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United States Affiliate of International Physicians for the Prevention of Nuclear War

Comparison of House and Senate Clean Energy Deployment Administration (CEDA) provisions

What is CEDA?

Both the American Clean Energy Leadership Act of 2009 (ACELA) in the Senate and Subtitle J-Nuclear and Advanced Technologies of the American Clean Energy and Security Act (H.R. 2454) in the House make changes to the Title XVII Loan Guarantee Program and establish a new Clean Energy Deployment Administration (CEDA). The purpose of CEDA in both bills is to "promote access to affordable financing for accelerated and widespread deployment" of clean energy, energy infrastructure, energy efficiency, and manufacturing technologies. Nuclear power and coal are eligible under the definition of "clean energy technologies" in both versions. Neither bill gives U.S. taxpayers a share of the venture's success, even though taxpayers are taking by far the largest risk if the project fails.

How is CEDA organized?

In both bills, CEDA is headed by an Administrator and directed by a Board of Directors.

- In the Senate version, the Board is comprised of the DOE Secretary, the Administrator, and 7 additional members appointed by the President with the consent of the Senate for staggered 5-year terms.
- In the House version, the CEDA Board is composed of the Administrator, the DOE Secretary, the Treasury Secretary, the Interior Secretary, the Agriculture Secretary, and the 4 members appointed by the President with the consent of the Senate for staggered 5-year terms.

Both bills establish an Energy Technology Advisory Council, consisting of 8 members for staggered 5-year terms, to develop a methodology for assessing energy technologies and to advise the Board on the technological approaches that should be supported by CEDA.

- In the Senate version, 5 members are selected by the DOE Secretary and 3 members selected by the Board of Directors.
- In the House version, all 8 are selected by the Board of Directors.

The bills use different legal structures for establishing CEDA.

- In the Senate version, CEDA is an administration within the Energy Department that "shall be considered a corporation" with regard to legal challenges. The bill sunsets CEDA's authority on January 1, 2029.
- In the House version, CEDA is a US government-owned independent corporation, like Tennessee Valley Authority and Amtrak. The corporation is chartered for 20 years from the date of enactment.

<u>What are the most important differences between the Senate and House versions?</u>

- **Senate version allows for unlimited loan guarantees:** The Senate version merges Title XVII with CEDA and exempts the program from Section 504(b) of the Federal Credit Reform Act of 1990, which requires that the agency managing the loan guarantees obtain Congressional budget authority before committing to loan guarantees. This means that CEDA has the authority to give out unlimited loan guarantees without congressional authorization. The House version does not merge Title XVII and CEDA and maintains Section 504(b) of the Federal Credit Reporting Act. It also prohibits the same project from obtaining federal subsidies from both sources.
- **Senate version allows one technology to get the lion's share:** The Senate does not prevent one technology from receiving the vast majority of the financial support. The House version prohibits one technology from getting more than 30% of the financial support available.
- **Senate version does not include a greenhouse gas metric:** The House version requires that CEDA 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 gases. This provision is not in the Senate version.

<u>What are other significant differences?</u>

- **Senate version fails to require reduction of greenhouse gases:** The Senate version makes the stabilization of greenhouse gases an option, by defining "clean energy technologies" as technologies that will reduce the need for additional energy supplies through efficiency, diversify the sources of US energy supply, OR contribute to stabilization of greenhouse gases. The House version requires that "clean energy technologies" contribute to stabilization of greenhouse gases through avoidance or sequestration, in addition to improving efficiency OR diversifying energy supply. Both require that commercial lending is insufficient for the technology.
- **Senate version allow multiple guarantees on the same technology:** The Senate version changes the definition of "commercial technologies" in Title XVII so that a technology that receives a loan guarantee is not defined as a commercialized. This would allow multiple loan guarantees to be given out to the same technology at the same time, putting taxpayers at risk of having to bail out multiple failed projects of the same technology.

- **Senate version artificially expedites application reviews:** The Senate version requires that DOE issue decisions on applications within 180 days of submission. In the case of nuclear reactor loan guarantees applications, DOE would have to determine the subsidy cost (risk of default) of a loan guarantee before the reactor design is even complete. The House version does not include this provision.
- **Senate version authorizes riskier indirect support measures:** The Senate bill allows CEDA to use financial mechanisms including securitization, indirect credit support, other means of credit enhancement, and secondary market support through lending on the security of debt to any "clean energy technology," including nuclear and coal. The House bill allows CEDA to provide credited support to portfolios of taxable debt obligations to increase building energy efficiency, to install small renewable energy capacity (less than 2MW), and to deploy energy storage technologies. The House bill also allows CEDA to guarantee tax equity deals and purchase power agreements, including for nuclear and coal projects. Both bills authorize direct loans, letters of credit, loan guarantees, insurance products and the acquisition or selling of debt instruments.
- **Senate version does not include risk management experience on CEDA Board:** The Senate version only requires that the 7 Board members have experience in banking or financial services. The House expands that list to include experience in technology assessment, energy regulation, or risk management.
- **Senate version does not require recusal in cases of conflict of interest:** The House version prohibits any CEDA representative from taking part in any review or decision of a project in which the individual would benefit. The Senate version does not have such language.
- **Senate version allows DOE to set the credit rating:** The Senate bill allows the DOE Secretary to waive requirements for a third-party credit report on an applicant if it is "not relevant" to the determination of whether support will be provided and if the applicant agrees to accept the credit rating assigned to it by DOE. The House bill does not include this provision.
- **Senate version moves $10 billion from Treasury to CEDA without appropriations:** The Senate bill authorizes an "initial investment" of $10 billion direct from the US Treasury to the Clean Energy Investment Fund when Title XVII functions and authorities are transferred to CEDA, no later than 18 months after enactment. The House bill allows Treasury to issue up to $7.5 billion worth of Green Bonds as capital stock for CEDA; additional funding must be congressionally appropriated.
- **House version codifies "conditional commitments" before licenses are obtained:** The House version codifies that "conditional commitments" can be given to projects that do not have licenses, but it does required that all necessary licenses and permits are obtained before the loan guarantee agreement can become final. The Senate version does not contain this provision.
- **House version requires prevailing industry wages to the CEDA Administrator and 4 other appointed Board members:** The Senate version pays appointed members of the CEDA Board at level III of the Executive Schedule for each day the member is working, which is currently an

annual salary of $162,900. Both versions pay members of the Advisory Council who are not federal employees at level IV of the Executive Schedule for each day the member is working, which is currently an annual salary of $153,200.

- **House version requires public transparency:** The House version requires an online database of the names of entities receiving financial support and a description of applications and their status, as well as other information. Entities receiving financial support are also required to submit quarterly reports on the use and progress of the project, which are to be posted online. All financial transactions, including formal annual reviews, are to be made public. The Senate bill does not require that this information be made publicly available and does not require quarterly reports.

<u>How do the bills increase risks to taxpayers?</u>

- **Both bills allow taxpayers to share subsidy costs with borrowers:** Both the House and Senate versions change the existing law in Title XVII of the Energy Policy Act of 2005 so that taxpayers can share subsidy costs with the borrower. The subsidy cost is the payment made in advance of a loan guarantee to cover the risk of default; calculating this risk is extremely difficult and more likely to be underestimated than overestimated, according to the Government Accountability Office and the Congressional Budget Office. Currently, in order to get a loan guarantee, funds must be appropriated to cover the subsidy cost or the borrower must provide the subsidy cost in advance. If taxpayers pay part of the subsidy costs with the borrower, the borrower fronts less money for these risky projects while taxpayers pay out, regardless of whether the project defaults.

- **Both bills remove US taxpayers' right of first lien:** Both bills also weaken an important taxpayer protection established in Title XVII of the Energy Policy Act of 2005, which gives U.S. taxpayers the first right of lien in the event that a project defaults and assets are sold. Both the House and Senate bills require the DOE Secretary to make agreements to provide for the sharing of these assets with other creditors. One result is that cooperatives, which want to invest in new reactors with larger investor-owned utilities, will be able to obtain loan guarantees for new reactors.

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