

Comparison of Issues in Proposed Federal Energy Bank Legislation

| # | Issue | American Clean Energy Leadership Act, S. 1462 (introduced by the Senate Energy and Natural Resources Committee on July 16, 2009) | American Clean Energy and Security Act, H.R. 2454 (passed by the House on June 26, 2009) | SEIA's Preferences |
|----|---|---|--|--|
| 1. | <i>Amendments to DOE's existing loan guarantee programs</i> | The Credit Subsidy Cost could be paid from the newly-created "Clean Energy Investment Fund," by the borrower, or by a combination of balances in the Fund and payments by the borrower. §103(b)(2). The Fund would initially include amounts that have been appropriated for administrative expenses to carry out DOE's loan guarantee programs, amounts deposited into the Fund under the Act, and other sums that are appropriated. §103(a)(1). | The Credit Subsidy Cost could be paid from a combination of appropriations and borrower fees. §181(b). | Support all reductions in borrower fees. |
| | | The Guarantee Agreement shall "provide for sharing the proceeds from the sale of project assets with other creditors or control the disposition of project assets if necessary to protect the interests of the United States" and "provide such lien priority in project assets as necessary to protect the interest of the United States in the case of default" (this will give DOE flexibility to allow <i>pari passu</i> structures). §103(b)(3). | Same as Senate bill. §181(e). | Support giving DOE flexibility to negotiate collateral structures. |
| | | Administrative fees would be deposited into the Clean Energy Investment Fund. §103(b)(4). | Administrative fees paid by borrowers would be deposited into a new "Incentives for Innovative Technologies Fund" and remain available to DOE to cover administrative expenses. §181(c). | Support all reductions in borrower fees. |

| # | Issue | American Clean Energy Leadership Act, S. 1462 (introduced by the Senate Energy and Natural Resources Committee on July 16, 2009) | American Clean Energy and Security Act, H.R. 2454 (passed by the House on June 26, 2009) | SEIA's Preferences |
|----|-------------------------------|--|--|---|
| | | DOE may waive the independent credit rating requirement. §103(b)(4). | Not addressed. | Support statutorily eliminating this expensive and time-consuming requirement that is set forth in DOE's regulations. |
| | | DOE must use best efforts to make decisions on applications within 180 days of receipt of an application. §103(b)(5). | Not addressed. | Support accelerating DOE's review process. |
| | | Of the amount of a fee that is imposed on an applicant at the conditional commitment stage, 75% will be refunded if there is no financial close. §103(b)(4). | Not addressed. | Support all reductions in borrower fees. |
| | | Aggregate amount of loan guarantees would not be subject to Congressional approval. §103(b)(2). | Not addressed. | Support codifying GAO's opinion that Section 1702(b) of the Energy Policy Act supersedes Section 504(b) of the Federal Credit Reform Act. |
| | | The bill does not address restrictions on multiple applications for projects with the same technology. | The bill does not address restrictions on multiple applications for projects with the same technology. | Support statutorily eliminating DOE regulation that sponsors may not submit applications for multiple projects using the same type of technology. |
| | | The bill does not address National Environmental Policy Act (NEPA) compliance. | The bill does not address National Environmental Policy Act (NEPA) compliance. | Support streamlining NEPA review requirements. |
| 2. | <i>Nature of organization</i> | CEDA would be established within the Department of Energy (part of the Executive Branch of the Federal government). §105(a). | CEDA would be an independent corporation of the United States. §186. | Support CEDA being an independent corporation. |

| # | Issue | American Clean Energy Leadership Act, S. 1462 (introduced by the Senate Energy and Natural Resources Committee on July 16, 2009) | American Clean Energy and Security Act, H.R. 2454 (passed by the House on June 26, 2009) | SEIA's Preferences |
|----|---|---|--|---|
| 3. | <i>Direct support for clean energy technologies</i> | <p>CEDA would be authorized to issue direct loans, letters of credit, loan guarantees, insurance products or other forms of credit enhancements or debt instruments to deploy "clean energy technologies." §106(a)(1)</p> <p>CEDA would seek to make decisions on applications for direct financial support within 180 days. §106(a)(1)(D)(i).</p> | <p>CEDA would be authorized to issue direct loans, letters of credit and loan guarantees to deploy "clean energy technologies." §187(a).</p> <p>(CEDA's loan guarantees would be in addition to loan guarantees under DOE's existing loan guarantee programs)</p> <p>Same as Senate bill. §187(d).</p> | <p>Support all forms of direct support for clean energy technologies.</p> <p>Support a streamlined application review process.</p> |
| 4. | <i>Indirect support for clean energy technologies</i> | <p>In cooperation with federal, state, local and private sector entities, CEDA could develop debt instruments that provide for the aggregation of projects for clean energy technology deployments on a scale appropriate for residential or commercial applications. §106(a)(2)(B)(i).</p> <p>CEDA could purchase any debt instrument associated with the deployment of clean energy technologies for the purpose of enhancing the availability of private financing for clean energy technology deployments. §106(a)(2)(B)(ii).</p> | <p>CEDA could provide credit support for portfolios of taxable debt obligations originated by state, local and private sector entities that enable owners and users of buildings to increase energy efficiency or install systems that individually generate electricity from renewable energy sources and have a capacity of not more than two megawatts. §188(a)(1).</p> <p>CEDA could facilitate financing in tax equity markets and long-term purchasing of clean energy by state, local, and non-profit entities to the degree and to the extent that CEDA determines is appropriate. §188(a)(2).</p> | <p>Support all forms of indirect support for clean energy technologies, including financial products that aggregate multiple small-scale projects.</p> <p>Support specific authorization in House Bill to facilitate financing transactions in tax equity markets (see "Tax Equity" below).</p> |

| # | Issue | American Clean Energy Leadership Act, S. 1462 (introduced by the Senate Energy and Natural Resources Committee on July 16, 2009) | American Clean Energy and Security Act, H.R. 2454 (passed by the House on June 26, 2009) | SEIA's Preferences |
|----|--|---|--|--|
| 5. | <i>Definition of "Clean Energy Technologies" that are eligible for support</i> | "Clean energy technology" means a technology related to the production, use, transmission, storage, control, or conservation of energy that will (A) reduce the need for additional energy supplies by using existing energy supplies with greater efficiency or by transmitting, distributing, or transporting energy with greater effectiveness through the infrastructure of the United States; (B) diversify the sources of energy supply of the United States to strengthen energy security and to increase supplies with a favorable balance of environmental effects if the entire technology system is considered; or (C) contribute to a stabilization of atmospheric greenhouse gas concentrations through reduction, avoidance, or sequestration of energy-related emissions. §102(5). | "Clean energy technology" means a technology related to the production, use, transmission, storage, control, or conservation of energy (A) that will contribute to a stabilization of atmospheric greenhouse gas concentrations through reduction, avoidance, or sequestration of energy-related emissions and (i) reduce the need for additional energy supplies by using existing energy supplies with greater efficiency or by transmitting, distributing or transporting energy with greater effectiveness through the infrastructure of the United States; or (ii) diversify the sources of energy supply of the United States to strengthen energy security and to increase supplies with a favorable balance of environmental effects if the entire technology system is considered; and (B) for which, as determined by the Administrator, insufficient commercial lending is available to allow for widespread deployment. §183(4). | Support Senate definition, which does not require a determination by the Administrator that insufficient commercial lending is available to allow for widespread deployment. This condition in (B) of the House Bill is ambiguous and prejudicial to commercial technologies. |

| # | Issue | American Clean Energy Leadership Act, S. 1462 (introduced by the Senate Energy and Natural Resources Committee on July 16, 2009) | American Clean Energy and Security Act, H.R. 2454 (passed by the House on June 26, 2009) | SEIA's Preferences |
|----|--|--|--|--|
| 6. | <i>Portfolio approach/ preferences for breakthrough technologies</i> | CEDA must use a portfolio investment approach that provides the "maximum practicable percentage of support to promote breakthrough technologies." §106(a)(1)(c)(iii)(III). | Same as Senate bill. §187(c)(3)(C). | Support clarifying CEDA objective of providing the "maximum practicable percentage of support" for breakthrough technologies; ensure that support is available for commercial technologies. For example, the bill could specify that "no more than [50]% of the financial support provided by CEDA may be available for breakthrough technologies," which would (i) clarify CEDA's goal of providing the "maximum practicable percentage of support" for breakthrough technologies, (ii) limit CEDA's overall financial risk, and (iii) ensure that CEDA would provide adequate support for commercially proven technologies. |
| | | No limit on how much support a particular technology may receive. | No particular technology may receive more than 30% of the financial support available in the portfolio. §187(c)(3)(A). | Support limit on support for any particular technology, as provided in House Bill. |

| # | Issue | American Clean Energy Leadership Act, S. 1462 (introduced by the Senate Energy and Natural Resources Committee on July 16, 2009) | American Clean Energy and Security Act, H.R. 2454 (passed by the House on June 26, 2009) | SEIA's Preferences |
|---|-------|---|--|--|
| | | No special priority for investments in technologies that will achieve the maximum reductions in greenhouse gas emissions. | CEDA must give the highest priority to investments that promote technologies that will achieve the maximum greenhouse gas emission reductions within a reasonable period of time per dollar invested and the earliest reductions in greenhouse gas emissions. §187(c)(3)(D). | Support priority for investments in technologies that will achieve the maximum reductions in greenhouse gas emissions. |

| # | Issue | American Clean Energy Leadership Act, S. 1462 (introduced by the Senate Energy and Natural Resources Committee on July 16, 2009) | American Clean Energy and Security Act, H.R. 2454 (passed by the House on June 26, 2009) | SEIA's Preferences |
|----|-------------------------------|--|--|---|
| 7. | <i>Funding/capitalization</i> | <p>The Act would establish the Clean Energy Investment Fund within the Treasury, consisting of amounts that have been appropriated for administrative expenses to carry out the Title XVII loan guarantee programs, amounts deposited into the Fund under the Act (e.g. fees paid by borrowers under the Title XVII loan guarantee programs), and other sums that are appropriated to supplement the Fund. §103(a)(1).</p> <p>Upon a finding by the Secretary of Energy and the Administrator of CEDA that CEDA is ready to assume its functions, and in no case later than 18 months after passage of the Act, (i) the Treasury would transfer \$10 billion to the Fund to remain available until expended and (ii) CEDA would have authority to make use of all amounts in the Fund. §107(a)(6).</p> <p>CEDA may also issue up to \$2 billion in notes, debentures, bonds, or other obligations for purchase by the Treasury in order to maintain liquidity for indirect financial support for clean energy technologies (e.g., debt instruments that provide for the aggregation of projects). §107(e)-(g).</p> | <p>The Act would establish the Clean Energy Investment Fund within the Treasury, consisting of amounts deposited into the Fund under the Act and other sums that are appropriated to supplement the Fund. §184(a). (appropriations and borrower fees related to the Title XVII loan guarantee program would not be deposited into this Fund)</p> <p>The Treasury would initially issue \$7.5 billion in "Green Bonds" to acquire all capital stock of CEDA. §184(e)(1).</p> <p>(issuance of "Green Bonds" is not subject to a finding that CEDA is ready to commence operations)</p> <p>Additional issuances of "Green Bonds" are not addressed.</p> | <p>To provide meaningful support in the industry, CEDA needs an initial capitalization of at least \$50 billion and authority to issue bonds to increase capitalization to up to \$100 billion.</p> |

| # | Issue | American Clean Energy Leadership Act, S. 1462 (introduced by the Senate Energy and Natural Resources Committee on July 16, 2009) | American Clean Energy and Security Act, H.R. 2454 (passed by the House on June 26, 2009) | SEIA's Preferences |
|-----|---|---|--|---|
| 8. | <i>Collateral/sharing of collateral among lenders</i> | <p>The bill does not include security requirements for loans or other obligations of CEDA. The bill also does not address security issues in cases where there are multiple lenders.</p> <p>For DOE's existing loan guarantee programs (which would be transferred to CEDA), the bill proposes amending the requirement that DOE must have a superior right to property acquired pursuant to a loan guarantee. This amendment would facilitate <i>pari passu</i> lending.</p> | <p>Same as Senate bill.</p> <p>The bill does not amend the security requirements for DOE's existing loan guarantee programs.</p> | <p>Support flexibility for CEDA to negotiate collateral structures.</p> <p>Support giving DOE flexibility to negotiate collateral structures (see "Amendments to DOE's existing loan guarantee programs" above).</p> |
| 9. | <i>Co-lending authority</i> | CEDA could participate as a co-lender or a member of a syndication. §106(a)(1). | Not specifically addressed. | Support authority of CEDA to work with private lenders. |
| 10. | <i>Relation to private credit markets/dependence of authority on private credit markets</i> | One duty of the Administrator of CEDA is to promote participation of private financial institutions and other sources of private capital on commercially reasonable terms if and to the extent the capital is available. §105(b)(2)(C)(v). | For a particular technology to qualify for support, the Administrator of CEDA must determine that there is insufficient commercial lending available to allow for widespread deployment of the technology. §183(4)(B) (definition of "clean energy technology"). | <p>Support coordination between CEDA and private financing markets.</p> <p>Support should not be contingent on a finding that insufficient commercial lending is available (see "Definition of 'clean energy technologies'" above).</p> |

| # | Issue | American Clean Energy Leadership Act, S. 1462 (introduced by the Senate Energy and Natural Resources Committee on July 16, 2009) | American Clean Energy and Security Act, H.R. 2454 (passed by the House on June 26, 2009) | SEIA's Preferences |
|-----|---|--|---|---|
| | | One duty of the Board of Directors is to ensure that the operations of CEDA are consistent with the development of a robust private sector that can provide commercial loans or financial projects. §105(c)(2)(D). | Same as Senate bill. §186(c)(2)(D). | Support coordination between CEDA and private financing markets. |
| 11. | <i>Environmental reviews</i> | CEDA would seek to avoid duplicating efforts already undertaken by other agencies and would seek to develop the most expeditious review process practicable. §106(a)(1)(D)(ii). | Same as Senate bill. §187(d)(2). | Support streamlined environmental reviews. |
| 12. | <i>Role of commercial banks in processing loans</i> | The bill does not provide any explicit authority for CEDA to contract with private lenders for processing loans. | Same as Senate bill. | Support flexibility of CEDA to contract with private entities. |
| 13. | <i>Borrower fees/Interest rates</i> | CEDA may use other alternative compensation arrangements (such as profit participation, contingent fees, and other valuable contingent interests) as CEDA considers appropriate. §107(c)(4). | Same as Senate bill. §189(b)(4). | Support flexibility in fee arrangements. |
| | | The bill does not address interest rates. | The bill does not address. | Support authority of CEDA to charge interest rates at the same rates charged by the Treasury Department's Federal Financing Bank. |
| 14. | <i>Tax equity</i> | The bill does not address financing transactions in tax equity markets. | CEDA would be authorized to facilitate financing in tax equity markets. §188(a)(2). | Support authorization of CEDA to facilitate financing in tax equity markets, as provided in House Bill. |

| # | Issue | American Clean Energy Leadership Act, S. 1462 (introduced by the Senate Energy and Natural Resources Committee on July 16, 2009) | American Clean Energy and Security Act, H.R. 2454 (passed by the House on June 26, 2009) | SEIA's Preferences |
|-----|------------------------------------|---|---|--|
| 15. | <i>Financing of lease payments</i> | The bill does not provide any explicit authority for CEDA to provide financing support or guarantees for lease payments. | Same as Senate bill. | Support authorization for CEDA to provide financing for lease payments. |
| 16. | <i>Applications for support</i> | The bill does not address procedures for applying for CEDA support. | The bill does not address procedures for applying for CEDA support. | CEDA should function like a commercial bank and accept unsolicited proposals for direct and indirect support. CEDA should not be required to issue solicitations for applications and evaluate those applications on a competitive basis. |