

111TH CONGRESS
1ST SESSION

H. R. 2212

To improve the loan guarantee program of the Department of Energy under title XVII of the Energy Policy Act of 2005, to provide additional options for deploying energy technologies, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 30, 2009

Mr. INSLEE (for himself, Mr. ISRAEL, Mr. WEINER, Mr. DINGELL, Mr. KLEIN of Florida, Mrs. HALVORSON, and Mrs. TAUSCHER) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committee on Science and Technology, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To improve the loan guarantee program of the Department of Energy under title XVII of the Energy Policy Act of 2005, to provide additional options for deploying energy technologies, 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,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “21st Century Energy
5 Technology Deployment Act”.

1 **SEC. 2. PURPOSE.**

2 The purpose of this Act is to promote the domestic
3 development and deployment of clean energy technologies
4 required for the 21st century through the improvement of
5 existing programs and the establishment of a self-sus-
6 taining Clean Energy Deployment Administration that will
7 provide for an attractive investment environment through
8 partnership with and support of the private capital market
9 in order to promote access to affordable financing for ac-
10 celerated and widespread deployment of—

11 (1) clean energy technologies;

12 (2) advanced or enabling energy infrastructure
13 technologies;

14 (3) energy efficiency technologies in residential,
15 commercial, and industrial applications, including
16 end-use efficiency in buildings; and

17 (4) manufacturing technologies for any of the
18 technologies or applications described in this section.

19 **SEC. 3. DEFINITIONS.**

20 In this Act:

21 (1) ADMINISTRATION.—The term “Administra-
22 tion” means the Clean Energy Deployment Adminis-
23 tration established by section 6.

24 (2) ADMINISTRATOR.—The term “Adminis-
25 trator” means the Administrator of the Administra-
26 tion.

1 (3) ADVISORY COUNCIL.—The term “Advisory
2 Council” means the Energy Technology Advisory
3 Council of the Administration.

4 (4) BREAKTHROUGH TECHNOLOGY.—The term
5 “breakthrough technology” means a clean energy
6 technology that—

7 (A) presents a significant opportunity to
8 advance the goals developed under section 5, as
9 assessed under the methodology established by
10 the Advisory Council; but

11 (B) has generally not been considered a
12 commercially ready technology as a result of
13 high perceived technology risk or other similar
14 factors.

15 (5) CLEAN ENERGY TECHNOLOGY.—The term
16 “clean energy technology” means a technology re-
17 lated to the production, use, transmission, storage,
18 control, or conservation of energy—

19 (A) that will—

20 (i) reduce the need for additional en-
21 ergy supplies by using existing energy sup-
22 plies with greater efficiency or by transmit-
23 ting, distributing, or transporting energy
24 with greater effectiveness through the in-
25 frastructure of the United States;

1 (ii) diversify the sources of energy
2 supply of the United States to strengthen
3 energy security and to increase supplies
4 with a favorable balance of environmental
5 effects if the entire technology system is
6 considered; or

7 (iii) contribute to a stabilization of at-
8 mospheric greenhouse gas concentrations
9 thorough reduction, avoidance, or seques-
10 tration of energy-related emissions; and

11 (B) for which, as determined by the Ad-
12 ministrator, insufficient commercial lending is
13 available to allow for widespread deployment.

14 (6) COST.—The term “cost” has the meaning
15 given the term in section 502 of the Federal Credit
16 Reform Act of 1990 (2 U.S.C. 661a).

17 (7) DIRECT LOAN.—The term “direct loan” has
18 the meaning given the term in section 502 of the
19 Federal Credit Reform Act of 1990 (2 U.S.C. 661a).

20 (8) FUND.—The term “Fund” means the Clean
21 Energy Investment Fund established by section 4(a).

22 (9) LOAN GUARANTEE.—The term “loan guar-
23 antee” has the meaning given the term in section
24 502 of the Federal Credit Reform Act of 1990 (2
25 U.S.C. 661a).

1 (10) NATIONAL LABORATORY.—The term “Na-
2 tional Laboratory” has the meaning given the term
3 in section 2 of the Energy Policy Act of 2005 (42
4 U.S.C. 15801).

5 (11) SECRETARY.—The term “Secretary”
6 means the Secretary of Energy.

7 (12) SECURITY.—The term “security” has the
8 meaning given the term in section 2 of the Securities
9 Act of 1933 (15 U.S.C. 77b).

10 (13) STATE.—The term “State” means—

11 (A) a State;

12 (B) the District of Columbia;

13 (C) the Commonwealth of Puerto Rico;

14 and

15 (D) any other territory or possession of the
16 United States.

17 (14) TECHNOLOGY RISK.—The term “tech-
18 nology risk” means the risks during construction or
19 operation associated with the design, development,
20 and deployment of clean energy technologies (includ-
21 ing the cost, schedule, performance, reliability and
22 maintenance, and accounting for the perceived risk),
23 from the perspective of commercial lenders, that
24 may be increased as a result of the absence of ade-
25 quate historical construction, operating, or perform-

1 ance data from commercial applications of the tech-
2 nology.

3 **SEC. 4. IMPROVEMENTS TO EXISTING PROGRAMS.**

4 (a) CLEAN ENERGY INVESTMENT FUND.—

5 (1) ESTABLISHMENT.—There is established in
6 the Treasury of the United States a revolving fund,
7 to be known as the “Clean Energy Investment
8 Fund”, consisting of—

9 (A) such amounts as have been appro-
10 priated for administrative expenses to carry out
11 title XVII of the Energy Policy Act of 2005 (42
12 U.S.C. 16511 et seq.);

13 (B) such amounts as are deposited in the
14 Fund under this Act and amendments made by
15 this Act; and

16 (C) such sums as may be appropriated to
17 supplement the Fund.

18 (2) EXPENDITURES FROM FUND.—

19 (A) IN GENERAL.—Notwithstanding sec-
20 tion 1705(e) of the Energy Policy Act of 2005
21 (42 U.S.C. 16516(e)), amounts in the Fund
22 shall be available to the Secretary for obligation
23 without fiscal year limitation, to remain avail-
24 able until expended.

25 (B) ADMINISTRATIVE EXPENSES.—

1 (i) FEES.—Fees collected for adminis-
2 trative expenses shall be available without
3 limitation to cover applicable expenses.

4 (ii) FUND.—To the extent that ad-
5 ministrative expenses are not reimbursed
6 through fees, an amount not to exceed 1.5
7 percent of the amounts in the Fund as of
8 the beginning of each fiscal year shall be
9 available to pay the administrative ex-
10 penses for the fiscal year necessary to
11 carry out title XVII of the Energy Policy
12 Act of 2005 (42 U.S.C. 16511 et seq.).

13 (3) TRANSFERS OF AMOUNTS.—

14 (A) IN GENERAL.—The amounts required
15 to be transferred to the Fund under this sub-
16 section shall be transferred at least monthly
17 from the general fund of the Treasury to the
18 Fund on the basis of estimates made by the
19 Secretary of the Treasury.

20 (B) ADJUSTMENTS.—Proper adjustment
21 shall be made in amounts subsequently trans-
22 ferred to the extent prior estimates were in ex-
23 cess of or less than the amounts required to be
24 transferred.

1 (b) REVISIONS TO LOAN GUARANTEE PROGRAM AU-
2 THORITY.—

3 (1) DEFINITION OF COMMERCIAL TECH-
4 NOLOGY.—Section 1701(1) of the Energy Policy Act
5 of 2005 (42 U.S.C. 16511(1)) is amended by strik-
6 ing subparagraph (B) and inserting the following:

7 “(B) EXCLUSION.—The term ‘commercial
8 technology’ does not include a technology if the
9 sole use of the technology is in connection
10 with—

11 “(i) a demonstration project; or

12 “(ii) a project for which the Secretary
13 approved a loan guarantee.”.

14 (2) SPECIFIC APPROPRIATION OR CONTRIBU-
15 TION.—Section 1702 of the Energy Policy Act of
16 2005 (42 U.S.C. 16512) is amended by striking sub-
17 section (b) and inserting the following:

18 “(b) SPECIFIC APPROPRIATION OR CONTRIBU-
19 TION.—

20 “(1) IN GENERAL.—No guarantee shall be
21 made unless sufficient amounts to account for the
22 cost are available—

23 “(A) in unobligated balances within the
24 Clean Energy Investment Fund established

1 under section 4(a) of the 21st Century Energy
2 Technology Deployment Act;

3 “(B) as a payment from the borrower and
4 the payment is deposited in the Clean Energy
5 Investment Fund; or

6 “(C) in any combination of balances and
7 payments described in subparagraphs (A) and
8 (B), respectively.

9 “(2) LIMITATION.—The source of payments re-
10 ceived from a borrower under paragraph (1)(B) shall
11 not be a loan or other debt obligation that is made
12 or guaranteed by the Federal Government.

13 “(3) RELATION TO OTHER LAWS.—Section
14 504(b) of the Federal Credit Reform Act of 1990 (2
15 U.S.C. 661c(b)) shall not apply to a loan or loan
16 guarantee under this section.”.

17 (3) SUBROGATION.—Section 1702(g)(2) of the
18 Energy Policy Act of 2005 (42 U.S.C. 16512(g)(2))
19 is amended—

20 (A) by striking subparagraph (B); and

21 (B) by redesignating subparagraph (C) as
22 subparagraph (B).

23 (4) FEES.—Section 1702(h) of the Energy Pol-
24 icy Act of 2005 (42 U.S.C. 16512(h)) is amended by
25 striking paragraph (2) and inserting the following:

1 “(2) AVAILABILITY.—Fees collected under this
2 subsection shall—

3 “(A) be deposited by the Secretary in the
4 Clean Energy Investment Fund established
5 under section 4(a) of the 21st Century Energy
6 Technology Deployment Act; and

7 “(B) remain available to the Secretary for
8 expenditure, without further appropriation or
9 fiscal year limitation, for administrative ex-
10 penses incurred in carrying out this title.

11 “(3) ADJUSTMENT.—The Secretary may adjust
12 the amount or manner of collection of fees under
13 this title as the Secretary determines is necessary to
14 promote, to the maximum extent practicable, eligible
15 projects under this title.”.

16 (5) PROCESSING.—Section 1702 of the Energy
17 Policy Act of 2005 (42 U.S.C. 16512) is amended
18 by adding at the end the following:

19 “(k) ACCELERATED REVIEWS.—To the maximum ex-
20 tent practicable and consistent with sound business prac-
21 tices, the Secretary shall seek to consolidate reviews of ap-
22 plications for loan guarantees under this title such that
23 decisions as to whether to enter into a commitment on
24 an application can be issued not later than 180 days after
25 the date of submission of a completed application.”.

1 (6) WAGE RATES.—Section 1705(c) of the En-
2 ergy Policy Act of 2005 (42 U.S.C. 16516(c)) is
3 amended by striking “support under this section”
4 and inserting “support under this title”.

5 **SEC. 5. ENERGY TECHNOLOGY DEPLOYMENT GOALS.**

6 (a) GOALS.—Not later than 1 year after the date of
7 enactment of this Act, the Secretary, after consultation
8 with the Advisory Council, shall develop and publish for
9 review and comment in the Federal Register near-, me-
10 dium-, and long-term goals (including numerical perform-
11 ance targets at appropriate intervals to measure progress
12 toward those goals) for the deployment of clean energy
13 technologies through the credit support programs estab-
14 lished by this Act (including an amendment made by this
15 Act) to promote—

16 (1) sufficient electric generating capacity using
17 clean energy technologies to meet the energy needs
18 of the United States;

19 (2) clean energy technologies in vehicles and
20 fuels that will substantially reduce the reliance of
21 the United States on foreign sources of energy and
22 insulate consumers from the volatility of world en-
23 ergy markets;

24 (3) a domestic commercialization and manufac-
25 turing capacity that will establish the United States

1 as a world leader in clean energy technologies across
2 multiple sectors;

3 (4) installation of sufficient infrastructure to
4 allow for the cost-effective deployment of clean en-
5 ergy technologies appropriate to each region of the
6 United States;

7 (5) the transformation of the building stock of
8 the United States to zero net energy consumption;

9 (6) the recovery, use, and prevention of waste
10 energy;

11 (7) domestic manufacturing of clean energy
12 technologies on a scale that is sufficient to achieve
13 price parity with conventional energy sources;

14 (8) domestic production of commodities and
15 materials (such as steel, chemicals, polymers, and
16 cement) using clean energy technologies so that the
17 United States will become a world leader in environ-
18 mentally sustainable production of the commodities
19 and materials;

20 (9) a robust, efficient, and interactive electricity
21 transmission grid that will allow for the incorpora-
22 tion of clean energy technologies, distributed genera-
23 tion, and demand-response in each regional electric
24 grid;

1 (10) sufficient availability of financial products
2 to allow owners and users of residential, retail, com-
3 mercial, and industrial buildings to make energy ef-
4 ficiency and distributed generation technology in-
5 vestments with reasonable payback periods; and

6 (11) such other goals as the Secretary, in con-
7 sultation with the Advisory Council, determines to be
8 consistent with the purposes of this Act.

9 (b) REVISIONS.—The Secretary shall revise the goals
10 established under subsection (a), from time to time as ap-
11 propriate, to account for advances in technology and
12 changes in energy policy.

13 **SEC. 6. CLEAN ENERGY DEPLOYMENT ADMINISTRATION.**

14 (a) ESTABLISHMENT.—

15 (1) IN GENERAL.—There is established in the
16 Department of Energy an administration to be
17 known as the Clean Energy Deployment Administra-
18 tion, under the direction of the Administrator and
19 the Board of Directors.

20 (2) STATUS.—

21 (A) IN GENERAL.—The Administration
22 (including officers, employees, and agents of the
23 Administration) shall not be responsible to, or
24 subject to the authority, direction, or control of,
25 any other officer, employee, or agent of the De-

1 partment of Energy other than the Secretary,
2 acting through the Administrator.

3 (B) EXEMPTION FROM REORGANIZA-
4 TION.—The Administration shall be exempt
5 from the reorganization authority provided
6 under section 643 of the Department of Energy
7 Reorganization Act (42 U.S.C. 7253).

8 (C) INSPECTOR GENERAL.—Section 12 of
9 the Inspector General Act of 1978 (5 U.S.C.
10 App.) is amended—

11 (i) in paragraph (1), by inserting “the
12 Administrator of the Clean Energy Deploy-
13 ment Administration;” after “Export-Im-
14 port Bank;” and

15 (ii) in paragraph (2), by inserting
16 “the Clean Energy Deployment Adminis-
17 tration,” after “Export-Import Bank,”.

18 (3) OFFICES.—

19 (A) PRINCIPAL OFFICE.—The Administra-
20 tion shall—

21 (i) maintain the principal office of the
22 Administration in the District of Columbia;
23 and

1 (ii) for purposes of venue in civil ac-
2 tions, be considered to be a resident of the
3 District of Columbia.

4 (B) OTHER OFFICES.—The Administration
5 may establish other offices in such other places
6 as the Administration considers necessary or
7 appropriate for the conduct of the business of
8 the Administration.

9 (b) ADMINISTRATOR.—

10 (1) IN GENERAL.—The Administrator shall
11 be—

12 (A) appointed by the President, with the
13 advice and consent of the Senate, for a 5-year
14 term; and

15 (B) compensated at the annual rate of
16 basic pay prescribed for level II of the Execu-
17 tive Schedule under section 5313 of title 5,
18 United States Code.

19 (2) DUTIES.—The Administrator shall—

20 (A) serve as the Chief Executive Officer of
21 the Administration and Chairman of the Board;

22 (B) ensure that—

23 (i) the Administration operates in a
24 safe and sound manner, including mainte-
25 nance of adequate capital and internal con-

1 trols (consistent with section 404 of the
2 Sarbanes-Oxley Act of 2002 (15 U.S.C.
3 7262));

4 (ii) the operations and activities of the
5 Administration foster liquid, efficient, com-
6 petitive, and resilient energy and energy ef-
7 ficiency finance markets;

8 (iii) the Administration carries out the
9 purposes of this Act only through activities
10 that are authorized under and consistent
11 with this Act; and

12 (iv) the activities of the Administra-
13 tion and the manner in which the Adminis-
14 tration is operated are consistent with the
15 public interest;

16 (C) develop policies and procedures for the
17 Administration that will—

18 (i) promote a self-sustaining portfolio
19 of investments that will maximize the value
20 of investments to effectively promote clean
21 energy technologies;

22 (ii) promote transparency and open-
23 ness in Administration operations;

1 (iii) afford the Administration with
2 sufficient flexibility to meet the purposes of
3 this Act; and

4 (iv) provide for the efficient proc-
5 essing of applications; and

6 (D) with the concurrence of the Board, set
7 expected loss reserves for the support provided
8 by the Administration consistent with section
9 7(a)(1)(C).

10 (c) BOARD OF DIRECTORS.—

11 (1) IN GENERAL.—The Board of Directors of
12 the Administration shall consist of—

13 (A) the Secretary or the designee of the
14 Secretary, who shall serve as an ex-officio vot-
15 ing member of the Board of Directors;

16 (B) the Administrator, who shall serve as
17 the Chairman of the Board of Directors; and

18 (C) 7 additional members who shall—

19 (i) be appointed by the President,
20 with the advice and consent of the Senate,
21 for staggered 5-year terms; and

22 (ii) have experience in banking or fi-
23 nancial services relevant to the operations
24 of the Administration, including individuals
25 with substantial experience in the develop-

1 ment of energy projects, the electricity
2 generation sector, the transportation sec-
3 tor, the manufacturing sector, and the en-
4 ergy efficiency sector.

5 (2) DUTIES.—The Board of Directors shall—

6 (A) oversee the operations of the Adminis-
7 tration and ensure industry best practices are
8 followed in all financial transactions involving
9 the Administration;

10 (B) consult with the Administrator on the
11 general policies and procedures of the Adminis-
12 tration to ensure the interests of the taxpayers
13 are protected;

14 (C) ensure the portfolio of investments are
15 consistent with purposes of this Act and with
16 the long-term financial stability of the Adminis-
17 tration;

18 (D) ensure that the operations and activi-
19 ties of the Administration are consistent with
20 the development of a robust private sector that
21 can provide commercial loans or financing prod-
22 ucts; and

23 (E) not serve on a full-time basis, except
24 that the Board of Directors shall meet at least
25 quarterly to review, as appropriate, applications

1 for credit support and set policies and proce-
2 dures as necessary.

3 No member of the Board shall take part in any re-
4 view or decision of any project as to which that
5 member or member's immediate family has a finan-
6 cial or other interest.

7 (3) REMOVAL.—An appointed member of the
8 Board of Directors may be removed from office by
9 the President for good cause.

10 (4) VACANCIES.—An appointed seat on the
11 Board of Directors that becomes vacant shall be
12 filled by appointment by the President, but only for
13 the unexpired portion of the term of the vacating
14 member.

15 (5) COMPENSATION OF MEMBERS.—An ap-
16 pointed member of the Board of Directors shall be
17 compensated at a rate equal to the daily equivalent
18 of the annual rate of basic pay prescribed for level
19 III of the Executive Schedule under section 5314 of
20 title 5, United States Code, for each day (including
21 travel time) during which the member is engaged in
22 the performance of the duties of the Board of Direc-
23 tors.

24 (d) ENERGY TECHNOLOGY ADVISORY COUNCIL.—

1 (1) IN GENERAL.—The Administration shall
2 have an Energy Technology Advisory Council con-
3 sisting of—

4 (A) 5 members selected by the Secretary;

5 and

6 (B) 3 members selected by the Board of
7 Directors of the Administration.

8 (2) QUALIFICATIONS.—The members of the Ad-
9 visory Council shall—

10 (A) have relevant scientific expertise; and

11 (B) in the case of the members selected by
12 the Secretary under paragraph (1)(A), include
13 representatives of—

14 (i) the academic community;

15 (ii) the private research community;

16 (iii) National Laboratories;

17 (iv) the technology or project develop-
18 ment community; and

19 (v) the commercial energy financing
20 and operations sector.

21 (3) DUTIES.—The Advisory Council shall—

22 (A) develop and publish for comment in
23 the Federal Register a methodology for assess-
24 ment of clean energy technologies that will
25 allow the Administration to evaluate projects

1 based on the progress likely to be achieved per
2 dollar invested in maximizing the attributes of
3 the definition of clean energy technology, taking
4 into account the extent to which support for a
5 clean energy technology is likely to accrue sub-
6 sequent benefits that are attributable to a com-
7 mercial scale deployment taking place earlier
8 than that which otherwise would have occurred
9 without the support; and

10 (B) advise on the technological approaches
11 that should be supported by the Administration
12 to meet the technology deployment goals estab-
13 lished by the Secretary pursuant to section 5.

14 (4) TERM.—

15 (A) IN GENERAL.—Members of the Advi-
16 sory Council shall have 5-year staggered terms,
17 as determined by the Secretary and the Admin-
18 istrator.

19 (B) REAPPOINTMENT.—A member of the
20 Advisory Council may be reappointed.

21 (5) COMPENSATION.—A member of the Advi-
22 sory Council, who is not otherwise compensated as
23 a Federal employee, shall be compensated at a rate
24 equal to the daily equivalent of the annual rate of
25 basic pay prescribed for level IV of the Executive

1 Schedule under section 5315 of title 5, United
2 States Code, for each day (including travel time)
3 during which the member is engaged in the perform-
4 ance of the duties of the Advisory Council.

5 (e) STAFF.—

6 (1) IN GENERAL.—The Administrator, in con-
7 sultation with the Board of Directors, may—

8 (A) appoint and terminate such officers,
9 attorneys, employees, and agents as are nec-
10 essary to carry out this Act; and

11 (B) vest those personnel with such powers
12 and duties as the Administrator may determine.

13 (2) DIRECT HIRE AUTHORITY.—

14 (A) IN GENERAL.—Notwithstanding sec-
15 tion 3304 and sections 3309 through 3318 of
16 title 5, United States Code, the Administrator
17 may, on a determination that there is a severe
18 shortage of candidates or a critical hiring need
19 for particular positions, recruit and directly ap-
20 point highly qualified critical personnel with
21 specialized knowledge important to the function
22 of the Administration into the competitive serv-
23 ice.

24 (B) EXCEPTION.—The authority granted
25 under subparagraph (A) shall not apply to posi-

1 tions in the excepted service or the Senior Exec-
2 utive Service.

3 (C) REQUIREMENTS.—In exercising the
4 authority granted under subparagraph (A), the
5 Administrator shall ensure that any action
6 taken by the Administrator—

7 (i) is consistent with the merit prin-
8 ciples of section 2301 of title 5, United
9 States Code; and

10 (ii) complies with the public notice re-
11 quirements of section 3327 of title 5,
12 United States Code.

13 (D) TERMINATION OF EFFECTIVENESS.—
14 The authority provided by this paragraph ter-
15 minates effective on the date that is 2 years
16 after the date of enactment of this Act.

17 (3) CRITICAL PAY AUTHORITY.—

18 (A) IN GENERAL.—Notwithstanding sec-
19 tion 5377 of title 5, United States Code, and
20 without regard to the provisions of that title
21 governing appointments in the competitive serv-
22 ice or the Senior Executive Service and chap-
23 ters 51 and 53 of that title (relating to classi-
24 fication and pay rates), the Administrator may
25 establish, fix the compensation of, and appoint

1 individuals to critical positions needed to carry
2 out the functions of the Administration, if the
3 Administrator certifies that—

4 (i) the positions require expertise of
5 an extremely high level in a financial, tech-
6 nical, or scientific field;

7 (ii) the Administration would not suc-
8 cessfully accomplish an important mission
9 without such an individual; and

10 (iii) exercise of the authority is nec-
11 essary to recruit an individual who is ex-
12 ceptionally well qualified for the position.

13 (B) LIMITATIONS.—The authority granted
14 under subparagraph (A) shall be subject to the
15 following conditions:

16 (i) The number of critical positions
17 authorized by subparagraph (A) may not
18 exceed 20 at any 1 time in the Administra-
19 tion.

20 (ii) The term of an appointment
21 under subparagraph (A) may not exceed 4
22 years.

23 (iii) An individual appointed under
24 subparagraph (A) may not have been an
25 Administration employee at any time dur-

1 ing the 2-year period preceding the date of
2 appointment.

3 (iv) Total annual compensation for
4 any individual appointed under subpara-
5 graph (A) may not exceed the highest total
6 annual compensation payable at the rate
7 determined under section 104 of title 3,
8 United States Code.

9 (v) An individual appointed under
10 subparagraph (A) may not be considered
11 to be an employee for purposes of sub-
12 chapter II of chapter 75 of title 5, United
13 States Code.

14 (C) NOTIFICATION.—Each year, the Ad-
15 ministrator shall submit to Congress a notifica-
16 tion that lists each individual appointed under
17 this paragraph.

18 **SEC. 7. ADMINISTRATION FUNCTIONS.**

19 (a) OPERATIONAL UNITS.—

20 (1) DIRECT SUPPORT.—

21 (A) IN GENERAL.—The Administration
22 may issue direct loans, letters of credit, loan
23 guarantees, insurance products, or such other
24 credit enhancements or debt instruments (in-
25 cluding participation as a co-lender or a mem-

1 ber of a syndication) as the Administrator con-
2 siders appropriate to deploy clean energy tech-
3 nologies if the Administrator has determined
4 that deployment of the technologies would ben-
5 efit or be accelerated by the support.

6 (B) ELIGIBILITY CRITERIA.—In carrying
7 out this paragraph and awarding credit support
8 to projects, the Administrator shall account
9 for—

10 (i) how the technology rates based on
11 an evaluation methodology established by
12 the Advisory Council;

13 (ii) how the project fits with the goals
14 established under section 5; and

15 (iii) the potential for the applicant to
16 successfully complete the project.

17 (C) RISK.—

18 (i) EXPECTED LOAN LOSS RE-
19 SERVE.—The Administrator shall establish
20 an expected loan loss reserve to account
21 for estimated losses attributable to activi-
22 ties under this section that is consistent
23 with the purposes of—

1 (I) developing breakthrough tech-
2 nologies to the point at which tech-
3 nology risk is largely mitigated;

4 (II) achieving widespread deploy-
5 ment and advancing the commercial
6 viability of clean energy technologies;
7 and

8 (III) advancing the goals estab-
9 lished under section 5.

10 (ii) INITIAL EXPECTED LOAN LOSS
11 RESERVE.—Until such time as the Admin-
12 istrator determines sufficient data exist to
13 establish an expected loan loss reserve that
14 is appropriate, the Administrator shall con-
15 sider establishing an initial rate of 10 per-
16 cent for the portfolio of investments under
17 this Act.

18 (iii) PORTFOLIO INVESTMENT AP-
19 PROACH.—The Administration shall—

20 (I) use a portfolio investment ap-
21 proach to mitigate risk and diversify
22 investments across technologies and
23 ensure that no particular technology
24 is provided more than 20 percent of
25 the financial support available;

1 (II) to the maximum extent prac-
2 ticable and consistent with long-term
3 self-sufficiency, weigh the portfolio of
4 investments in projects to advance the
5 goals established under section 5; and

6 (III) consistent with the expected
7 loan loss reserve established under
8 this subparagraph, the purposes of
9 this Act, and section 6(b)(2)(B), pro-
10 vide the maximum practicable per-
11 centage of support to promote break-
12 through technologies.

13 (iv) LOSS RATE REVIEW.—

14 (I) IN GENERAL.—The Board of
15 Directors shall review on an annual
16 basis the loss rates of the portfolio to
17 determine the adequacy of the re-
18 serves.

19 (II) REPORT.—Not later than 90
20 days after the date of the initiation of
21 the review, the Administrator shall
22 submit to the Committee on Energy
23 and Natural Resources of the Senate
24 and the Committee on Energy and
25 Commerce of the House of Represent-

1 atives a report describing the results
2 of the review and any recommended
3 policy changes.

4 (D) APPLICATION REVIEW.—

5 (i) IN GENERAL.—To the maximum
6 extent practicable and consistent with
7 sound business practices, the Administra-
8 tion shall seek to consolidate reviews of ap-
9 plications for credit support under this Act
10 such that final decisions on applications
11 can generally be issued not later than 180
12 days after the date of submission of a com-
13 pleted application.

14 (ii) ENVIRONMENTAL REVIEW.—In
15 carrying out this Act, the Administration
16 shall, to the maximum extent practicable—

17 (I) avoid duplicating efforts that
18 have already been undertaken by
19 other agencies (including State agen-
20 cies acting under Federal programs);
21 and

22 (II) with the advice of the Coun-
23 cil on Environmental Quality and any
24 other applicable agencies, use the ad-
25 ministrative records of similar reviews

1 conducted throughout the executive
2 branch to develop the most expedi-
3 tious review process practicable.

4 (E) WAGE RATE REQUIREMENTS.—

5 (i) IN GENERAL.—No credit support
6 shall be issued under this section unless
7 the borrower has provided to the Adminis-
8 trator reasonable assurances that all labor-
9 ers and mechanics employed by contractors
10 and subcontractors in the performance of
11 construction work financed in whole or in
12 part by the Administration will be paid
13 wages at rates not less than those pre-
14 vailing on projects of a character similar to
15 the contract work in the civil subdivision of
16 the State in which the contract work is to
17 be performed as determined by the Sec-
18 retary of Labor in accordance with sub-
19 chapter IV of chapter 31 of part A of sub-
20 title II of title 40, United States Code.

21 (ii) LABOR STANDARDS.—With re-
22 spect to the labor standards specified in
23 this section, the Secretary of Labor shall
24 have the authority and functions set forth
25 in Reorganization Plan Numbered 14 of

1 1950 (64 Stat. 1267; 5 U.S.C. App.) and
2 section 3145 of title 40, United States
3 Code.

4 (2) INDIRECT SUPPORT.—

5 (A) IN GENERAL.—The Administration
6 shall work to develop financial products and ar-
7 rangements to both promote the widespread de-
8 ployment of, and mobilize private sector support
9 of credit and investment institutions for, clean
10 energy technologies through securitization, indi-
11 rect credit support, or other similar means of
12 credit enhancement.

13 (B) FINANCIAL PRODUCTS.—The Adminis-
14 tration—

15 (i) in cooperation with Federal, State,
16 local, and private sector entities, shall de-
17 velop debt instruments that provide for the
18 aggregation of, or directly aggregate,
19 projects for clean energy technology de-
20 ployments on a scale appropriate for resi-
21 dential or commercial applications; and

22 (ii) may purchase, and make commit-
23 ments to purchase, any debt instrument
24 associated with the deployment of clean en-
25 ergy technologies for the purposes of en-

1 hancing the availability of private financ-
2 ing for clean energy technology deploy-
3 ments.

4 (C) DISPOSITION OF DEBT OR INTER-
5 EST.—The Administration may acquire, hold,
6 and sell or otherwise dispose of, pursuant to
7 commitments or otherwise, any debt associated
8 with the deployment of clean energy tech-
9 nologies or interest in the debt.

10 (D) PRICING.—

11 (i) IN GENERAL.—The Administrator
12 may establish requirements, and impose
13 charges or fees, which may be regarded as
14 elements of pricing, for different classes of
15 sellers, servicers, or services.

16 (ii) CLASSIFICATION OF SELLERS AND
17 SERVICERS.—For the purpose of clause (i),
18 the Administrator may classify sellers and
19 servicers as necessary to promote trans-
20 parency and liquidity and properly charac-
21 terize the risk of default.

22 (E) ELIGIBILITY.—The Administrator
23 shall establish—

24 (i) eligibility criteria for loan origina-
25 tors, sellers, and servicers seeking support

1 for portfolios of financial obligations relat-
2 ing to clean energy technologies so as to
3 ensure the capability of the loan origina-
4 tors, sellers, and servicers to perform the
5 functions required to maintain the ex-
6 pected performance of the portfolios; and

7 (ii) such criteria, standards, guide-
8 lines, and mechanisms such that, to the
9 maximum extent practicable, loan origina-
10 tors and sellers will be able to determine
11 the eligibility of loans for resale at the time
12 of initial lending.

13 (F) SECONDARY MARKET SUPPORT.—

14 (i) IN GENERAL.—The Administration
15 may lend on the security of, and make
16 commitments to lend on the security of,
17 any debt that the Administration has
18 issued or is authorized to purchase under
19 this section.

20 (ii) AUTHORIZED ACTIONS.—On such
21 terms and conditions as the Administrator
22 may prescribe, the Administration may,
23 with the concurrence of the Board of Di-
24 rectors—

25 (I) borrow;

- 1 (II) give security;
- 2 (III) pay interest or other return;
- 3 and
- 4 (IV) issue notes, debentures,
- 5 bonds, or other obligations or securi-
- 6 ties.

7 (G) LENDING ACTIVITIES.—

8 (i) IN GENERAL.—The Administrator

9 shall determine—

10 (I) the volume of the lending ac-

11 tivities of the Administration; and

12 (II) the types of loan ratios, risk

13 profiles, interest rates, maturities, and

14 charges or fees in the secondary mar-

15 ket operations of the Administration.

16 (ii) OBJECTIVES.—Determinations

17 under clause (i) shall be consistent with

18 the objectives of—

19 (I) providing an attractive invest-

20 ment environment for clean energy

21 technologies;

22 (II) making the operations of the

23 Administration self-supporting over

24 the long term; and

1 (III) advancing the goals estab-
2 lished under section 5.

3 (H) EXEMPT SECURITIES.—All securities
4 issued or guaranteed by the Administration
5 shall, to the same extent as securities that are
6 direct obligations of or obligations guaranteed
7 as to principal or interest by the United States,
8 be considered to be exempt securities within the
9 meaning of the laws administered by the Secu-
10 rities and Exchange Commission.

11 (b) OTHER AUTHORIZED PROGRAMS.—

12 (1) IN GENERAL.—The Secretary may delegate
13 to the Administration the provision of financial serv-
14 ices and program management for grant, loan, and
15 other credit enhancement programs authorized
16 under any other provision of law.

17 (2) ADMINISTRATION.—In administering any
18 other program delegated by the Secretary, the Ad-
19 ministration shall, to the maximum extent prac-
20 ticable (as determined by the Administrator)—

21 (A) administer the program in a manner
22 that is consistent with the terms and conditions
23 of this Act; and

24 (B) minimize the administrative costs to
25 the Federal Government.

1 **SEC. 8. FEDERAL CREDIT AUTHORITY.**

2 (a) **TRANSFER OF FUNCTIONS AND AUTHORITY.—**

3 (1) **IN GENERAL.—**Subject to paragraph (2), on
4 a finding by the Secretary and the Administrator
5 that the Administration is sufficiently ready to as-
6 sume the functions and that applicants to those pro-
7 grams will not be unduly adversely affected but in
8 no case later than 18 months after the date of en-
9 actment of this Act, all of the functions and author-
10 ity of the Secretary under title XVII of the Energy
11 Policy Act of 2005 (42 U.S.C. 16511 et seq.) and
12 authorities established by this Act shall be trans-
13 ferred to the Administration.

14 (2) **FAILURE TO TRANSFER FUNCTIONS.—**If the
15 functions and authorities are not transferred to the
16 Administration in accordance with paragraph (1),
17 the Secretary and the Administrator shall submit to
18 Congress a report on the reasons for delay and an
19 expected timetable for transfer of the functions and
20 authorities to the Administration.

21 (3) **EFFECT ON EXISTING RIGHTS AND OBLIGA-**
22 **TIONS.—**The transfer of functions and authority
23 under this subsection shall not affect the rights and
24 obligations of any party that arise under a prede-
25 cessor program or authority prior to the transfer
26 under this subsection.

1 (4) TRANSFER OF FUND AUTHORITY.—On
2 transfer of functions pursuant to paragraph (1), the
3 Administration shall have all authorities to make use
4 of the Fund reserved for the Secretary before the
5 transfer.

6 (5) USE.—Amounts in the Fund shall be avail-
7 able for discharge of liabilities and all other expenses
8 of the Administration, including subsequent transfer
9 to the respective credit program accounts.

10 (6) INITIAL INVESTMENT.—

11 (A) IN GENERAL.—On transfer of func-
12 tions pursuant to paragraph (1), out of any
13 funds in the Treasury not otherwise appro-
14 priated, the Secretary of the Treasury shall
15 transfer to the Fund to carry out this Act
16 \$10,000,000,000, to remain available until ex-
17 pended.

18 (B) RECEIPT AND ACCEPTANCE.—The
19 Fund shall be entitled to receive and shall ac-
20 cept, and shall be used to carry out this Act,
21 the funds transferred to the Fund under sub-
22 paragraph (A), without further appropriation.

23 (7) AUTHORIZATION OF APPROPRIATIONS.—In
24 addition to funds made available by paragraphs (1)
25 through (6), there are authorized to be appropriated

1 to the Fund such sums as are necessary to carry out
2 this Act.

3 (b) PAYMENTS OF LIABILITIES.—

4 (1) IN GENERAL.—Any payment made to dis-
5 charge liabilities arising from agreements under this
6 Act shall be paid out of the Fund or the associated
7 credit program account, as appropriate.

8 (2) SECURITY.—The full faith and credit of the
9 United States is pledged to the payment of all obli-
10 gations entered into by the Administration pursuant
11 to this Act.

12 (c) FEES.—

13 (1) IN GENERAL.—Consistent with achieving
14 the purposes of this Act, the Administrator shall
15 charge fees or collect compensation generally in ac-
16 cordance with commercial rates.

17 (2) AVAILABILITY OF FEES.—All fees collected
18 by the Administration may be retained by the Ad-
19 ministration and placed in the Fund and may re-
20 main available to the Administration, without fur-
21 ther appropriation or fiscal year limitation, for use
22 in carrying out the purposes of this Act.

23 (3) BREAKTHROUGH TECHNOLOGIES.—The Ad-
24 ministration shall charge the minimum amount in
25 fees or compensation practicable for breakthrough

1 technologies, consistent with the long-term viability
2 of the Administration, unless the Administration
3 first determines that a higher charge will not impede
4 the development of the technology.

5 (4) ALTERNATIVE FEE ARRANGEMENTS.—The
6 Administration may use such alternative arrange-
7 ments (such as profit participation, contingent fees,
8 and other valuable contingent interests) as the Ad-
9 ministration considers appropriate to compensate the
10 Administration for the expenses of the Administra-
11 tion and the risk inherent in the support of the Ad-
12 ministration.

13 (d) COST TRANSFER AUTHORITY.—Amounts col-
14 lected by the Administration for the cost of a loan or loan
15 guarantee shall be transferred by the Administration to
16 the respective credit program accounts.

17 (e) SUPPLEMENTAL BORROWING AUTHORITY.—In
18 order to maintain sufficient liquidity for activities author-
19 ized under section 7(a)(2), the Administration may issue
20 notes, debentures, bonds, or other obligations for purchase
21 by the Secretary of the Treasury.

22 (f) PUBLIC DEBT TRANSACTIONS.—For the purpose
23 of subsection (e)—

24 (1) the Secretary of the Treasury may use as
25 a public debt transaction the proceeds of the sale of

1 any securities issued under chapter 31 of title 31,
2 United States Code; and

3 (2) the purposes for which securities may be
4 issued under that chapter are extended to include
5 any purchase under this subsection.

6 (g) MAXIMUM OUTSTANDING HOLDING.—The Sec-
7 retary of the Treasury shall purchase instruments issued
8 under subsection (e) to the extent that the purchase would
9 not increase the aggregate principal amount of the out-
10 standing holdings of obligations under subsection (e) by
11 the Secretary of the Treasury to an amount that is greater
12 than \$2,000,000,000.

13 (h) RATE OF RETURN.—Each purchase of obligations
14 by the Secretary of the Treasury under this section shall
15 be on terms and conditions established to yield a rate of
16 return determined by the Secretary of the Treasury to be
17 appropriate, taking into account the current average rate
18 on outstanding marketable obligations of the United
19 States as of the last day of the month preceding the pur-
20 chase.

21 (i) SALE OF OBLIGATIONS.—The Secretary of the
22 Treasury may at any time sell, on terms and conditions
23 and at prices determined by the Secretary of the Treasury,
24 any of the obligations acquired by the Secretary of the
25 Treasury under this section.

1 (j) PUBLIC DEBT TRANSACTIONS.—All redemptions,
2 purchases, and sales by the Secretary of the Treasury of
3 obligations under this section shall be treated as public
4 debt transactions of the United States.

5 **SEC. 9. GENERAL PROVISIONS.**

6 (a) IMMUNITY FROM IMPAIRMENT, LIMITATION, OR
7 RESTRICTION.—

8 (1) IN GENERAL.—All rights and remedies of
9 the Administration (including any rights and rem-
10 edies of the Administration on, under, or with re-
11 spect to any mortgage or any obligation secured by
12 a mortgage) shall be immune from impairment, limi-
13 tation, or restriction by or under—

14 (A) any law (other than a law enacted by
15 Congress expressly in limitation of this para-
16 graph) that becomes effective after the acquisi-
17 tion by the Administration of the subject or
18 property on, under, or with respect to which the
19 right or remedy arises or exists or would so
20 arise or exist in the absence of the law; or

21 (B) any administrative or other action that
22 becomes effective after the acquisition.

23 (2) STATE LAW.—The Administrator may con-
24 duct the business of the Administration without re-

1 gard to any qualification or law of any State relating
2 to incorporation.

3 (b) USE OF OTHER AGENCIES.—With the consent of
4 a department, establishment, or instrumentality (including
5 any field office), the Administration may—

6 (1) use and act through any department, estab-
7 lishment, or instrumentality;

8 (2) use, and pay compensation for, information,
9 services, facilities, and personnel of the department,
10 establishment, or instrumentality.

11 (c) PROCUREMENT.—The Administrator shall be the
12 senior procurement officer for the Administration for pur-
13 poses of section 16(a) of the Office of Federal Procure-
14 ment Policy Act (41 U.S.C. 414(a)).

15 (d) FINANCIAL MATTERS.—

16 (1) INVESTMENTS.—Funds of the Administra-
17 tion may be invested in such investments as the
18 Board of Directors may prescribe.

19 (2) FISCAL AGENTS.—Any Federal Reserve
20 bank or any bank as to which at the time of the des-
21 ignation of the bank by the Administrator there is
22 outstanding a designation by the Secretary of the
23 Treasury as a general or other depository of public
24 money, may be designated by the Administrator as

1 a depository or custodian or as a fiscal or other
2 agent of the Administration.

3 (e) JURISDICTION.—Notwithstanding section 1349 of
4 title 28, United States Code, or any other provision of
5 law—

6 (1) the Administration shall be considered a
7 corporation covered by sections 1345 and 1442 of
8 title 28, United States Code;

9 (2) all civil actions to which the Administration
10 is a party shall be considered to arise under the laws
11 of the United States, and the district courts of the
12 United States shall have original jurisdiction of all
13 such actions, without regard to amount or value;
14 and

15 (3) any civil or other action, case or controversy
16 in a court of a State, or in any court other than a
17 district court of the United States, to which the Ad-
18 ministration is a party may at any time before trial
19 be removed by the Administration, without the giv-
20 ing of any bond or security and by following any
21 procedure for removal of causes in effect at the time
22 of the removal—

23 (A) to the district court of the United
24 States for the district and division embracing
25 the place in which the same is pending; or

1 (B) if there is no such district court, to the
2 district court of the United States for the dis-
3 trict in which the principal office of the Admin-
4 istration is located.

5 (f) PERIODIC REPORTS.—Not later than 1 year after
6 commencement of operation of the Administration and at
7 least biannually thereafter, the Administrator shall submit
8 to the Committee on Energy and Natural Resources of
9 the Senate and the Committee on Energy and Commerce
10 of the House of Representatives a report that includes a
11 description of—

12 (1) the technologies supported by activities of
13 the Administration and how the activities advance
14 the purposes of this Act; and

15 (2) the performance of the Administration on
16 meeting the goals established under section 5.

17 (g) AUDITS BY THE COMPTROLLER GENERAL.—

18 (1) IN GENERAL.—The programs, activities, re-
19 ceipts, expenditures, and financial transactions of
20 the Administration shall be subject to audit by the
21 Comptroller General of the United States under
22 such rules and regulations as may be prescribed by
23 the Comptroller General.

24 (2) ACCESS.—The representatives of the Gov-
25 ernment Accountability Office shall—

1 (A) have access to the personnel and to all
2 books, accounts, documents, records (including
3 electronic records), reports, files, and all other
4 papers, automated data, things, or property be-
5 longing to, under the control of, or in use by
6 the Administration, or any agent, representa-
7 tive, attorney, advisor, or consultant retained by
8 the Administration, and necessary to facilitate
9 the audit;

10 (B) be afforded full facilities for verifying
11 transactions with the balances or securities held
12 by depositories, fiscal agents, and custodians;

13 (C) be authorized to obtain and duplicate
14 any such books, accounts, documents, records,
15 working papers, automated data and files, or
16 other information relevant to the audit without
17 cost to the Comptroller General; and

18 (D) have the right of access of the Comp-
19 troller General to such information pursuant to
20 section 716(e) of title 31, United States Code.

21 (3) ASSISTANCE AND COST.—

22 (A) IN GENERAL.—For the purpose of con-
23 ducting an audit under this subsection, the
24 Comptroller General may, in the discretion of
25 the Comptroller General, employ by contract,

1 without regard to section 3709 of the Revised
2 Statutes (41 U.S.C. 5), professional services of
3 firms and organizations of certified public ac-
4 countants for temporary periods or for special
5 purposes.

6 (B) REIMBURSEMENT.—

7 (i) IN GENERAL.—On the request of
8 the Comptroller General, the Administra-
9 tion shall reimburse the General Account-
10 ability Office for the full cost of any audit
11 conducted by the Comptroller General
12 under this subsection.

13 (ii) CREDITING.—Such reimburse-
14 ments shall—

15 (I) be credited to the appropria-
16 tion account entitled “Salaries and
17 Expenses, Government Accountability
18 Office” at the time at which the pay-
19 ment is received; and

20 (II) remain available until ex-
21 pended.

22 (h) ANNUAL INDEPENDENT AUDITS.—

23 (1) IN GENERAL.—The Administrator shall—

24 (A) have an annual independent audit
25 made of the financial statements of the Admin-

1 istration by an independent public accountant
2 in accordance with generally accepted auditing
3 standards; and

4 (B) submit to the Secretary the results of
5 the audit.

6 (2) CONTENT.—In conducting an audit under
7 this subsection, the independent public accountant
8 shall determine and report on whether the financial
9 statements of the Administration—

10 (A) are presented fairly in accordance with
11 generally accepted accounting principles; and

12 (B) comply with any disclosure require-
13 ments imposed under this Act.

14 (i) FINANCIAL REPORTS.—

15 (1) IN GENERAL.—The Administrator shall
16 submit to the Secretary annual and quarterly re-
17 ports of the financial condition and operations of the
18 Administration, which shall be in such form, contain
19 such information, and be submitted on such dates as
20 the Secretary shall require.

21 (2) CONTENTS OF ANNUAL REPORTS.—Each
22 annual report shall include—

23 (A) financial statements prepared in ac-
24 cordance with generally accepted accounting
25 principles;

1 (B) any supplemental information or alter-
2 native presentation that the Secretary may re-
3 quire; and

4 (C) an assessment (as of the end of the
5 most recent fiscal year of the Administration),
6 signed by the chief executive officer and chief
7 accounting or financial officer of the Adminis-
8 tration, of—

9 (i) the effectiveness of the internal
10 control structure and procedures of the
11 Administration; and

12 (ii) the compliance of the Administra-
13 tion with applicable safety and soundness
14 laws.

15 (3) SPECIAL REPORTS.—The Secretary may re-
16 quire the Administrator to submit other reports on
17 the condition (including financial condition), man-
18 agement, activities, or operations of the Administra-
19 tion, as the Secretary considers appropriate.

20 (4) ACCURACY.—Each report of financial condi-
21 tion shall contain a declaration by the Administrator
22 or any other officer designated by the Board of Di-
23 rectors of the Administration to make the declara-
24 tion, that the report is true and correct to the best
25 of the knowledge and belief of the officer.

1 (5) AVAILABILITY OF REPORTS.—Reports re-
2 quired under this section shall be published and
3 made publicly available as soon as is practicable
4 after receipt by the Secretary.

5 (j) SCOPE AND TERMINATION OF AUTHORITY.—

6 (1) NEW OBLIGATIONS.—The Administrator
7 shall not initiate any new obligations under this Act
8 on or after January 1, 2029.

9 (2) REVERSION TO SECRETARY.—The authori-
10 ties and obligations of the Administration shall re-
11 vert to the Secretary on January 1, 2029.

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