during the period—

13 “(i) beginning on the date that the fi-
14 nancial structure of the eligible project is
15 established; and

16 “(ii) ending on the date of the start of
17 construction of the eligible project.

18 “(D) COST OF COVERAGE.—Subject to
19 subsection (c)(4)(E), the cost of a secured loan
20 for an eligible project under this subsection
21 shall be borne by the Secretary.

22 “(E) INTEREST RATE.—

23 “(i) IN GENERAL.—Subject to clause
24 (ii), the interest rate on a secured loan

1 under this subsection shall be established
2 by the Secretary.

3 “(ii) MINIMUM RATE.—The interest
4 rate on a loan resulting from a secured
5 loan under this subsection shall not be less
6 than the current average market yield on
7 outstanding marketable obligations of the
8 United States of comparable maturity, as
9 of the date of the execution of the loan
10 agreement.

11 “(F) SECURITY.—The secured loan—

12 “(i) shall be payable, in whole or in
13 part, from dedicated revenue sources gen-
14 erated by the eligible project;

15 “(ii) shall include a rate covenant,
16 coverage requirement, or similar security
17 feature supporting the project obligations;
18 and

19 “(iii) may have a lien on revenues de-
20 scribed in clause (i), subject to any lien se-
21 curing project obligations.

22 “(G) RIGHTS OF THIRD-PARTY CREDI-
23 TORS.—

24 “(i) AGAINST FEDERAL GOVERN-
25 MENT.—A third-party creditor of the obli-

1 gor shall not have any right against the
2 Federal Government with respect to any
3 payments due to the Federal Government
4 under this subsection.

5 “(ii) ASSIGNMENT.—An obligor may
6 assign the secured loan to 1 or more lend-
7 ers or to a trustee on behalf of the lenders.

8 “(H) SUBORDINATION.—A secured loan
9 for an eligible project made under this sub-
10 section shall be subordinate to senior private
11 debt issued by a lender for the eligible project.

12 “(I) NONRECOURSE STATUS.—A secured
13 loan for an eligible project under this subsection
14 shall be non-recourse to the obligor in the event
15 of bankruptcy, insolvency, or liquidation of the
16 eligible project.

17 “(J) FEES.—The Board may establish fees
18 at a level sufficient to cover all or a portion of
19 the costs to the Federal Government of making
20 secured loans for an eligible project under this
21 subsection.

22 “(3) REPAYMENT.—

23 “(A) SCHEDULE AND TERMS.—The Board
24 shall establish a repayment schedule and terms
25 and conditions for each secured loan for an eli-

1 gible project under this subsection based on the
2 projected cash flow from revenues for the eligi-
3 ble project.

4 “(B) REPAYMENT SCHEDULE.—Scheduled
5 repayments on a secured loan for an eligible
6 project under this subsection shall—

7 “(i) commence not later than 5 years
8 after the scheduled start of commercial op-
9 erations of the eligible project; and

10 “(ii) be completed, with interest, not
11 later than 35 years after the scheduled
12 date of the start of commercial operations
13 of the eligible project.

14 “(C) SOURCES OF REPAYMENT FUNDS.—
15 The sources of funds for scheduled loan repay-
16 ments under this subsection shall include—

17 “(i) the sale of carbon or carbon com-
18 pounds;

19 “(ii) the sale of electricity or gener-
20 ating capacity;

21 “(iii) the sale of sequestration serv-
22 ices;

23 “(iv) the sale or transmission of en-
24 ergy;

1 “(v) revenues associated with energy
2 efficiency gains; or

3 “(vi) other dedicated revenue sources.

4 “(D) DEFERRED PAYMENTS.—

5 “(i) AUTHORIZATION.—If, at any time
6 during the 10-year period beginning on the
7 date of the scheduled start of commercial
8 operation of an eligible project, the eligible
9 project is unable to generate sufficient rev-
10 enues to pay the scheduled loan repay-
11 ments of principal or interest on the se-
12 cured loan, the Secretary may, subject to
13 clause (iii), allow the obligor to add unpaid
14 principal or interest to the outstanding bal-
15 ance of the secured loan.

16 “(ii) INTEREST.—Any payment de-
17 ferred under clause (i) shall—

18 “(I) continue to accrue interest
19 in accordance with paragraph (2)(E)
20 until fully repaid; and

21 “(II) be scheduled to be amor-
22 tized over the number of years re-
23 maining in the term of the loan in ac-
24 cordance with subparagraph (B).

25 “(iii) CRITERIA.—

1 “(I) IN GENERAL.—Any payment
2 deferral under clause (i) shall be con-
3 tingent on the eligible project meeting
4 criteria established by the Secretary.

5 “(II) REPAYMENT STANDARDS.—
6 The criteria established under sub-
7 clause (I) shall include standards for
8 reasonable assurance of repayment.

9 “(E) PREPAYMENT.—

10 “(i) USE OF EXCESS REVENUES.—At
11 the discretion of the obligor, any excess
12 revenues that remain after satisfying
13 scheduled debt service requirements on the
14 project obligations and secured loan, and
15 all deposit requirements under the terms of
16 any trust agreement, bond resolution, or
17 similar agreement securing project obliga-
18 tions, may be applied annually to prepay
19 the secured loan without penalty.

20 “(ii) USE OF PROCEEDS OF REFI-
21 NANCING.—The secured loan may be pre-
22 paid at any time without penalty from the
23 proceeds of refinancing from non-Federal
24 funding sources.

25 “(4) SALE OF SECURED LOANS.—

1 “(A) IN GENERAL.—Subject to subpara-
2 graph (B), as soon as practicable after substan-
3 tial completion of an eligible project and after
4 notifying the obligor, the Board may sell to an-
5 other entity or reoffer into the capital markets
6 a secured loan for the eligible project if the
7 Board determines that the sale or reoffering
8 can be made on favorable terms.

9 “(B) CONSENT OF OBLIGOR.—In making a
10 sale or reoffering under subparagraph (A), the
11 Board may not change the original terms and
12 conditions of the secured loan without the writ-
13 ten consent of the obligor.

14 “(5) LOAN GUARANTEES.—

15 “(A) IN GENERAL.—The Board may pro-
16 vide a loan guarantee to a lender, in lieu of
17 making a secured loan, under this subsection if
18 the Board determines that the budgetary cost
19 of the loan guarantee is substantially the same
20 as that of a secured loan.

21 “(B) TERMS.—

22 “(i) IN GENERAL.—Except as pro-
23 vided in clause (ii), the terms of a guaran-
24 teed loan shall be consistent with the terms
25 for a secured loan under this subsection.

1 “(ii) INTEREST RATE; PREPAY-
2 MENT.—The interest rate on the guaran-
3 teed loan and any prepayment features
4 shall be established by negotiations be-
5 tween the obligor and the lender, with the
6 consent of the Board.

7 “(g) PRODUCTION INCENTIVE PAYMENTS.—

8 “(1) SECURED LOAN.—

9 “(A) IN GENERAL.—The Secretary may
10 enter into an agreement with 1 or more obligors
11 to make a secured loan for an eligible project
12 selected under subsection (c)(4) that employs 1
13 or more advanced climate technologies or sys-
14 tems.

15 “(B) PRODUCTION INCENTIVE PAY-
16 MENTS.—

17 “(i) IN GENERAL.—Amounts loaned
18 to an obligor under subparagraph (A) shall
19 be made available in the form of a series
20 of production incentive payments provided
21 by the Board to the obligor during a period
22 of not more than 10 years, as determined
23 by the Board, beginning after the date on
24 which commercial project operations start
25 at the eligible project.

1 “(ii) AMOUNT.—Production incentive
2 payments under clause (i) shall be for an
3 amount equal to 20 percent of the value
4 of—

5 “(I) the energy produced or
6 transmitted by the eligible project
7 during the applicable year; or

8 “(II) any gains in energy effi-
9 ciency achieved by the eligible project
10 during the applicable year.

11 “(2) TERMS AND LIMITATIONS.—

12 “(A) IN GENERAL.—A secured loan under
13 this subsection shall be subject to such terms
14 and conditions, including any covenant, rep-
15 resentation, warranty, and requirement (includ-
16 ing a requirement for an audit) that the Sec-
17 retary determines to be appropriate.

18 “(B) AGREEMENT COSTS.—Subject to sub-
19 section (c)(4), the cost of carrying out an agree-
20 ment entered into under paragraph (1)(A) shall
21 be paid by the Secretary.

22 “(C) INTEREST RATE.—

23 “(i) IN GENERAL.—Subject to clause
24 (ii), the interest rate on a secured loan

1 under this subsection shall be established
2 by the Secretary.

3 “(ii) MINIMUM RATE.—The interest
4 rate on a secured loan under this sub-
5 section shall not be less than the current
6 average market yield on outstanding mar-
7 ketable obligations of the United States of
8 comparable maturity, as of the date on
9 which the agreement under paragraph
10 (1)(A) is executed.

11 “(D) SECURITY.—The secured loan—

12 “(i) shall be payable, in whole or in
13 part, from dedicated revenue sources gen-
14 erated by the eligible project;

15 “(ii) shall include a rate covenant,
16 coverage requirement, or similar security
17 feature supporting the eligible project obli-
18 gations; and

19 “(iii) may have a lien on revenues de-
20 scribed in clause (i), subject to any lien se-
21 curing eligible project obligations.

22 “(E) RIGHTS OF THIRD-PARTY CREDI-
23 TORS.—

24 “(i) AGAINST FEDERAL GOVERN-
25 MENT.—A third-party creditor of the obli-

1 gor shall not have any right against the
2 Federal Government with respect to any
3 payments due to the Federal Government
4 under the agreement entered into under
5 paragraph (1)(A).

6 “(ii) ASSIGNMENT.—An obligor may
7 assign production incentive payments to 1
8 or more lenders or to a trustee on behalf
9 of the lenders.

10 “(F) SUBORDINATION.—A secured loan
11 under this subsection shall be subordinate to
12 senior private debt issued by a lender for the el-
13 igible project.

14 “(G) NONRECOURSE STATUS.—A secured
15 loan under this subsection shall be nonrecourse
16 to the obligor in the event of bankruptcy, insol-
17 vency, or liquidation of the eligible project.

18 “(H) FEES.—The Secretary may impose
19 fees at a level sufficient to cover all or part of
20 the costs to the Federal Government of pro-
21 viding production incentive payments under this
22 subsection.

23 “(3) REPAYMENT.—

24 “(A) SCHEDULE, TERMS, AND CONDI-
25 TIONS.—The Secretary shall establish a repay-

1 ment schedule and terms and conditions for
2 each secured loan under this subsection based
3 on the projected cash flow from revenues of the
4 eligible project.

5 “(B) REPAYMENT SCHEDULE.—Scheduled
6 repayments of principal or interest on a secured
7 loan under this subsection shall—

8 “(i) commence not later than 5 years
9 after the date on which the last production
10 incentive payment is made by the Board
11 under paragraph (1)(B); and

12 “(ii) be completed, with interest, not
13 later than 10 years after the date on which
14 the last production incentive payment is
15 made.

16 “(C) SOURCES OF REPAYMENT FUNDS.—
17 The sources of funds for scheduled loan repay-
18 ments under this subsection include—

19 “(i) the sale of electricity or gener-
20 ating capacity,

21 “(ii) the sale or transmission of en-
22 ergy;

23 “(iii) revenues associated with energy
24 efficiency gains; or

25 “(iv) other dedicated revenue sources.

1 “(D) DEFERRED PAYMENTS.—

2 “(i) AUTHORIZATION.—If, at any time
3 during the 10-year period beginning on
4 the date on which commercial operations of
5 the eligible project start, the eligible
6 project is unable to generate sufficient rev-
7 enues to pay the scheduled loan repay-
8 ments of principal or interest on a secured
9 loan under this subsection, the Secretary
10 may, subject to criteria established by the
11 Secretary (including standards for reason-
12 able assurances of repayment), allow the
13 obligor to add unpaid principal and inter-
14 est to the outstanding balance of the se-
15 cured loan.

16 “(ii) INTEREST.—Any payment de-
17 ferred under clause (i) shall—

18 “(I) continue to accrue interest
19 in accordance with paragraph (2)(C)
20 until fully repaid; and

21 “(II) be scheduled to be amor-
22 tized over the number of years re-
23 maining in the term of the loan in ac-
24 cordance with subparagraph (B).

25 “(E) PREPAYMENT.—

1 “(i) USE OF EXCESS REVENUES.—At
2 the discretion of the obligor, any excess
3 revenues that remain after satisfying
4 scheduled debt service requirements on the
5 eligible project obligations and the secured
6 loan, and all deposit requirements under
7 the terms of any trust agreement, bond
8 resolution, or similar agreement securing
9 eligible project obligations, may be applied
10 annually to prepay loans pursuant to an
11 agreement entered into under paragraph
12 (1)(A) without penalty.

13 “(ii) USE OF PROCEEDS OF REFI-
14 NANCING.—The secured loan may be pre-
15 paid at any time without penalty from the
16 proceeds of refinancing from non-Federal
17 funding sources.

18 “(4) SALE OF SECURED LOANS.—

19 “(A) IN GENERAL.—Subject to subpara-
20 graph (B), as soon as practicable after the date
21 on which the last production incentive payment
22 is made to the obligor under paragraph (1)(B)
23 and after notifying the obligor, the Secretary
24 may sell to another entity or reoffer into the
25 capital markets a secured loan for the eligible

1 project if the Secretary determines that the sale
2 or reoffering can be made on favorable terms.

3 “(B) CONSENT REQUIRED.—In making a
4 sale or reoffering under subparagraph (A), the
5 Board may not change the original terms and
6 conditions of the secured loan without the writ-
7 ten consent of the obligor.

8 “(h) OTHER CREDIT-BASED FINANCIAL ASSISTANCE
9 MECHANISMS FOR ELIGIBLE PROJECTS.—

10 “(1) IN GENERAL.—

11 “(A) AGREEMENTS.—The Board may
12 enter into an agreement with 1 or more obligors
13 to make a secured loan to the obligors for eligi-
14 ble projects selected under subsection (c) that
15 employ advanced technologies or systems, the
16 proceeds of which shall be used to—

17 “(i) finance eligible project costs; or

18 “(ii) enhance eligible project revenues.

19 “(B) CREDIT-BASED FINANCIAL ASSIST-
20 ANCE.—Amounts made available as a secured
21 loan under subparagraph (A) shall be provided
22 by the Board to the obligor in the form of cred-
23 it-based financial assistance mechanisms that
24 are not otherwise specifically provided for in

1 subsections (d) through (g), as determined to
2 be appropriate by the Secretary.

3 “(2) TERMS AND LIMITATIONS.—

4 “(A) IN GENERAL.—A secured loan under
5 this subsection shall be subject to such terms
6 and conditions (including any covenants, rep-
7 resentations, warranties, and requirements (in-
8 cluding a requirement for an audit)) as the Sec-
9 retary determines to be appropriate.

10 “(B) MAXIMUM AMOUNT.—Subject to sub-
11 section (c)(5), the total amount of the secured
12 loan under this subsection shall not exceed 50
13 percent of the reasonably anticipated eligible
14 project costs.

15 “(C) PERIOD OF AVAILABILITY.—The
16 Board may enter into a contract with the obli-
17 gor to provide credit-based financial assistance
18 to an eligible project during the period—

19 “(i) beginning on the date that the fi-
20 nancial structure of the eligible project is
21 established; and

22 “(ii) ending on the date of the start of
23 construction of the eligible project.

24 “(D) AGREEMENT COSTS.—Subject to sub-
25 section (c)(4)(E), the cost of carrying out an

1 agreement entered into under paragraph (1)(A)
2 shall be paid by the Board.

3 “(E) INTEREST RATE.—

4 “(i) IN GENERAL.—Subject to clause
5 (ii), the interest rate on a secured loan
6 under this subsection shall be established
7 by the Board.

8 “(ii) MINIMUM RATE.—The interest
9 rate on a secured loan under this sub-
10 section shall not be less than the current
11 average market yield on outstanding mar-
12 ketable obligations of the United States of
13 comparable maturity, as of the date of the
14 execution of the secured loan agreement.

15 “(F) SECURITY.—The secured loan—

16 “(i) shall be payable, in whole or in
17 part, from dedicated revenue sources gen-
18 erated by the eligible project;

19 “(ii) shall include a rate covenant,
20 coverage requirement, or similar security
21 feature supporting the eligible project obli-
22 gations; and

23 “(iii) may have a lien on revenues de-
24 scribed in clause (i), subject to any lien se-
25 curing eligible project obligations.

1 “(G) RIGHTS OF THIRD-PARTY CREDI-
2 TORS.—

3 “(i) AGAINST FEDERAL GOVERN-
4 MENT.—A third-party creditor of the obli-
5 gor shall not have any right against the
6 Federal Government with respect to any
7 payments due to the Federal Government
8 under this subsection.

9 “(ii) ASSIGNMENT.—An obligor may
10 assign payments made pursuant to an
11 agreement to provide credit-based financial
12 assistance under this subsection to 1 or
13 more lenders or to a trustee on behalf of
14 the lenders.

15 “(H) SUBORDINATION.—A secured loan
16 under this subsection shall be subordinate to
17 senior private debt issued by a lender for the el-
18 igible project.

19 “(I) NONRECOURSE STATUS.—A secured
20 loan under this subsection shall be nonrecourse
21 to the obligor in the event of bankruptcy, insol-
22 vency, or liquidation of the eligible project.

23 “(J) FEES.—The Board may establish fees
24 at a level sufficient to cover all or part of the
25 costs to the Federal Government of providing

1 credit-based financial assistance under this sub-
2 section.

3 “(3) REPAYMENT.—

4 “(A) SCHEDULE AND TERMS AND CONDI-
5 TIONS.—The Board shall establish a repayment
6 schedule and terms and conditions for each se-
7 cured loan under this subsection based on the
8 projected cash flow from eligible project reve-
9 nues.

10 “(B) REPAYMENT SCHEDULE.—Scheduled
11 loan repayments of principal or interest on a se-
12 cured loan under this subsection shall—

13 “(i) commence not later than 5 years
14 after the date of substantial completion of
15 the eligible project; and

16 “(ii) be completed, with interest, not
17 later than 35 years after the date of sub-
18 stantial completion of the eligible project.

19 “(C) SOURCES OF REPAYMENT FUNDS.—
20 The sources of funds for scheduled loan repay-
21 ments under this subsection shall include—

22 “(i) the sale of electricity or gener-
23 ating capacity;

24 “(ii) the sale or transmission of en-
25 ergy;

1 “(iii) revenues associated with energy
2 efficiency gains; or

3 “(iv) other dedicated revenue sources,
4 such as carbon sequestration.

5 “(D) DEFERRED PAYMENTS.—

6 “(i) AUTHORIZATION.—If, at any time
7 during the 10-year period beginning on the
8 date of the start of commercial operations
9 of the eligible project, the eligible project is
10 unable to generate sufficient revenues to
11 pay the scheduled loan repayments of prin-
12 cipal or interest on a secured loan under
13 this subsection, the Secretary may, subject
14 to criteria established by the Secretary (in-
15 cluding standards for reasonable assur-
16 ances of repayment), allow the obligor to
17 add unpaid principal and interest to the
18 outstanding balance of the secured loan.

19 “(ii) INTEREST.—Any payment de-
20 ferred under clause (i) shall—

21 “(I) continue to accrue interest
22 in accordance with paragraph (2)(E)
23 until fully repaid; and

24 “(II) be scheduled to be amor-
25 tized over the number of years re-

1 “(II) be scheduled to be amor-
2 tized over the number of years re-
3 maining in the term of the loan in ac-
4 cordance with subparagraph (B).

5 “(E) PREPAYMENT.—

6 “(i) USE OF EXCESS REVENUES.—At
7 the discretion of the obligor, any excess
8 revenues that remain after satisfying
9 scheduled debt service requirements on the
10 eligible project obligations and secured
11 loan, and all deposit requirements under
12 the terms of any trust agreement, bond
13 resolution, or similar agreement securing
14 eligible project obligations, may be applied
15 annually to prepay a secured loan under
16 this subsection without penalty.

17 “(ii) USE OF PROCEEDS OF REFI-
18 NANCING.—A secured loan under this sub-
19 section may be prepaid at any time without
20 penalty from the proceeds of refinancing
21 from non-Federal funding sources.

22 “(4) SALE OF SECURED LOANS.—

23 “(A) IN GENERAL.—Subject to subpara-
24 graph (B), as soon as practicable after the start
25 of commercial operations of an eligible project

1 and after notifying the obligor, the Board may
2 sell to another entity or reoffer into the capital
3 markets a secured loan for the eligible project
4 under this subsection if the Secretary deter-
5 mines that the sale or reoffering can be made
6 on favorable terms.

7 “(B) CONSENT OF OBLIGOR.—In making a
8 sale or reoffering under subparagraph (A), the
9 Board may not change the original terms and
10 conditions of the secured loan without the writ-
11 ten consent of the obligor.

12 “(i) FEDERAL, STATE, AND LOCAL REGULATORY
13 REQUIREMENTS.—The provision of Federal financial as-
14 sistance to an eligible project under this section shall
15 not—

16 “(1) relieve any recipient of the assistance of
17 any obligation to obtain any required Federal, State,
18 or local regulatory requirement, permit, or approval
19 with respect to the eligible project;

20 “(2) limit the right of any unit of Federal,
21 State, or local government to approve or regulate
22 any rate of return on private equity invested in the
23 eligible project; or

1 “(3) otherwise supersede any Federal, State, or
2 local law (including any regulation) applicable to the
3 construction or operation of the eligible project.

4 “(j) AUTHORIZATION OF APPROPRIATIONS.—There
5 is authorized to be appropriated to carry out this section
6 \$400,000,000 for each of fiscal years 2006 through 2010,
7 to remain available until expended.

8 “(k) TERMINATION OF AUTHORITY.—The authority
9 provided by this section terminates effective December 31,
10 2010.”.

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