

Comparison of House and Senate CEDA provisions

Both the 21st Century Energy Technology and Deployment Act (S. 949) 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.

The CEDA is headed by an Administrator and directed by a Board of Directors, which includes the DOE Secretary, the Administrator, and 7 additional 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 5 members selected by the DOE Secretary and 3 members selected by the Board of Directors 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.

Title XVII Loan Guarantee Program

- The Senate version merges Title XVII with CEDA and exempts the program from Section 504(b) of the Federal Credit Reporting Act, 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.
- The House version codifies that “conditional commitments” can be given to projects that do not have licenses. This provision will largely benefit the nuclear industry, because new reactor applications will not complete the Nuclear Regulatory Commission licensing process before 2012. It does require that all necessary licenses and permits are obtained before the loan guarantee agreement can become final. The Senate version does not contain this provision.
- Both the House and Senate versions change the law 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 GAO and CBO. 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.
- The Senate version makes the following changes to Title XVII, which the House version does not:
 - Requires loan guarantee agreements that provide for sharing the assets in the event of a default with other creditors (the House version maintains the taxpayer’s right of first lien);
 - Changes the definition of “commercial technologies” so that a technology that receives a loan guarantee is not defined as a commercialized, thus allowing multiple loan guarantees to be given out to the same technology at the same time, even before DOE knows whether the technology is successful;

- Expedites loan guarantee decisions to 180 days (the House version makes this change only for CEDA, not Title XVII).
- The House version does not merge Title XVII with the Clean Energy Deployment Administration, but it also does not prohibit double-dipping federal subsidies from both sources for the same project.

Clean Energy Deployment Administration (CEDA)

Significant differences between House and Senate versions:

- 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.
- The House version prohibits a Board member from taking part in any review or decision of a project in which they or their immediate family would benefit financially. The Senate version does not have this language.
- The House version requires that “clean energy technologies” contribute to stabilization of greenhouse gases, avoidance or sequestration AND improve efficiency OR diversify energy supply. 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. Both require that commercial lending is insufficient for the technology.
- The House version does not allow for risky indirect support measures, including securitization, indirect credit support, and other means of credit enhancement; the acquisition or selling of debt or interest in the debt; and secondary market support through lending on the security of debt. Both bills authorize direct support, including direct loans, letters of credit, loan guarantees, insurance products or other credit enhancements or debt instruments (including participation as a co-lender or a member of a syndication).
- The House version includes an important provision that prohibits one technology from getting more than 30% of the financial support available. The Senate does not prevent one technology from receiving the vast majority of the financial support.
- The House version requires a greenhouse gas standard: 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 gases. This provision is not in the Senate version.
- 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.
- 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 requires a congressional appropriation.

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