

111TH CONGRESS
1ST SESSION

S. _____

To establish a Clean Energy for Homes and Buildings Program in the Department of Energy to provide financial assistance to promote residential-, commercial-, and industrial-scale energy efficiency and on-site renewable technologies.

IN THE SENATE OF THE UNITED STATES

Mr. MERKLEY introduced the following bill; which was read twice and referred to the Committee on _____

A BILL

To establish a Clean Energy for Homes and Buildings Program in the Department of Energy to provide financial assistance to promote residential-, commercial-, and industrial-scale energy efficiency and on-site renewable technologies.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Clean Energy for
5 Homes and Buildings Act of 2009”.

6 **SEC. 2. FINDINGS.**

7 Congress finds that—

1 (1) homes and commercial or industrial build-
2 ings in the United States consume significant quan-
3 tities of energy, including energy for electricity and
4 heating, the generation or combustion of which cre-
5 ates significant quantities of greenhouse gas emis-
6 sions;

7 (2) in most cases, energy efficiency is the most
8 cost-effective and rapidly deployable strategy for re-
9 ducing greenhouse gas emissions, energy demand,
10 and the need for long-distance transmission of en-
11 ergy;

12 (3) on-site renewable energy generation reduces
13 greenhouse gas emissions, demand on the electricity
14 transmission grid, and the need for long-distance
15 transmission of energy;

16 (4) many energy efficiency measures and on-
17 site renewable energy generation systems produce a
18 net cost savings over the course of the useful life of
19 the measures and systems, and often over a shorter
20 time frame, but the initial expense required to pur-
21 chase and install the measures and systems is often
22 a significant barrier to widespread investment in the
23 measures and systems;

24 (5) financial products, financing programs, and
25 other programs that reduce or eliminate the need for

1 the initial expense described in paragraph (4) can
2 permit building owners to invest in measures and
3 systems that reduce total energy costs and realize
4 net cost savings at the time of the installation of the
5 measures and systems, defer capital expenditure,
6 and enhance the value, comfort, and sustainability of
7 the property of the owners; and

8 (6) State and local governments, utilities, en-
9 ergy efficiency and renewable energy service pro-
10 viders, banks, finance companies, community devel-
11 opment organizations, and other entities are devel-
12 oping financial products and programs to provide fi-
13 nancing assistance for building owners to encourage
14 the use of the measures and systems described in
15 paragraph (4), including programs that allow repay-
16 ment of loans under programs described in para-
17 graph (5) through utility bills, or through property-
18 based assessments, taxes, or charges, to facilitate
19 loan repayment for the benefit of building owners
20 and lenders or program sponsors.

21 **SEC. 3. PURPOSE.**

22 The purpose of this Act is to encourage widespread
23 deployment of energy efficiency and on-site renewable en-
24 ergy technologies in homes and other buildings throughout
25 the United States through the establishment of a self-sus-

1 taining Clean Energy for Homes and Buildings Program
2 that can—

3 (1) to encourage the widespread availability of
4 financial products and programs with attractive
5 rates and terms that significantly reduce or elimi-
6 nate upfront expenses to allow building owners (in-
7 cluding homeowners, business owners, owners of
8 multifamily housing, owners of multi-tenant com-
9 mercial properties, and owners of other residential,
10 commercial, or industrial properties) to invest in en-
11 ergy efficiency measures and on-site renewable en-
12 ergy systems with payback periods of up to 25 years
13 by providing credit support, credit enhancement, sec-
14 ondary markets, and other support to originators of
15 the financial products and sponsors of the financing
16 programs; and

17 (2) to help building owners invest in measures
18 and systems that reduce energy costs, in many cases
19 creating a net cost savings that can be realized in
20 the short-term, and may also allow building owners
21 to defer capital expenditures and increase the value,
22 comfort, and sustainability of the property of the
23 owners.

24 **SEC. 4. DEFINITIONS.**

25 In this Act:

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

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

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

11 (4) PROGRAM.—The term “Program” means
12 the Clean Energy for Homes and Buildings Program
13 established by section 6.

14 (5) SECRETARY.—The term “Secretary” means
15 the Secretary of Energy.

16 (6) SECURITY.—The term “security” has the
17 meaning given the term in section 2 of the Securities
18 Act of 1933 (15 U.S.C. 77b).

19 (7) STATE.—The term “State” means—

20 (A) a State;

21 (B) the District of Columbia;

22 (C) the Commonwealth of Puerto Rico;

23 and

24 (D) any other territory or possession of the
25 United States.

1 **SEC. 5. CLEAN ENERGY FOR HOMES AND BUILDINGS**

2 **GOALS.**

3 (a) IN GENERAL.—Not later than 180 days after the
4 date of enactment of this Act, the Secretary shall develop
5 and publish for review and comment in the Federal Reg-
6 ister near-, medium-, and long-term goals (including nu-
7 merical performance targets at appropriate intervals to
8 measure progress toward those goals) for—

9 (1)(A) a minimum number of homes to be ret-
10 rofitted through energy efficiency measures or to
11 have on-site renewable energy systems added;

12 (B) a minimum number of other buildings, by
13 type, to be retrofitted through energy efficiency
14 measures or to have on-site renewable energy sys-
15 tems added; and

16 (C) the number of on-site solar energy, wind
17 energy, and geothermal heat pump systems to be in-
18 stalled; and

19 (2) as a result of those retrofits, additions, and
20 installations—

21 (A) the quantity by which use of grid-sup-
22 plied electricity, natural gas, home heating oil,
23 and other fuels will be reduced;

24 (B) the quantity by which total fossil fuel
25 dependence in the buildings sector will be re-
26 duced;

1 (C) the quantity by which greenhouse gas
2 emissions will be reduced;

3 (D) the number of jobs that will be cre-
4 ated; and

5 (E) the estimated total energy cost savings
6 for building owners.

7 (b) ESTIMATES BY ORIGINATORS OR SPONSORS.—

8 The Secretary may rely on reasonable estimates made by
9 originators of financial products or sponsors of financing
10 programs for tracking progress toward meeting the goals
11 established under this section instead of requiring building
12 owners to monitor and report on the progress.

13 **SEC. 6. CLEAN ENERGY FOR HOMES AND BUILDINGS PRO-**
14 **GRAM.**

15 (a) ESTABLISHMENT.—There is established in the
16 Department of Energy a program to be known as the
17 Clean Energy for Homes and Buildings Program.

18 (b) ELIGIBILITY CRITERIA.—

19 (1) IN GENERAL.—In administering the Pro-
20 gram, the Secretary shall establish eligibility criteria
21 for applicants for financial assistance under sub-
22 section (c) who can offer financial products and pro-
23 grams consistent with the purposes of this Act.

24 (2) CRITERIA.—Criteria for applicants shall—

25 (A) take into account—

1 (i) the number and type of buildings
2 that can be served by the applicant, the
3 size of the potential market, and the scope
4 of the program (in terms of measures or
5 technologies to be used);

6 (ii) the ability of the applicant to suc-
7 cessfully execute the proposed program
8 and maintain the performance of the pro-
9 posed projects and investments;

10 (iii) financial criteria, as applicable,
11 including the ability of the applicant to
12 raise private capital or other sources of
13 funds for the proposed program;

14 (iv) criteria that enable the Secretary
15 to determine sound program design, in-
16 cluding—

17 (I) an assurance of credible en-
18 ergy efficiency or renewable energy
19 generation performance; and

20 (II) financial product or program
21 design that effectively reduces barriers
22 posed by traditional financing pro-
23 grams;

24 (v) such criteria, standards, guide-
25 lines, and mechanisms as will enable the

1 Secretary, to the maximum extent prac-
2 ticable, to communicate to program spon-
3 sors and originators, servicers, and sellers
4 of financial obligations the eligibility of
5 loans for resale;

6 (vi) the ability of the applicant to re-
7 port relevant data on program perform-
8 ance; and

9 (vii) the ability of the applicant to use
10 incentives or marketing techniques that are
11 likely to result in successful market pene-
12 tration; and

13 (B) encourage—

14 (i) use of technologies that are either
15 well-established or new, but demonstrated
16 to be reliable;

17 (ii) applicants that can offer building
18 owners payment plans generally designed
19 to permit the combination of energy pay-
20 ments and assessments or charges from
21 the installation or payments associated
22 with financing to be lower than the energy
23 payments prior to installing energy effi-
24 ciency measures or on-site renewable en-
25 ergy technologies;

1 (iii) applicants that will use repay-
2 ment mechanisms convenient for building
3 owners, such as tax-increment financing,
4 special tax districts, on-utility-bill repay-
5 ment, or other mechanisms;

6 (iv) applicants that can provide con-
7 venience for building owners by combining
8 participation in the lending program
9 with—

10 (I) processing for tax credits and
11 other incentives;

12 (II) technical assistance in select-
13 ing and working with vendors to pro-
14 vide energy efficiency measures or on-
15 site renewable energy generation sys-
16 tems;

17 (v) applicants the projects of which
18 will use contractors that hire within a 50-
19 mile radius of the project, or as close as is
20 practicable;

21 (vi) applicants that will use materials
22 and technologies manufactured in the
23 United States;

24 (vii) partnerships with or other in-
25 volvement of State workforce investment

1 boards, labor organizations, community-
2 based organizations, State-approved ap-
3 prenticeship programs, and other job train-
4 ing entities; and

5 (viii) applicants that can provide fi-
6 nancing programs or financial products
7 that mitigate barriers other than the initial
8 expense of installing measures or tech-
9 nologies, such as unfavorable lease terms.

10 (3) DIVERSE PORTFOLIO.—In establishing cri-
11 teria and selecting applicants to receive financial as-
12 sistance under subsection (c), to the maximum ex-
13 tent practicable, the Secretary shall select a portfolio
14 of investments that reaches a diversity of building
15 owners, including—

16 (A) individual homeowners;

17 (B) multifamily apartment building own-
18 ers;

19 (C) condominium owners associations;

20 (D) commercial building owners, including
21 multi-tenant commercial properties; and

22 (E) industrial building owners.

23 (c) FINANCIAL ASSISTANCE.—

24 (1) IN GENERAL.—For applicants determined
25 to be eligible under criteria established under sub-

1 section (b), the Secretary may provide financial as-
2 sistance in the form of direct loans, letters of credit,
3 loan guarantees, insurance products, other credit en-
4 hancements or debt instruments (including
5 securitization or indirect credit support), or other fi-
6 nancial products to promote the widespread deploy-
7 ment of, and mobilize private sector support of cred-
8 it and investment institutions for, energy efficiency
9 measures and on-site renewable energy generation
10 systems in buildings.

11 (2) FINANCIAL PRODUCTS.—The Secretary—

12 (A) in cooperation with Federal, State,
13 local, and private sector entities, shall develop
14 debt instruments that provide for the aggrega-
15 tion of, or directly aggregate, programs for the
16 deployment of energy efficiency measures and
17 on-site renewable energy generation systems on
18 a scale appropriate for residential, commercial,
19 or industrial applications; and

20 (B) may insure, guarantee, purchase, and
21 make commitments to purchase any debt in-
22 strument associated with the deployment of
23 clean energy technologies (including subordi-
24 nated securities) for the purpose of enhancing
25 the availability of private financing for the de-

1 ployment of energy efficiency measures and on-
2 site renewable energy generation systems.

3 (3) APPLICATION REVIEW.—

4 (A) IN GENERAL.—To the maximum ex-
5 tent practicable and consistent with sound busi-
6 ness practices, the Secretary shall seek to expe-
7 dite reviews of applications for credit support
8 under this Act in order to communicate to ap-
9 plicants in a timely manner the likelihood of
10 support so that the applicants can seek private
11 capital in order to receive final approval.

12 (B) MECHANISMS.—In carrying out this
13 paragraph, the Secretary shall consider using
14 mechanisms such as—

15 (i) a system for conditional pre-ap-
16 proval that informs applicants that final
17 applicants will be approved, if established
18 conditions are met;

19 (ii) clear guidelines that communicate
20 to applicants what level of performance on
21 eligibility criteria will ensure approval for
22 credit support or resale;

23 (iii) in the case of an applicant port-
24 folio of more than 300 loans or other fi-
25 nancial arrangement, an expedited review

1 based on statistical sampling to ensure
2 that the loan or other financial arrange-
3 ment meets the eligibility criteria; and

4 (iv) in the case of an applicant with a
5 demonstrated track record with respect to
6 successfully originating eligible loans or
7 other financial arrangements and who
8 meets appropriate other criteria deter-
9 mined by the Secretary, a system for dele-
10 gating responsibility for meeting eligibility
11 criteria that includes appropriate protec-
12 tions such as buy-back mechanisms in the
13 event criteria are determined not to have
14 been met.

15 (C) DISPOSITION OF DEBT OR INTER-
16 EST.—The Secretary may acquire, hold, and
17 sell or otherwise dispose of, pursuant to com-
18 mitments or otherwise, any debt associated with
19 the deployment of clean energy technologies or
20 interest in the debt.

21 (D) PRICING.—

22 (i) IN GENERAL.—The Secretary may
23 establish requirements, and impose charges
24 or fees, which may be regarded as elements
25 of pricing, for different classes of appli-

1 cants, originators, sellers, servicers, or
2 services.

3 (ii) CLASSIFICATION OF APPLICANTS,
4 ORIGINATORS, SELLERS AND SERVICERS.—
5 For the purpose of clause (i), the Secretary
6 may classify applicants, originators, sellers
7 and servicers as necessary to promote
8 transparency and liquidity and properly
9 characterize the risk of default.

10 (E) SECONDARY MARKET SUPPORT.—

11 (i) IN GENERAL.—The Secretary may
12 lend on the security of, and make commit-
13 ments to lend on the security of, any debt
14 that the Secretary has insured, guaran-
15 teed, issued or is authorized to purchase
16 under this section.

17 (ii) AUTHORIZED ACTIONS.—On such
18 terms and conditions as the Secretary may
19 prescribe, the Secretary may—

20 (I) give security;

21 (II) insure;

22 (III) guarantee;

23 (IV) purchase;

24 (V) sell;

1 (VI) pay interest or other return;

2 and

3 (VII) issue notes, debentures,

4 bonds, or other obligations or securi-

5 ties.

6 (F) LENDING ACTIVITIES.—

7 (i) IN GENERAL.—The Secretary shall

8 determine—

9 (I) the volume of the lending ac-
10 tivities of the Program; and

11 (II) the types of loan ratios, risk
12 profiles, interest rates, maturities, and
13 charges or fees in the secondary mar-
14 ket operations of the Program.

15 (ii) OBJECTIVES.—Determinations
16 under clause (i) shall be consistent with
17 the objectives of—

18 (I) providing an attractive invest-
19 ment environment for programs that
20 install energy efficiency measures or
21 on-site renewable energy generation
22 technologies;

23 (II) making the operations of the
24 Program self-supporting over the long
25 term; and

1 (III) advancing the goals estab-
2 lished under this Act.

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

11 **SEC. 7. GENERAL PROVISIONS.**

12 (a) PERIODIC REPORTS.—Not later than 1 year after
13 commencement of operation of the Program and at least
14 biannually thereafter, the Secretary shall submit to the
15 Committee on Energy and Natural Resources of the Sen-
16 ate and the Committee on Energy and Commerce of the
17 House of Representatives a report that includes a descrip-
18 tion of the Program in meeting the purpose and goals es-
19 tablished by or pursuant to this Act.

20 (b) AUDITS BY THE COMPTROLLER GENERAL.—

21 (1) IN GENERAL.—The programs, activities, re-
22 ceipts, expenditures, and financial transactions of
23 the Program shall be subject to audit by the Comp-
24 troller General of the United States under such rules

1 and regulations as may be prescribed by the Comp-
2 troller General.

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

5 (A) have access to the personnel and to all
6 books, accounts, documents, records (including
7 electronic records), reports, files, and all other
8 papers, automated data, things, or property be-
9 longing to, under the control of, or in use by
10 the Program, or any agent, representative, at-
11 torney, advisor, or consultant retained by the
12 Program, and necessary to facilitate the audit;

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

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

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

24 (3) ASSISTANCE AND COST.—

1 (A) IN GENERAL.—For the purpose of con-
2 ducting an audit under this subsection, the
3 Comptroller General may, in the discretion of
4 the Comptroller General, employ by contract,
5 without regard to section 3709 of the Revised
6 Statutes (41 U.S.C. 5), professional services of
7 firms and organizations of certified public ac-
8 countants for temporary periods or for special
9 purposes.

10 (B) REIMBURSEMENT.—

11 (i) IN GENERAL.—On the request of
12 the Comptroller General, the Secretary
13 shall reimburse the General Accountability
14 Office for the full cost of any audit con-
15 ducted by the Comptroller General under
16 this subsection.

17 (ii) CREDITING.—Such reimburse-
18 ments shall—

19 (I) be credited to the appropria-
20 tion account entitled “Salaries and
21 Expenses, Government Accountability
22 Office” at the time at which the pay-
23 ment is received; and

24 (II) remain available until ex-
25 pended.

1 SEC. 8. AUTHORIZATION OF APPROPRIATIONS.

2 There is authorized to be appropriated to carry out
3 this Act \$2,000,000,000.