

The Clean Free Market Act

A bill to scale up clean free enterprise, infrastructure and capital markets, by reducing tax and policy barriers

Rough Draft Outline

We here offer non-legislative draft language – with some specifics – to help guide legislative language for the Act.

Six-Year Pilot Program for Tax Exempt Clean Asset Bonds and Loans

During a six-year pilot program, interest on qualified privately issued Clean Asset Bonds (CABs) and Clean Asset Loans (CALs) will not be subject to federal taxation. All proceeds from such bonds and loans must be used to finance projects that manufacture, purchase, deploy, or construct the following Clean Assets:

1. Qualified renewable energy facilities as defined in Section 45 of the tax code. Specifically:
 - (A) wind,
 - (B) closed-loop biomass,
 - (C) open-loop biomass,
 - (D) geothermal energy,
 - (E) solar energy,
 - (F) small irrigation power,
 - (G) municipal solid waste,
 - (H) qualified hydropower production, and
 - (I) marine and hydrokinetic renewable energy.
2. Facilities that capture and sequester carbon dioxide as defined in section 45Q of the tax code.
3. Advanced nuclear power facilities as defined in section 45J of the tax code.
4. Clean energy property as defined in Section 48 of the tax code. Specifically:
 - (A) solar energy,
 - (B) geothermal energy,
 - (C) qualified fuel cell and microturbine property,
 - (D) combined heat and power system property,
 - (E) qualified small wind energy property, and
 - (F) equipment which uses the ground or ground water as a thermal energy source to heat a structure or as a thermal energy sink to cool a structure.
5. Qualified plug-in electric drive motor vehicles as defined in Section 30D of the tax code.
6. Qualified alternative motor vehicles as defined in Section 30B of the tax code.
7. Electric vehicle charging systems that can be used by the public and that operate at 200 volts or higher.
8. A home or building that is designed to achieve net zero energy performance, and certified by a licensed architect or engineer (need to be able to show design calculations, not actual performance). A “Zero

Energy Building” is an energy-efficient building where, on a source energy basis, the actual annual delivered energy is less than or equal to the on-site renewable exported energy.¹

9. Deep energy efficiency retrofits to existing buildings, defined as retrofits that reduce the energy use of a home or building by at least 30% relative to pre-retrofit use. Such retrofits shall be certified by a licensed architect or engineer, a BPI certified building analyst, or such other certified professionals as designated by the Secretary of the Treasury in consultation with the Secretary of Energy (need to be able to show design calculations, not actual performance).

New tax-exempt CABs and CALs can be issued in each year of the pilot program to finance the following maximum percentage of total project costs: Year 1 and 2: 75%; Year 3 and 4: 60%; Year 5 and 6: 45%. To keep the number of filings manageable, \$1 million is the minimum size for a CAB issuance, and CAL lenders must loan at least \$1 million in CALs (individual loans may be smaller, but must be packaged by the lender for IRS reporting into packages of at least \$1 million, with the lender responsible to collect and retain documentation on use of proceeds from CAL borrowers). Such CALs packaged together by lenders may be sold or used as a package of clean assets backing new CAB securities issued by the holder of the CAL debt. Use of tax-exempt CABs and CALs shall not prevent the use of additional similar taxable bonds and loans, or any other financing legally allowed.

Agency Oversight

The Secretary of the Treasury, in consultation with the Secretary of Energy, and after providing an opportunity for public comment, shall develop any needed criteria by which each of the above categories of clean assets or technologies shall be further defined, and where deemed necessary, certified by an independent third party; and they shall also consider simple procedures and criteria for proposing to Congress improvements in the above categories, as well as new categories and technologies that may arise in the future, that may be similarly qualified as clean assets, products, services and investments which reduce pollution.

The Secretary of the Treasury shall develop procedures for bond and loans issuers to report on bonds and loans, both immediately after issue and on an on-going basis. These procedures shall be based on the procedures now used by the IRS for Tax Exempt Bond Post Issuance Compliance (section 149 of the tax code). Tax exemption for CABs and CALs shall require that construction commence within one year of bond or loan issuance. The IRS shall issue guidance on the commencement and completion of construction requirements based on the “Commence Construction Guidance” published by the IRS on June 18, 2018 for renewable energy projects.²

The Secretary of the Treasury shall also develop procedures for bond and loan issuers to report to the IRS use of proceeds, expenditures and income from projects covered by CABs and CALs in order to help with the evaluation of this pilot program.

Two years after the CFMA program begins, and every two years thereafter, the Secretary of the Treasury, in consultation with the Secretary of Energy and other relevant government departments, after providing an opportunity for public comment, shall report to Congress on the costs and benefits of the program and any recommendations for refinements of these provisions.

CAB issuers, in their public offering documents, shall pledge to follow Green Bond Principles (GBP - voluntary, industry-driven and self-regulated best practice issuance guidelines for Green Bonds) as published by the International Capital Markets Association in June 2018, to the extent consistent with compliance with this Act, but the allowable uses of CAB proceeds shall be determined by this Act. GBP compliance will remain self-regulated.

¹ This is the DOE definition: <https://www.energy.gov/eere/buildings/articles/doe-releases-common-definition-zero-energy-buildings-campus-and>

² <https://www.irs.gov/pub/irs-drop/n-18-59.pdf>