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

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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,*

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Climate Change Technology Deployment and Infrastructure Credit Act of 2005''.

SEC. 2. GREENHOUSE GAS INTENSITY REDUCING TECHNOLOGY STRATEGIES.

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

''SEC. 1610. GREENHOUSE GAS INTENSITY REDUCING STRATEGIES.

''(a) DEFINITIONS.—In this section:

''(1) CARBON SEQUESTRATION.—The term 'carbon sequestration' means the capture of carbon dioxide through terrestrial, geological, biological, or other means, which prevents the release of carbon dioxide into the atmosphere.

''(2) COMMITTEE.—The term 'Committee' means the Interagency Coordinating Committee on Climate Change Technology established under subsection (c)(1).

''(3) GREENHOUSE GAS.—The term 'greenhouse gas' means—

''(A) carbon dioxide;

''(B) methane;

''(C) nitrous oxide;

"(D) hydrofluorocarbons;

"(E) perfluorocarbons;

"(F) sulfur hexafluoride; and

"(G) any other gas that the Director of the Office of Science and Technology Policy, in consultation with the National Academy of Sciences, defines as a greenhouse gas for purposes of this section, based on credible scientific research.

"(4) GREENHOUSE GAS INTENSITY.—The term 'greenhouse gas intensity' means the ratio of greenhouse gas emissions to economic output.

"(5) NATIONAL LABORATORY.—The term 'National Laboratory' means a laboratory owned by the Department of Energy, including the following:

"(A) Argonne National Laboratory.

"(B) Idaho National Laboratory.

"(C) Brookhaven National Laboratory.

"(D) Oak Ridge National Laboratory.

"(E) Los Alamos National Laboratory.

"(F) Sandia National Laboratory.

"(G) Lawrence Livermore National Laboratory.

"(H) National Energy Technology Laboratory.

"(I) National Renewable Energy Laboratory.

"(J) Pacific Northwest National Laboratory.

"(6) WORKING GROUP.—The term 'Working Group' means the Climate Change Technology Working Group established under subsection (g)(1).

"(b) OFFICE OF SCIENCE AND TECHNOLOGY POLICY STRATEGY.—

"(1) IN GENERAL.—Based on the recommendations of the report submitted under subsection (f)(2), the Director of the Office of Science and Technology Policy shall develop a national strategy to promote greenhouse gas intensity reducing technologies and practices developed through research and development programs conducted by National Laboratories, other Federal research facilities, universities, and the private sector.

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

"(c) INTERAGENCY COORDINATING COMMITTEE ON CLIMATE CHANGE TECHNOLOGY.—

"(1) IN GENERAL.—Not later than 180 days after the date of enactment of this section, the Secretary shall establish an Interagency Coordinating Committee on Climate Change Technology to coordinate Federal climate change activities and programs carried out in furtherance of the strategy developed under subsection (b)(1).

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

"(A) the Secretary;

"(B) the Secretary of Commerce;

"(C) the Chairman of the Council on Environmental Quality;

"(D) the Secretary of Agriculture;

"(E) the Administrator of the Environmental Protection Agency; and

"(F) the Secretary of Transportation.

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

"(d) CLIMATE CHANGE SCIENCE PROGRAM AND CLIMATE CHANGE TECHNOLOGY PROGRAM.—

"(1) CLIMATE CHANGE SCIENCE PROGRAM.—Not later than 180 days after the date on which the first report is submitted under subsection (b)(2), the

Secretary of Commerce, in cooperation with the Committee, shall establish within the Department of Commerce the Climate Change Science Program to assist the Committee in the interagency coordination of climate change science research and related activities, including—

"(A) the assessments of the state of knowledge on climate change; and

"(B) carrying out supporting studies, planning, and analyses of the science of climate change.

"(2) CLIMATE CHANGE TECHNOLOGY PROGRAM.—Not later than 180 days after the date on which the first report is submitted under subsection (b)(2), the Secretary, in cooperation with the Committee, shall establish within the Department of Energy, the Climate Change Technology Program to assist the Committee in the interagency coordination of climate change technology research, development, demonstration, and deployment to reduce greenhouse gas intensity.

"(e) TECHNOLOGY INVENTORY.—

"(1) IN GENERAL.—The Secretary shall conduct an inventory and evaluation of greenhouse gas intensity reducing technologies that have been devel-

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

"(2) REPORT.—Not later than 180 days after the completion of the inventory under paragraph (1), the Secretary shall submit to the Secretary of Commerce and Congress a report that includes the results of the completed inventory and any recommendations of the Secretary.

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

"(f) GREENHOUSE GAS INTENSITY REDUCING TECHNOLOGY STUDY.—

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

"(A) the commercialization and diffusion of new and existing technologies to reduce greenhouse gas intensity; and

"(B) ways to increase the development and deployment of cost-effective technologies and practices.

"(2) REPORT.—Not later than 180 days after the completion of the study under paragraph (1), the Secretary shall submit to Congress and the Director of the Office of Science and Technology Policy a report that describes—

"(A) the results of the study; and

"(B) any recommendations of the Committee to—

"(i) increase commercialization of the technologies and practices described in paragraph (1); and

"(ii) promote the long-term commercialization and deployment of those technologies and practices.

"(g) CLIMATE CHANGE TECHNOLOGY WORKING GROUP.—

"(1) IN GENERAL.—The Secretary, in consultation with the Committee, shall establish a Climate Change Technology Working Group to identify statutory, regulatory, and economic barriers to the commercialization of greenhouse gas intensity reducing technologies and practices.

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

pointed by the Secretary, in consultation with the Committee:

"(A) 1 representative from each National Laboratory.

"(B) 3 members shall be representatives of energy-producing trade organizations.

"(C) 3 members shall represent energy-intensive trade organizations.

"(D) 3 members shall represent groups that represent end-use energy and other consumers.

"(E) 3 members shall be employees of the Federal Government who are experts in energy technology, intellectual property, tax, and regulation.

"(F) 3 members shall be representatives of universities with expertise in energy technology development that are recommended by the National Academy of Engineering.

"(3) REPORT.—Not later than 1 year after the date of enactment of this section and annually thereafter, the Working Group shall submit to the Committee a report that describes—

"(A) the findings of the Working Group; and

"(B) any recommendations of the Working Group for the removal of barriers to commercialization and increasing the use of greenhouse gas intensity reducing technologies.

"(4) COMPENSATION OF MEMBERS.—

"(A) NON-FEDERAL EMPLOYEES.—A member of the Working Group who is not an officer or employee of the Federal Government shall be compensated at a rate equal to the daily equivalent of the annual rate of basic pay prescribed for level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day (including travel time) during which the member is engaged in the performance of the duties of the Working Group.

"(B) FEDERAL EMPLOYEES.—A member of the Working Group who is an officer or employee of the Federal Government shall serve without compensation in addition to the compensation received for the services of the member as an officer or employee of the Federal Government.

"(C) TRAVEL EXPENSES.—A member of the Working Group shall be allowed travel expenses, including per diem in lieu of subsist-

ence, at rates authorized for an employee of an agency under subchapter I of chapter 57 of title 5, United States Code, while away from the home or regular place of business of the member in the performance of the duties of the Commission.

"(h) GREENHOUSE GAS INTENSITY REDUCING TECHNOLOGY DEPLOYMENT.—

"(1) IN GENERAL.—Based on the strategy developed under subsection (b)(1), the technology inventory conducted under subsection (e)(1), and the greenhouse gas intensity reducing technology study report submitted under subsection (e)(2), the Committee shall develop a program for implementation by the Climate Credit Board established under section 1611(b)(2)(A) that would provide for the removal of domestic barriers to the deployment of greenhouse gas intensity reducing technologies.

"(2) REQUIREMENTS.—In developing the program under paragraph (1), the Committee shall consider in the aggregate—

"(A) the cost-effectiveness of the technology;

"(B) fiscal and regulatory barriers;

"(C) statutory barriers; and

"(D) intellectual property issues.

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

"(A) identifies the barriers to, and the commercial risks associated with, the deployment of greenhouse gas intensity reducing technologies;

"(B) includes a plan for carrying out eligible projects with Federal financial assistance under section 1611; and

"(C) describes the program developed under paragraph (1).

"(i) PROCEDURES FOR CALCULATING, MONITORING, AND ANALYZING GREENHOUSE GAS INTENSITY.—

"(1) IN GENERAL.—Using the guidelines issued under section 1605(b), the Committee, in collaboration with the Administrator of the Energy Information Administration and the National Institute of Standards and Technology, shall develop and propose standards and best practices for calculating, monitoring, and analyzing greenhouse gas intensity.

"(2) CONTENT.—The standards and best practices shall address measurement of greenhouse gas intensity by industry sector.

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

"(4) APPLICABLE LAW.—To ensure that high quality information is produced, the standards and best practices developed under paragraph (1) shall conform to the guidelines established under section 515 of the Treasury and General Government Appropriations Act, 2001 (commonly known as the 'Data Quality Act') (44 U.S.C. 3516 note; 114 Stat. 2763A–1543), as enacted into law by section 1(a)(3) of Public Law 106–554.

"(j) DEMONSTRATION PROJECTS.—

"(1) IN GENERAL.—The Secretary shall conduct and participate in demonstration projects approved by the Committee, including demonstration projects relating to—

"(A) coal gasification and coal liquefaction;

"(B) carbon sequestration;

"(C) cogeneration technology initiatives;

"(D) advanced nuclear power projects;

"(E) lower emission transportation;

"(F) renewable energy; and

"(G) transmission upgrades.

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

"(A) increase the reduction of the greenhouse gas intensity to levels below that which would be achieved by technologies being used in the United States as of the date of enactment of this section;

"(B) maximize the potential return on Federal investment;

"(C) demonstrate distinct roles in public-private partnerships;

"(D) produce a large-scale reduction of greenhouse gas intensity if commercialization occurred; and

"(E) support a diversified portfolio to mitigate the uncertainty associated with a single technology.

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

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

"(l) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as are necessary to carry out this section (other than subsection (j)).

"(m) TERMINATION OF AUTHORITY.—The authority provided by this section terminates effective December 31, 2010.".

SEC. 3. CLIMATE INFRASTRUCTURE CREDIT.

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

"SEC. 1611. CLIMATE INFRASTRUCTURE CREDIT.

"(a) DEFINITIONS.—In this section:

"(1) ADVANCED CLIMATE TECHNOLOGY OR SYSTEM.—The term 'advanced climate technology or system' means a climate technology or system that is not in general usage as of the date of enactment of this section.

"(2) BOARD.—The term 'Board' means the Climate Credit Board established under subsection (b)(2)(A).

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

"(4) ELIGIBLE PROJECT.—The term 'eligible project' means a demonstration project that is approved under section 1610(j)(1).

"(5) ELIGIBLE PROJECT COST.—The term 'eligible project cost' means any amount incurred for an eligible project that is paid by, or on behalf of, an obligor, including the costs of—

"(A) pre-construction activities, including—

"(i) detailed project engineering and design work;

"(ii) environmental reviews and permitting; and

"(iii) other pre-construction activities, as determined by the Secretary;

"(B) construction activities, including—

"(i) the acquisition of capital equipment;

"(ii) construction management; and

"(iii) construction contingencies; and

"(C) acquiring land (including any improvements to the land) relating to the eligible project; and

"(D) financing the eligible project, including—

"(i) providing capitalized interest necessary to meet market requirements;

"(ii) maintaining reasonably required reserve funds;

"(iii) capital issuance expenses; and

"(iv) other carrying costs during construction.

"(6) FEDERAL FINANCIAL ASSISTANCE.—The term 'Federal financial assistance' means any credit-based financial assistance, including a direct loan, loan guarantee, a line of credit (which serves as standby default coverage or standby interest coverage), production incentive payment under subsection (g)(1)(B), or other credit-based financial assistance mechanism for an eligible project that is—

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

"(B) provided in accordance with the Federal Credit Reform Act of 1990 (2 U.S.C. 661 et seq.).

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

"(8) LENDER.—The term 'lender' means any non-Federal qualified institutional buyer (as defined in section 230.144A(a) of title 17, Code of Federal Regulations (or any successor regulation), known as Rule 144A(a) of the Securities and Exchange Commission and issued under the Securities Act of 1933 (15 U.S.C. 77a et seq.)), including—

"(A) a qualified retirement plan (as defined in section 4974(c) of the Internal Revenue Code of 1986) that is a qualified institutional buyer; and

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

"(9) LOAN GUARANTEE.—The term 'loan guarantee' means any guarantee or other pledge by the Secretary to pay all or part of the principal of and

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

"(10) OBLIGOR.—The term 'obligor' means a person or entity (including a corporation, partnership, joint venture, trust, or governmental entity, agency, or instrumentality) that is primarily liable for payment of the principal of, or interest on, a Federal credit instrument.

"(11) PROJECT OBLIGATION.—The term 'project obligation' means any note, bond, debenture, or other debt obligation issued by an obligor in connection with the financing of an eligible project, other than a Federal credit instrument.

"(12) RATING AGENCY.—The term 'rating agency' means a bond rating agency identified by the Securities and Exchange Commission as a Nationally Recognized Statistical Rating Organization.

"(13) REGULATORY FAILURE.—The term 'regulatory failure' means a situation in which, because of a breakdown in a regulatory process or an indefinite delay caused by a judicial challenge to the regulatory consideration of a specific eligible project, the Federal or State regulatory or licensing process governing the siting, construction, or commissioning of an eligible project does not produce a definitive de-

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

"(14) SECURED LOAN.—The term 'secured loan' means a loan or other secured debt obligation issued by an obligor and funded by the Secretary in connection with the financing of an eligible project.

"(15) STANDBY DEFAULT COVERAGE.—The term 'standby default coverage' means a pledge by the Secretary to pay all or part of the debt obligation issued by an obligor and funded by a lender, plus all or part of obligor equity, if an eligible project fails to receive an operating license in a period of time established by the Secretary because of a regulatory failure or other specific issue identified by the Secretary.

"(16) STANDBY INTEREST COVERAGE.—The term 'standby interest coverage' means a pledge by the Secretary to provide to an obligor, at a future date and on the occurrence of 1 or more events, a direct loan, the proceeds of which shall be used by the obligor to maintain the current status of the obligor on interest payments due on 1 or more loans or other project obligations issued by an obligor and funded by a lender for an eligible project.

"(17) SUBSIDY AMOUNT.—The term 'subsidy amount' means the amount of budget authority sufficient to cover the estimated long-term cost to the Federal Government of a Federal credit instrument issued by the Secretary to an eligible project, calculated on a net present value basis, excluding administrative costs and any incidental effects on governmental receipts or outlays in accordance with the Federal Credit Reform Act of 1990 (2 U.S.C. 661 et seq.).

"(18) SUBSTANTIAL COMPLETION.—The term 'substantial completion' means that an eligible project has been determined by the Board to be in, or capable of, commercial operation.

"(b) DUTIES OF THE SECRETARY.—

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

"(2) CLIMATE CREDIT BOARD.—

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

ment of Energy a Climate Credit Board composed of—

"(i) the Under Secretary of Energy, who shall serve as Chairperson;

"(ii) the Chief Financial Officer of the Department of Energy;

"(iii) the Assistant Secretary of Energy for Policy and International Affairs;

"(iv) the Assistant Secretary of Energy for Energy Efficiency and Renewable Energy; and

"(v) such other individuals as the Secretary determines to have the experience and expertise (including expertise in corporate and project finance and the energy sector) necessary to carry out the duties of the Board.

"(B) DUTIES.—The Board shall—

"(i) implement the program developed under section 1610(h)(1) in accordance with paragraph (3);

"(ii) issue regulations and criteria in accordance with paragraph (4);

"(iii) conduct negotiations with individuals and entities interested in obtaining assistance under this section;

"(iv) recommend to the Secretary potential recipients and amounts of grants of assistance under this section;

"(v) carry out such other projects and activities as the Interagency Coordinating Committee on Climate Change Technology may recommend; and

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

"(3) GREENHOUSE GAS INTENSITY REDUCING TECHNOLOGY DEPLOYMENT PROGRAM.—Not later than 1 year after the date of enactment of this section, the Board shall implement the greenhouse gas intensity reducing technology deployment program developed under section 1610(h)(1).

"(4) REGULATIONS AND CRITERIA.—

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

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

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

"(i) a competitive process and the general terms and conditions for the provision of assistance under this section;

"(ii) the procedures by which eligible project owners and eligible project developers may request financial assistance under this section; and

"(iii) the collection of any other information necessary for the Secretary to carry out this section, including a process for negotiating the terms and conditions of assistance provided under this section.

"(C) ELIGIBILITY AND CRITERIA.—The determination of eligibility of, and criteria for selecting, eligible projects to receive assistance under this section shall be carried out in accordance with subsection (c).

"(D) CONDITIONS FOR PROVISION OF ASSISTANCE.—The Board shall not provide assistance under this section unless the Board deter-

mines that the terms, conditions, maturity, security, schedule, and amounts of repayments of the assistance are reasonable and meet such standards as the Board determines are appropriate to protect the financial interests of the United States.

"(5) REPORTS TO THE PRESIDENT AND CONGRESS.—Not later than 4 years after the date of enactment of this section, and every 2 years thereafter, the Board shall submit to the Secretary, for transmittal to the President and Congress, a report that describes—

"(A) the progress in carrying out this section;

"(B) the financial performance of the eligible projects that are receiving, or have received, assistance under this section as of the date of the report; and

"(C) the progress and value to the United States of the program under this section, including a recommendation as to whether the objectives of this section are best served by—

"(i) continuing the program under the authority of the Secretary;

"(ii) establishing a Federal Government corporation or Federal Government-sponsored enterprise to administer the program; or

"(iii) phasing out the program and relying on the capital markets to fund the kinds of energy infrastructure investments assisted by this section without Federal participation.

"(6) CONFIDENTIALITY.—The Board shall protect the confidentiality of any information provided by an applicant for assistance under this section that the applicant certifies to be commercially sensitive or that is protected intellectual property.

"(c) GENERAL REQUIREMENTS REGARDING ASSISTANCE, DETERMINATION OF ELIGIBILITY, AND PROJECT SELECTION.—

"(1) IN GENERAL.—The Board shall not provide assistance to an eligible project under this section unless the Board first determines that the amount of assistance to be provided for the eligible project is not greater than the amount of assistance required to achieve the criteria established under section 1610(j)(2) with respect to the eligible project.

"(2) ELIGIBILITY.—To be eligible to receive assistance under this section, an eligible project shall, as determined by the Board—

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

"(B) be nationally or regionally significant by—

"(i) reducing greenhouse gas intensity;

"(ii) generating economic benefits;

"(iii) contributing to energy security;

"(iv) contributing to energy and technology diversity in the energy economy of the United States;

"(v) contributing to energy and electricity price stability; or

"(vi) otherwise enhancing national or regional energy efficiency, reliability, and robustness of performance;

"(C) contain an advanced climate technology or system that could—

"(i) significantly improve the efficiency, security, reliability, and environmental performance of the energy economy of the United States; and

"(ii) reduce greenhouse gas emissions;

"(D) have revenue sources dedicated to repayment of credit support-based project financing, such as revenue—

"(i) from the sale of sequestered carbon;

"(ii) from the sale of energy, electricity, or other products from eligible projects that employ advanced climate technologies and systems;

"(iii) from the sale of transportation of commerce;

"(iv) from the sale of electricity or generating capacity, in the case of electricity infrastructure;

"(v) from the sale or transmission of energy;

"(vi) associated with energy efficiency gains, in the case of other energy projects; or

"(vii) from other dedicated revenue sources;

"(E) include a project proposal and agreement for project financing repayment that demonstrates to the satisfaction of the Board that the dedicated revenue sources described in subparagraph (D) will be adequate to repay project financing provided under this section;

"(F) reduce greenhouse gas intensity on a national or regional basis; and

"(G) if the eligible project involves new transmission capacity, link to low-emission projects.

"(3) LIMITATIONS.—Except as otherwise provided in this section—

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

"(B) the Federal share of an eligible project provided Federal financial assistance under this section shall be not more than 20 percent of the total cost of carrying out the eligible project;

"(C) not more than $200,000,000 in Federal financial assistance shall be provided to any individual eligible project; and

"(D) an eligible project shall not be eligible for financial assistance from any other Federal program during any period that Federal financial assistance is provided to the eligible project under this section.

"(4) SELECTION AMONG ELIGIBLE PROJECTS.—

"(A) ESTABLISHMENT OF SELECTION CRITERIA.—The Board shall establish criteria for selecting which eligible projects will receive assistance under this section.

"(B) REQUIREMENTS.—The selection criteria shall include a determination by the Board of the extent to which—

"(i) the eligible project reduces greenhouse gas intensity beyond reductions achieved by technology available as of October 15, 1992;

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

"(iii) assistance under this section for the eligible project would foster innovative

public-private partnerships and attract private debt or equity investment;

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

"(v) the eligible project uses new technologies that enhance the efficiency, reduce the environmental impact, improve the reliability, or improve the safety, of the eligible project;

"(vi) the eligible project helps to maintain or protect the environment, especially with respect to having a low level of emissions to the atmosphere;

"(vii) assistance for the eligible project provided under this section could reduce the contribution of other Federal grant or funding assistance to the eligible project; and

"(viii) the eligible project is nationally or regionally significant in terms of generating economic benefits, supporting international commerce, or otherwise enhancing national energy efficiency, security, reli-

ability, robustness, and environmental performance.

"(C) FINANCIAL INFORMATION.—An application for assistance for an eligible project under this section shall include such information as the Secretary determines to be necessary concerning—

"(i) the amount of budget authority required to fund the Federal credit instrument requested for the eligible project;

"(ii) the estimated construction costs of the proposed eligible project;

"(iii) estimates of construction and operating costs of the eligible project;

"(iv) projected revenues from the eligible project; and

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

"(D) PRELIMINARY RATING OPINION LETTER.—The Board shall require each applicant seeking assistance for an eligible project under this section to provide a preliminary rating opinion letter from at least 1 credit rating agency indicating that the senior obligations of

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

"(E) RISK ASSESSMENT.—Before entering into any agreement to provide assistance for an eligible project under this section, the Board, in consultation with the Secretary, the Director of the Office of Management and Budget, and each credit rating agency providing a preliminary rating opinion letter under subparagraph (D), shall determine and maintain an appropriate capital reserve subsidy amount for each line of credit established for the eligible project, taking into account the information contained in the preliminary rating opinion letter.

"(F) INVESTMENT-GRADE RATING REQUIREMENT.—

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

"(ii) CONSIDERATIONS.—In determining whether an investment-grade rating is appropriate under clause (i), the credit

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

"(5) MAXIMUM AVAILABLE CLIMATE CREDIT SUPPORT.—Notwithstanding any assistance limitation under any other provision of this section, the Secretary shall not provide energy credit support to any eligible project in the form of a secured loan or loan guarantee under subsection (f), production incentive payments under subsection (g), or other credit-based financial assistance under subsection (h), the combined total of which exceeds 20 percent of eligible project costs, excluding the value of standby default coverage under subsection (d) and standby interest coverage under subsection (e), as determined by the Secretary.

"(d) STANDBY DEFAULT COVERAGE.—

"(1) AGREEMENTS; USE OF PROCEEDS.—

"(A) AGREEMENTS.—

"(i) IN GENERAL.—Subject to subparagraph (B), the Board, in consultation with the Secretary, may enter into agreements to provide standby default coverage for advanced climate technologies or systems of an eligible project.

"(ii) RECIPIENTS.—Coverage under clause (i) may be provided to 1 or more obligors and debt holders to be triggered at future dates on the occurrence of certain events for any eligible project selected under subsection (c).

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

"(2) TERMS AND LIMITATIONS.—

"(A) IN GENERAL.—Standby default coverage under this subsection with respect to an eligible project shall be on such terms and conditions and contain such covenants, representations, warranties, and requirements (including

requirements for audits) as the Board determines to be appropriate.

"(B) MAXIMUM AMOUNTS.—The total amount of standby default coverage provided for an eligible project shall not exceed 100 percent of the reasonably anticipated eligible project costs, including debt and equity.

"(C) EXERCISE.—Any exercise on the standby default coverage shall be made only if a facility involved with the eligible project fails, because of regulatory failure or other specific issues specified by the Secretary, to receive an operating license by such deadline as the Secretary shall establish.

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

"(E) FEES.—In carrying out this section, the Secretary may—

"(i) establish fees at a level sufficient to cover all or a portion of the administrative costs incurred by the Federal Govern-

ment in providing standby default coverage under this subsection; and

"(ii) require that the fees be paid upon application for a standby default coverage agreement under this subsection.

"(F) PERIOD OF AVAILABILITY.—In the event that regulatory approval to operate a facility is suspended as a result of regulatory failure or other circumstances specified by the Secretary, standby default coverage shall be available beginning on the date of substantial completion and ending not later than 5 years after the date on which operation of the facility is scheduled to commence.

"(G) RIGHTS OF THIRD-PARTY CREDITORS.—

"(i) AGAINST FEDERAL GOVERNMENT.—A third-party creditor of an obligor shall not have any right against the Federal Government with respect to any amounts other than those specified in subparagraph (B).

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

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

"(H) RESULT OF EXERCISE OF STANDBY DEFAULT COVERAGE.—If standby default coverage is exercised by the obligor of an eligible project—

"(i) the Federal Government shall become the sole owner of the eligible project, with all rights and appurtenances to the eligible project; and

"(ii) the Board shall dispose of the assets of the eligible project on terms that are most favorable to the Federal Government, which may include continuing to licensing and commercial operation or resale of the eligible project, in whole or in part, if that is the best course of action in the judgment of the Board.

"(I) ESTIMATE OF ASSETS AT TIME OF TERMINATION.—If standby default coverage is exercised and an eligible project is terminated, the Board, in making a determination of whether to dispose of the assets of the eligible project or continue the eligible project to licensing and commercial operation, shall obtain a fair and

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

"(J) RELATIONSHIP TO OTHER CREDIT INSTRUMENTS.—An eligible project that receives standby default coverage under this subsection may receive a secured loan or loan guarantee under subsection (f), production incentive payments under subsection (g), or assistance through a credit-based financial assistance mechanism under subsection (h).

"(K) OTHER CONDITIONS AND REQUIREMENTS.—The Secretary may impose such other conditions and requirements in connection with any insurance provided under this subsection (including requirements for audits) as the Secretary determines to be appropriate.

"(e) STANDBY INTEREST COVERAGE.—

"(1) IN GENERAL.—

"(A) AGREEMENTS.—Subject to subparagraph (B), the Board may enter into agreements to make standby interest coverage available to 1 or more obligors in the form of loans for advanced climate or energy technologies or systems to be made by the Board at future dates on the occurrence of certain events for

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

"(B) USE OF PROCEEDS.—Subject to subsection (c)(3), the proceeds of standby interest coverage made available under this subsection shall be available to pay the debt service on project obligations issued to finance eligible project costs of an eligible project if a delay in commercial operations occurs due to a regulatory failure or other condition determined by the Secretary.

"(2) TERMS AND LIMITATIONS.—

"(A) IN GENERAL.—Standby interest coverage under this subsection with respect to an eligible project shall be made on such terms and conditions (including a requirement for an audit) as the Secretary determines appropriate.

"(B) MAXIMUM AMOUNTS.—

"(i) TOTAL AMOUNT.—The total amount of standby interest coverage for an eligible project under this subsection shall not exceed 20 percent of the reasonably anticipated eligible project costs of the eligible project.

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

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

"(i) beginning on a date following substantial completion of the eligible project that regulatory approval to operate a facility under the eligible project is suspended as a result of regulatory failure or other condition determined by the Secretary; and

"(ii) ending on a date that is not later than 5 years after the eligible project is scheduled to commence commercial operations.

"(D) COST OF COVERAGE.—Subject to subsection (c)(4)(E), the cost of standby interest coverage for an eligible project under this subsection shall be borne by the Secretary.

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

"(i) represent a loan;

"(ii) be made only if there is a delay in commercial operations after the substantial completion of the eligible project; and

"(iii) be subject to the overall credit support limitations established under subsection (c)(5).

"(F) INTEREST RATE.—

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

"(ii) MINIMUM RATE.—The interest rate on a loan resulting from a draw on standby interest coverage under this subsection shall not be less than the current average market yield on outstanding marketable obligations of the United States with a maturity of 10 years, as of the date on which the standby interest coverage is obligated.

"(G) SECURITY.—The standby interest coverage for an eligible project—

"(i) shall be payable, in whole or in part, from dedicated revenue sources generated by the eligible project;

"(ii) shall require security for the project obligations; and

"(iii) may have a lien on revenues described in clause (i), subject to any lien securing project obligations.

"(H) RIGHTS OF THIRD-PARTY CREDITORS.—

"(i) AGAINST FEDERAL GOVERNMENT.—A third-party creditor of the obligor shall not have any right against the Federal Government with respect to any draw on standby interest coverage under this subsection.

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

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

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

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

"(3) REPAYMENT.—

"(A) TERMS AND CONDITIONS.—The Secretary shall establish a repayment schedule and terms and conditions for each loan for an eligible project under this subsection based on the projected cash flow from revenues for the eligible project.

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

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

"(ii) be completed, with interest, not later than 10 years after the end of the period of availability.

"(C) SOURCES OF REPAYMENT FUNDS.—The sources of funds for scheduled loan repayments under this subsection shall include—

"(i) the sale of electricity or generating capacity;

"(ii) the sale or transmission of energy;

"(iii) revenues associated with energy efficiency gains; or

"(iv) other dedicated revenue sources, such as carbon use.

"(D) PREPAYMENT.—

"(i) USE OF EXCESS REVENUES.—At the discretion of the obligor, any excess revenues that remain after satisfying scheduled debt service requirements on the project obligations and secured loan, and all deposit requirements under the terms of any trust agreement, bond resolution, or similar agreement securing project obligations, may be applied annually to prepay the secured loan without penalty.

"(ii) USE OF PROCEEDS OF REFINANCING.—The secured loan may be prepaid at any time without penalty from the proceeds of refinancing from non-Federal funding sources.

"(f) SECURED LOANS AND LOAN GUARANTEES.—

"(1) IN GENERAL.—

"(A) AGREEMENTS.—Subject to subparagraph (B), the Board may enter into agreements with 1 or more obligors to make secured loans for eligible projects involving advanced climate technologies or systems.

"(B) USE OF PROCEEDS.—Subject to paragraph (2), the proceeds of a secured loan for an eligible project made available under this subsection shall be available, in conjunction with the equity of the obligor and senior debt financing for the eligible project, to pay for eligible project costs.

"(2) TERMS AND LIMITATIONS.—

"(A) IN GENERAL.—A secured loan under this subsection with respect to an eligible project shall be made on such terms and conditions (including requirements for an audit) as

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

"(B) MAXIMUM AMOUNT.—Subject to subsection (c)(5), the total amount of the secured loan for an eligible project under this subsection shall not exceed 20 percent of the reasonably anticipated eligible project costs of the eligible project.

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

"(i) beginning on the date that the financial structure of the eligible project is established; and

"(ii) ending on the date of the start of construction of the eligible project.

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

"(E) INTEREST RATE.—

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

under this subsection shall be established by the Secretary.

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

"(F) SECURITY.—The secured loan—

"(i) shall be payable, in whole or in part, from dedicated revenue sources generated by the eligible project;

"(ii) shall include a rate covenant, coverage requirement, or similar security feature supporting the project obligations; and

"(iii) may have a lien on revenues described in clause (i), subject to any lien securing project obligations.

"(G) RIGHTS OF THIRD-PARTY CREDITORS.—

"(i) AGAINST FEDERAL GOVERNMENT.—A third-party creditor of the obli-

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

"(ii) ASSIGNMENT.—An obligor may assign the secured loan to 1 or more lenders or to a trustee on behalf of the lenders.

"(H) SUBORDINATION.—A secured loan for an eligible project made under this subsection shall be subordinate to senior private debt issued by a lender for the eligible project.

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

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

"(3) REPAYMENT.—

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

gible project under this subsection based on the projected cash flow from revenues for the eligible project.

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

"(i) commence not later than 5 years after the scheduled start of commercial operations of the eligible project; and

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

"(C) SOURCES OF REPAYMENT FUNDS.—The sources of funds for scheduled loan repayments under this subsection shall include—

"(i) the sale of carbon or carbon compounds;

"(ii) the sale of electricity or generating capacity;

"(iii) the sale of sequestration services;

"(iv) the sale or transmission of energy;

"(v) revenues associated with energy efficiency gains; or

"(vi) other dedicated revenue sources.

"(D) DEFERRED PAYMENTS.—

"(i) AUTHORIZATION.—If, at any time during the 10-year period beginning on the date of the scheduled start of commercial operation of an eligible project, the eligible project is unable to generate sufficient revenues to pay the scheduled loan repayments of principal or interest on the secured loan, the Secretary may, subject to clause (iii), allow the obligor to add unpaid principal or interest to the outstanding balance of the secured loan.

"(ii) INTEREST.—Any payment deferred under clause (i) shall—

"(I) continue to accrue interest in accordance with paragraph (2)(E) until fully repaid; and

"(II) be scheduled to be amortized over the number of years remaining in the term of the loan in accordance with subparagraph (B).

"(iii) CRITERIA.—

"(I) IN GENERAL.—Any payment deferral under clause (i) shall be contingent on the eligible project meeting criteria established by the Secretary.

"(II) REPAYMENT STANDARDS.—The criteria established under subclause (I) shall include standards for reasonable assurance of repayment.

"(E) PREPAYMENT.—

"(i) USE OF EXCESS REVENUES.—At the discretion of the obligor, any excess revenues that remain after satisfying scheduled debt service requirements on the project obligations and secured loan, and all deposit requirements under the terms of any trust agreement, bond resolution, or similar agreement securing project obligations, may be applied annually to prepay the secured loan without penalty.

"(ii) USE OF PROCEEDS OF REFINANCING.—The secured loan may be prepaid at any time without penalty from the proceeds of refinancing from non-Federal funding sources.

"(4) SALE OF SECURED LOANS.—

"(A) IN GENERAL.—Subject to subparagraph (B), as soon as practicable after substantial completion of an eligible project and after notifying the obligor, the Board may sell to another entity or reoffer into the capital markets a secured loan for the eligible project if the Board determines that the sale or reoffering can be made on favorable terms.

"(B) CONSENT OF OBLIGOR.—In making a sale or reoffering under subparagraph (A), the Board may not change the original terms and conditions of the secured loan without the written consent of the obligor.

"(5) LOAN GUARANTEES.—

"(A) IN GENERAL.—The Board may provide a loan guarantee to a lender, in lieu of making a secured loan, under this subsection if the Board determines that the budgetary cost of the loan guarantee is substantially the same as that of a secured loan.

"(B) TERMS.—

"(i) IN GENERAL.—Except as provided in clause (ii), the terms of a guaranteed loan shall be consistent with the terms for a secured loan under this subsection.

"(ii) INTEREST RATE; PREPAYMENT.—The interest rate on the guaranteed loan and any prepayment features shall be established by negotiations between the obligor and the lender, with the consent of the Board.

"(g) PRODUCTION INCENTIVE PAYMENTS.—

"(1) SECURED LOAN.—

"(A) IN GENERAL.—The Secretary may enter into an agreement with 1 or more obligors to make a secured loan for an eligible project selected under subsection (c)(4) that employs 1 or more advanced climate technologies or systems.

"(B) PRODUCTION INCENTIVE PAYMENTS.—

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

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

"(I) the energy produced or transmitted by the eligible project during the applicable year; or

"(II) any gains in energy efficiency achieved by the eligible project during the applicable year.

"(2) TERMS AND LIMITATIONS.—

"(A) IN GENERAL.—A secured loan under this subsection shall be subject to such terms and conditions, including any covenant, representation, warranty, and requirement (including a requirement for an audit) that the Secretary determines to be appropriate.

"(B) AGREEMENT COSTS.—Subject to subsection (c)(4), the cost of carrying out an agreement entered into under paragraph (1)(A) shall be paid by the Secretary.

"(C) INTEREST RATE.—

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

under this subsection shall be established by the Secretary.

"(ii) MINIMUM RATE.—The interest rate on a secured loan under this subsection shall not be less than the current average market yield on outstanding marketable obligations of the United States of comparable maturity, as of the date on which the agreement under paragraph (1)(A) is executed.

"(D) SECURITY.—The secured loan—

"(i) shall be payable, in whole or in part, from dedicated revenue sources generated by the eligible project;

"(ii) shall include a rate covenant, coverage requirement, or similar security feature supporting the eligible project obligations; and

"(iii) may have a lien on revenues described in clause (i), subject to any lien securing eligible project obligations.

"(E) RIGHTS OF THIRD-PARTY CREDITORS.—

"(i) AGAINST FEDERAL GOVERNMENT.—A third-party creditor of the obli-

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

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

"(F) SUBORDINATION.—A secured loan under this subsection shall be subordinate to senior private debt issued by a lender for the eligible project.

"(G) NONRECOURSE STATUS.—A secured loan under this subsection shall be nonrecourse to the obligor in the event of bankruptcy, insolvency, or liquidation of the eligible project.

"(H) FEES.—The Secretary may impose fees at a level sufficient to cover all or part of the costs to the Federal Government of providing production incentive payments under this subsection.

"(3) REPAYMENT.—

"(A) SCHEDULE, TERMS, AND CONDITIONS.—The Secretary shall establish a repay-

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

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

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

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

"(C) SOURCES OF REPAYMENT FUNDS.—The sources of funds for scheduled loan repayments under this subsection include—

"(i) the sale of electricity or generating capacity,

"(ii) the sale or transmission of energy;

"(iii) revenues associated with energy efficiency gains; or

"(iv) other dedicated revenue sources.

"(D) DEFERRED PAYMENTS.—

"(i) AUTHORIZATION.—If, at any time during the 10–year period beginning on the date on which commercial operations of the eligible project start, the eligible project is unable to generate sufficient revenues to pay the scheduled loan repayments of principal or interest on a secured loan under this subsection, the Secretary may, subject to criteria established by the Secretary (including standards for reasonable assurances of repayment), allow the obligor to add unpaid principal and interest to the outstanding balance of the secured loan.

"(ii) INTEREST.—Any payment deferred under clause (i) shall—

"(I) continue to accrue interest in accordance with paragraph (2)(C) until fully repaid; and

"(II) be scheduled to be amortized over the number of years remaining in the term of the loan in accordance with subparagraph (B).

"(E) PREPAYMENT.—

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

"(ii) USE OF PROCEEDS OF REFINANCING.—The secured loan may be prepaid at any time without penalty from the proceeds of refinancing from non-Federal funding sources.

"(4) SALE OF SECURED LOANS.—

"(A) IN GENERAL.—Subject to subparagraph (B), as soon as practicable after the date on which the last production incentive payment is made to the obligor under paragraph (1)(B) and after notifying the obligor, the Secretary may sell to another entity or reoffer into the capital markets a secured loan for the eligible

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

"(B) CONSENT REQUIRED.—In making a sale or reoffering under subparagraph (A), the Board may not change the original terms and conditions of the secured loan without the written consent of the obligor.

"(h) OTHER CREDIT-BASED FINANCIAL ASSISTANCE MECHANISMS FOR ELIGIBLE PROJECTS.—

"(1) IN GENERAL.—

"(A) AGREEMENTS.—The Board may enter into an agreement with 1 or more obligors to make a secured loan to the obligors for eligible projects selected under subsection (c) that employ advanced technologies or systems, the proceeds of which shall be used to—

"(i) finance eligible project costs; or

"(ii) enhance eligible project revenues.

"(B) CREDIT-BASED FINANCIAL ASSISTANCE.—Amounts made available as a secured loan under subparagraph (A) shall be provided by the Board to the obligor in the form of credit-based financial assistance mechanisms that are not otherwise specifically provided for in

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

"(2) TERMS AND LIMITATIONS.—

"(A) IN GENERAL.—A secured loan under this subsection shall be subject to such terms and conditions (including any covenants, representations, warranties, and requirements (including a requirement for an audit)) as the Secretary determines to be appropriate.

"(B) MAXIMUM AMOUNT.—Subject to subsection (c)(5), the total amount of the secured loan under this subsection shall not exceed 50 percent of the reasonably anticipated eligible project costs.

"(C) PERIOD OF AVAILABILITY.—The Board may enter into a contract with the obligor to provide credit-based financial assistance to an eligible project during the period—

"(i) beginning on the date that the financial structure of the eligible project is established; and

"(ii) ending on the date of the start of construction of the eligible project.

"(D) AGREEMENT COSTS.—Subject to subsection (c)(4)(E), the cost of carrying out an

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

"(E) INTEREST RATE.—

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

"(ii) MINIMUM RATE.—The interest rate on a secured loan under this subsection shall not be less than the current average market yield on outstanding marketable obligations of the United States of comparable maturity, as of the date of the execution of the secured loan agreement.

"(F) SECURITY.—The secured loan—

"(i) shall be payable, in whole or in part, from dedicated revenue sources generated by the eligible project;

"(ii) shall include a rate covenant, coverage requirement, or similar security feature supporting the eligible project obligations; and

"(iii) may have a lien on revenues described in clause (i), subject to any lien securing eligible project obligations.

"(G) RIGHTS OF THIRD-PARTY CREDITORS.—

"(i) AGAINST FEDERAL GOVERNMENT.—A third-party creditor of the obligor shall not have any right against the Federal Government with respect to any payments due to the Federal Government under this subsection.

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

"(H) SUBORDINATION.—A secured loan under this subsection shall be subordinate to senior private debt issued by a lender for the eligible project.

"(I) NONRECOURSE STATUS.—A secured loan under this subsection shall be nonrecourse to the obligor in the event of bankruptcy, insolvency, or liquidation of the eligible project.

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

credit-based financial assistance under this subsection.

"(3) REPAYMENT.—

"(A) SCHEDULE AND TERMS AND CONDITIONS.—The Board shall establish a repayment schedule and terms and conditions for each secured loan under this subsection based on the projected cash flow from eligible project revenues.

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

"(i) commence not later than 5 years after the date of substantial completion of the eligible project; and

"(ii) be completed, with interest, not later than 35 years after the date of substantial completion of the eligible project.

"(C) SOURCES OF REPAYMENT FUNDS.—The sources of funds for scheduled loan repayments under this subsection shall include—

"(i) the sale of electricity or generating capacity;

"(ii) the sale or transmission of energy;

"(iii) revenues associated with energy efficiency gains; or

"(iv) other dedicated revenue sources, such as carbon sequestration.

"(D) DEFERRED PAYMENTS.—

"(i) AUTHORIZATION.—If, at any time during the 10-year period beginning on the date of the start of commercial operations of the eligible project, the eligible project is unable to generate sufficient revenues to pay the scheduled loan repayments of principal or interest on a secured loan under this subsection, the Secretary may, subject to criteria established by the Secretary (including standards for reasonable assurances of repayment), allow the obligor to add unpaid principal and interest to the outstanding balance of the secured loan.

"(ii) INTEREST.—Any payment deferred under clause (i) shall—

"(I) continue to accrue interest in accordance with paragraph (2)(E) until fully repaid; and

"(II) be scheduled to be amortized over the number of years re-

"(II) be scheduled to be amortized over the number of years remaining in the term of the loan in accordance with subparagraph (B).

"(E) PREPAYMENT.—

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

"(ii) USE OF PROCEEDS OF REFINANCING.—A secured loan under this subsection may be prepaid at any time without penalty from the proceeds of refinancing from non-Federal funding sources.

"(4) SALE OF SECURED LOANS.—

"(A) IN GENERAL.—Subject to subparagraph (B), as soon as practicable after the start of commercial operations of an eligible project

and after notifying the obligor, the Board may sell to another entity or reoffer into the capital markets a secured loan for the eligible project under this subsection if the Secretary determines that the sale or reoffering can be made on favorable terms.

"(B) CONSENT OF OBLIGOR.—In making a sale or reoffering under subparagraph (A), the Board may not change the original terms and conditions of the secured loan without the written consent of the obligor.

"(i) FEDERAL, STATE, AND LOCAL REGULATORY REQUIREMENTS.—The provision of Federal financial assistance to an eligible project under this section shall not—

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

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

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

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

"(k) TERMINATION OF AUTHORITY.—The authority provided by this section terminates effective December 31, 2010.".

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