

IRC Sections 54, 54A-E and 45(d)

Section 54 Credit to holders of clean renewable energy bonds

(a) Allowance of credit

If a taxpayer holds a clean renewable energy bond on one or more credit allowance dates of the bond occurring during any taxable year, there shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to the sum of the credits determined under subsection (b) with respect to such dates.

(b) Amount of credit

(1) In general

The amount of the credit determined under this subsection with respect to any credit allowance date for a clean renewable energy bond is 25 percent of the annual credit determined with respect to such bond.

(2) Annual credit

The annual credit determined with respect to any clean renewable energy bond is the product of--

- (A) the credit rate determined by the Secretary under paragraph (3) for the day on which such bond was sold, multiplied by
- (B) the outstanding face amount of the bond.

(3) Determination

For purposes of paragraph (2), with respect to any clean renewable energy bond, the Secretary shall determine daily or cause to be determined daily a credit rate which shall apply to the first day on which there is a binding, written contract for the sale or exchange of the bond. The credit rate for any day is the credit rate which the Secretary or the Secretary's designee estimates will permit the issuance of clean renewable energy bonds with a specified maturity or redemption date without discount and without interest cost to the qualified issuer.

(4) Credit allowance date

For purposes of this section, the term "credit allowance date" means--

- (A) March 15,
- (B) June 15,

(C) September 15, and

(D) December 15.

Such term also includes the last day on which the bond is outstanding.

(5) Special rule for issuance and redemption

In the case of a bond which is issued during the 3-month period ending on a credit allowance date, the amount of the credit determined under this subsection with respect to such credit allowance date shall be a ratable portion of the credit otherwise determined based on the portion of the 3-month period during which the bond is outstanding. A similar rule shall apply when the bond is redeemed or matures.

(c) Limitation based on amount of tax

The credit allowed under subsection (a) for any taxable year shall not exceed the excess of--

(1) the sum of the regular tax liability (as defined in section 26(b)) plus the tax imposed by section 55, over

(2) the sum of the credits allowable under this part (other than subpart C, section 1400N(l), and this section).

(d) Clean renewable energy bond

For purposes of this section--

(1) In General

The term "clean renewable energy bond" means any bond issued as part of an issue if--

(A) the bond is issued by a qualified issuer pursuant to an allocation by the Secretary to such issuer of a portion of the national clean renewable energy bond limitation under subsection (f)(2),

(B) 95 percent or more of the proceeds of such issue are to be used for capital expenditures incurred by qualified borrowers for one or more qualified projects,

(C) the qualified issuer designates such bond for purposes of this section and the bond is in registered form, and

(D) the issue meets the requirements of subsection (h).

(2) Qualified project; special use rules

(A) In general

The term "qualified project" means any qualified facility (as determined under section 45(d) without regard to paragraph (10) and to any placed in service date) owned by a qualified borrower.

(B) Refinancing rules

For purposes of paragraph (1)(B), a qualified project may be refinanced with proceeds of a clean renewable energy bond only if the indebtedness being refinanced (including any obligation directly or indirectly refinanced by such indebtedness) was originally incurred by a qualified borrower after the date of the enactment of this section.

(C) Reimbursement

For purposes of paragraph (1)(B), a clean renewable energy bond may be issued to reimburse a qualified borrower for amounts paid after the date of the enactment of this section with respect to a qualified project, but only if--

- (i) prior to the payment of the original expenditure, the qualified borrower declared its intent to reimburse such expenditure with the proceeds of a clean renewable energy bond,
- (ii) not later than 60 days after payment of the original expenditure, the qualified issuer adopts an official intent to reimburse the original expenditure with such proceeds, and
- (iii) the reimbursement is made not later than 18 months after the date the original expenditure is paid.

(D) Treatment of changes in use

For purposes of paragraph (1)(B), the proceeds of an issue shall not be treated as used for a qualified project to the extent that a qualified borrower or qualified issuer takes any action within its control which causes such proceeds not to be used for a qualified project. The Secretary shall prescribe regulations specifying remedial actions that may be taken (including conditions to taking such remedial actions) to prevent an action described in the preceding sentence from causing a bond to fail to be a clean renewable energy bond.

(e) Maturity limitations

(1) Duration of term

A bond shall not be treated as a clean renewable energy bond if the maturity of such bond exceeds the maximum term determined by the Secretary under paragraph (2) with respect to such bond.

(2) Maximum term

During each calendar month, the Secretary shall determine the maximum term permitted under this paragraph for bonds issued during the following calendar month. Such maximum term shall be the term which the Secretary estimates will result in the present value of the obligation to repay the principal on the bond being equal to 50 percent of the face amount of such bond. Such present value shall be determined without regard to the requirements of subsection (l)(6) and using as a discount rate the average annual interest rate of tax-exempt obligations having a term of 10 years or more which are issued during the month. If the term as so determined is not a multiple of a whole year, such term shall be rounded to the next highest whole year.

(f) Limitation on amount of bonds designated

(1) National limitation

There is a national clean renewable energy bond limitation of \$1,200,000,000.

(2) Allocation by Secretary

The Secretary shall allocate the amount described in paragraph (1) among qualified projects in such manner as the Secretary determines appropriate, except that the Secretary may not allocate more than \$750,000,000 of the national clean renewable energy bond limitation to finance qualified projects of qualified borrowers which are governmental bodies.

(g) Credit included in gross income

Gross income includes the amount of the credit allowed to the taxpayer under this section (determined without regard to subsection (c)) and the amount so included shall be treated as interest income.

(h) Special rules relating to expenditures

(1) In general

An issue shall be treated as meeting the requirements of this subsection if, as of the date of issuance, the qualified issuer reasonably expects--

(A) at least 95 percent of the proceeds of such issue are to be spent for one or more qualified projects within the 5-year period beginning on the date of issuance of the clean energy bond,

(B) a binding commitment with a third party to spend at least 10 percent of the proceeds of such issue will be incurred within the 6-month period beginning on the date of issuance of the clean energy bond or, in the case of a clean energy bond the proceeds of which are to be loaned to two or more qualified borrowers, such binding commitment will be incurred within the 6-month period beginning on the date of the loan of such proceeds to a qualified borrower, and

(C) such projects will be completed with due diligence and the proceeds of such issue will be spent with due diligence.

(2) Extension of period

Upon submission of a request prior to the expiration of the period described in paragraph (1)(A), the Secretary may extend such period if the qualified issuer establishes that the failure to satisfy the 5-year requirement is due to reasonable cause and the related projects will continue to proceed with due diligence.

(3) Failure to spend required amount of bond proceeds within 5 years

To the extent that less than 95 percent of the proceeds of such issue are expended by the close of the 5-year period beginning on the date of issuance (or if an extension has been obtained under paragraph (2), by the close of the extended period), the qualified issuer shall redeem all of the nonqualified bonds within 90 days after the end of such period. For purposes of this paragraph, the amount of the nonqualified bonds required to be redeemed shall be determined in the same manner as under section 142.

(i) Special rules relating to arbitrage

A bond which is part of an issue shall not be treated as a clean renewable energy bond unless, with respect to the issue of which the bond is a part, the qualified issuer satisfies the arbitrage requirements of section 148 with respect to proceeds of the issue.

(j) Cooperative electric company; qualified energy tax credit bond lender; governmental body; qualified borrower

For purposes of this section--

(1) Cooperative electric company

The term "cooperative electric company" means a mutual or cooperative electric company described in section 501(c)(12) or section 1381(a)(2)(C), or a not-for-profit electric utility which has received a loan or loan guarantee under the Rural Electrification Act.

(2) Clean renewable energy bond lender

The term "clean renewable energy bond lender" means a lender which is a cooperative which is owned by, or has outstanding loans to, 100 or more cooperative electric companies and is in existence on February 1, 2002, and shall include any affiliated entity which is controlled by such lender.

(3) Governmental body

The term "governmental body" means any State, territory, possession of the United States, the District of Columbia, Indian tribal government, and any political subdivision thereof.

(4) Qualified issuer

The term "qualified issuer" means--

- (A) a clean renewable energy bond lender,
- (B) a cooperative electric company, or
- (C) a governmental body.

(5) Qualified borrower

The term "qualified borrower" means--

- (A) a mutual or cooperative electric company described in section 501(c)(12) or 1381(a)(2)(C), or
- (B) a governmental body.

(k) Special rules relating to pool bonds

No portion of a pooled financing bond may be allocable to any loan unless the borrower has entered into a written loan commitment for such portion prior to the issue date of such issue.

(l) Other definitions and special rules

For purposes of this section--

(1) Bond

The term "bond" includes any obligation.

(2) Pooled financing bond

The term "pooled financing bond" shall have the meaning given such term by section 149(f)(6)(A).

(3) Partnership; S Corporation; and other pass-thru entities

(A) In general

Under regulations prescribed by the Secretary, in the case of a partnership, trust, S corporation, or other pass-thru entity, rules similar to the rules of section 41(g) shall apply with respect to the credit allowable under subsection (a).

(B) No basis adjustment

In the case of a bond held by a partnership or an S corporation, rules similar to the rules under section 1397E(l) shall apply.

(4) Bonds held by regulated investment companies

If any clean renewable energy bond is held by a regulated investment company, the credit determined under subsection (a) shall be allowed to shareholders of such company under procedures prescribed by the Secretary.

(5) Ratable principal amortization required

A bond shall not be treated as a clean renewable energy bond unless it is part of an issue which provides for an equal amount of principal to be paid by the qualified issuer during each calendar year that the issue is outstanding.

(6) Reporting

Issuers of clean renewable energy bonds shall submit reports similar to the reports required under section 149(e).

(m) Termination

This section shall not apply with respect to any bond issued after December 31, 2009.

Sec. 54A Credit to holders of qualified tax credit bonds

(a) Allowance of credit

If a taxpayer holds a qualified tax credit bond on one or more credit allowance dates of the bond during any taxable year, there shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to the sum of the credits determined under subsection (b) with respect to such dates.

(b) Amount of credit

(1) In general

The amount of the credit determined under this subsection with respect to any credit allowance date for a qualified tax credit bond is 25 percent of the annual credit determined with respect to such bond.

(2) Annual credit

The annual credit determined with respect to any qualified tax credit bond is the product of--

- (A) the applicable credit rate, multiplied by
- (B) the outstanding face amount of the bond.

(3) Applicable credit rate

For purposes of paragraph (2), the applicable credit rate is the rate which the Secretary estimates will permit the issuance of qualified tax credit bonds with a specified maturity or redemption date without discount and without interest cost to the qualified issuer. The applicable credit rate with respect to any qualified tax credit bond shall be determined as of the first day on which there is a binding, written contract for the sale or exchange of the bond.

(4) Special rule for issuance and redemption

In the case of a bond which is issued during the 3-month period ending on a credit allowance date, the amount of the credit determined under this subsection with respect to such credit allowance date shall be a ratable portion of the credit otherwise determined based on the portion of the 3-month period during which the bond is outstanding. A similar rule shall apply when the bond is redeemed or matures.

(c) Limitation based on amount of tax

(1) In general

The credit allowed under subsection (a) for any taxable year shall not exceed the excess of--

(A) the sum of the regular tax liability (as defined in section 26(b)) plus the tax imposed by section 55, over

(B) the sum of the credits allowable under this part (other than subpart C and this subpart).

(2) Carryover of unused credit

If the credit allowable under subsection (a) exceeds the limitation imposed by paragraph (1) for such taxable year, such excess shall be carried to the succeeding taxable year and added to the credit allowable under subsection (a) for such taxable year (determined before the application of paragraph (1) for such succeeding taxable year).

(d) Qualified tax credit bond

For purposes of this section--

(1) Qualified tax credit bondⁱ

The term "qualified tax credit bond"ⁱⁱⁱ means--

(A) a qualified forestry conservation bond,

(B) a new clean renewable energy bond,

(C) a qualified energy conservation bond, or

(D) a qualified zone academy bond,

which is part of an issue that meets requirements of paragraphs (2), (3), (4), (5), and (6).

(2) Special rules relating to expenditures

(A) In general

An issue shall be treated as meeting the requirements of this paragraph if, as of the date of issuance, the issuer reasonably expects--

- (i) 100 percent or more of the available project proceeds to be spent for 1 or more qualified purposes within the 3-year period beginning on such date of issuance, and
- (ii) a binding commitment with a third party to spend at least 10 percent of such available project proceeds will be incurred within the 6-month period beginning on such date of issuance.

(B) Failure to spend required amount of bond proceeds within 3 years

(i) In general

To the extent that less than 100 percent of the available project proceeds of the issue are expended by the close of the expenditure period for 1 or more qualified purposes, the issuer shall redeem all of the nonqualified bonds within 90 days after the end of such period. For purposes of this paragraph, the amount of the nonqualified bonds required to be redeemed shall be determined in the same manner as under section 142.

(ii) Expenditure period

For purposes of this subpart, the term "expenditure period" means, with respect to any issue, the 3-year period beginning on the date of issuance. Such term shall include any extension of such period under clause (iii).

(iii) Extension of period

Upon submission of a request prior to the expiration of the expenditure period (determined without regard to any extension under this clause), the Secretary may extend such period if the issuer establishes that the failure to expend the proceeds within the original expenditure period is due to reasonable cause and the expenditures for qualified purposes will continue to proceed with due diligence.

(C) Qualified purposeⁱⁱⁱ

For purposes of this paragraph, the term "qualified purpose"^{iv} means--

- (i) in the case of a qualified forestry conservation bond, a purpose specified in section 54B(e),
- (ii) in the case of a new clean renewable energy bond, a purpose specified in section 54C(a)(1),
- (iii) in the case of a qualified energy conservation bond, a purpose specified in section 54D(a)(1), and
- (iv) in the case of a qualified zone academy bond, a purpose specified in section 54E(a)(1).

(D) Reimbursement

For purposes of this subtitle, available project proceeds of an issue shall be treated as spent for a qualified purpose if such proceeds are used to reimburse the issuer for amounts paid for a qualified purpose after the date that the Secretary makes an allocation of bond limitation with respect to such issue, but only if--

- (i) prior to the payment of the original expenditure, the issuer declared its intent to reimburse such expenditure with the proceeds of a qualified tax credit bond,
- (ii) not later than 60 days after payment of the original expenditure, the issuer adopts an official intent to reimburse the original expenditure with such proceeds, and
- (iii) the reimbursement is made not later than 18 months after the date the original expenditure is paid.

(3) Reporting

An issue shall be treated as meeting the requirements of this paragraph if the issuer of qualified tax credit bonds submits reports similar to the reports required under section 149(e).

(4) Special rules relating to arbitrage

(A) In general

An issue shall be treated as meeting the requirements of this paragraph if the issuer satisfies the requirements of section 148 with respect to the proceeds of the issue.

(B) Special rule for investments during expenditure period

An issue shall not be treated as failing to meet the requirements of subparagraph (A) by reason of any investment of available project proceeds during the expenditure period.

(C) Special rule for reserve funds

An issue shall not be treated as failing to meet the requirements of subparagraph (A) by reason of any fund which is expected to be used to repay such issue if--

- (i) such fund is funded at a rate not more rapid than equal annual installments,
- (ii) such fund is funded in a manner reasonably expected to result in an amount not greater than an amount necessary to repay the issue, and
- (iii) the yield on such fund is not greater than the discount rate determined under paragraph (5)(B) with respect to the issue.

(5) Maturity limitation

(A) In general

An issue shall be treated as meeting the requirements of this paragraph if the maturity of any bond which is part of such issue does not exceed the maximum term determined by the Secretary under subparagraph (B).

(B) Maximum term

During each calendar month, the Secretary shall determine the maximum term permitted under this paragraph for bonds issued during the following calendar month. Such maximum term shall be the term which the Secretary estimates will result in the present value of the obligation to repay the principal on the bond being equal to 50 percent of the face amount of such bond. Such present value shall be determined using as a discount rate the average annual interest rate of tax-exempt obligations

having a term of 10 years or more which are issued during the month. If the term as so determined is not a multiple of a whole year, such term shall be rounded to the next highest whole year.

(6) Prohibition on financial conflicts of interest

An issue shall be treated as meeting the requirements of this paragraph if the issuer certifies that--

(A) applicable State and local law requirements governing conflicts of interest are satisfied with respect to such issue, and

(B) if the Secretary prescribes additional conflicts of interest rules governing the appropriate Members of Congress, Federal, State, and local officials, and their spouses, such additional rules are satisfied with respect to such issue.

(e) Other definitions

For purposes of this subchapter--

(1) Credit allowance date

The term "credit allowance date" means--

(A) March 15,

(B) June 15,

(C) September 15, and

(D) December 15.

Such term includes the last day on which the bond is outstanding.

(2) Bond

The term "bond" includes any obligation.

(3) State

The term "State" includes the District of Columbia and any possession of the United States.

(4) Available project proceeds

The term "available project proceeds" means--

(A) the excess of--

- (i) the proceeds from the sale of an issue, over
- (ii) the issuance costs financed by the issue (to the extent that such costs do not exceed 2 percent of such proceeds), and

(B) the proceeds from any investment of the excess described in subparagraph (A).

(f) Credit treated as interest

For purposes of this subtitle, the credit determined under subsection (a) shall be treated as interest which is includible in gross income.

(g) S corporations and partnerships

In the case of a tax credit bond held by an S corporation or partnership, the allocation of the credit allowed by this section to the shareholders of such corporation or partners of such partnership shall be treated as a distribution.

(h) Bonds held by regulated investment companies and Real Estate Investment Trusts

If any qualified tax credit bond is held by a regulated investment company or a real estate investment trust, the credit determined under subsection (a) shall be allowed to shareholders of such company or beneficiaries of such trust (and any gross income included under subsection (f) with respect to such credit shall be treated as distributed to such shareholders or beneficiaries) under procedures prescribed by the Secretary.

(i) Credits may be stripped

Under regulations prescribed by the Secretary--

(1) In general

There may be a separation (including at issuance) of the ownership of a qualified tax credit bond and the entitlement to the credit under this section with respect to such bond. In case of any such separation, the credit under this section shall be allowed to the person who on the credit allowance date holds the instrument evidencing the entitlement to the credit and not to the holder of the bond.

(2) Certain rules to apply

In the case of a separation described in paragraph (1), the rules of section 1286 shall apply to the qualified tax credit bond as if it were a stripped bond and to the credit under this section as if it were a stripped coupon.

ⁱ Code section 54A(d)(1), as excerpted below (and in the form prior to the amendments under the 2008 Energy Improvement and Extension Act (P.L. 110-343) (the "Energy Act")), applies to obligations issued before Oct. 4, 2008.

⁽¹⁾ Qualified tax credit bond

The term "qualified tax credit bond" means a qualified forestry conservation bond which is part of an issue that meets the requirements of paragraphs (2), (3), (4), (5), and (6)."

ⁱⁱ Code section 54A(d)(1), in its current form, as amended by sections 107, 301, and 313 of the Energy Act, applies to obligations issued after Oct. 3, 2008.

ⁱⁱⁱ Code section 54A(d)(2)(C), as excerpted below (and in the form prior to the amendments under the Energy Act), applies to obligations issued before Oct. 4, 2008.

^(C) Qualified purpose

For purposes of this paragraph, the term "qualified purpose" means a purpose specified in section 54B(e).

^{iv} Code section 54A(d)(2)(C), in its current form, as amended by sections 107, 301, and 313 of the Energy Act, applies to obligations issued after Oct. 3, 2008.

Sec. 54B Qualified forestry conservation bonds

(a) Qualified forestry conservation bond

For purposes of this subchapter, the term "qualified forestry conservation bond" means any bond issued as part of an issue if--

(1) 100 percent of the available project proceeds of such issue are to be used for one or more qualified forestry conservation purposes,

(2) the bond is issued by a qualified issuer, and

(3) the issuer designates such bond for purposes of this section.

(b) Limitation on amount of bonds designated

The maximum aggregate face amount of bonds which may be designated under subsection (a) by any issuer shall not exceed the limitation amount allocated to such issuer under subsection (d).

(c) National limitation on amount of bonds designated

There is a national qualified forestry conservation bond limitation of \$500,000,000.

(d) Allocations

(1) In general

The Secretary shall make allocations of the amount of the national qualified forestry conservation bond limitation described in subsection (c) among qualified forestry conservation purposes in such manner as the Secretary determines appropriate so as to ensure that all of such limitation is allocated before the date which is 24 months after the date of the enactment of this section.

(2) Solicitation of applications

The Secretary shall solicit applications for allocations of the national qualified forestry conservation bond limitation described in subsection (c) not later than 90 days after the date of the enactment of this section.

(e) Qualified forestry conservation purpose

For purposes of this section, the term "qualified forestry conservation purpose" means the acquisition by a State or any political subdivision or instrumentality thereof or a 501(c)(3) organization (as defined in section 150(a)(4)) from an unrelated person of forest and forest land that meets the following qualifications:

- (1) Some portion of the land acquired must be adjacent to United States Forest Service Land.
- (2) At least half of the land acquired must be transferred to the United States Forest Service at no net cost to the United States and not more than half of the land acquired may either remain with or be conveyed to a State.
- (3) All of the land must be subject to a native fish habitat conservation plan approved by the United States Fish and Wildlife Service.
- (4) The amount of acreage acquired must be at least 40,000 acres.

(f) Qualified issuer

For purposes of this section, the term "qualified issuer" means a State or any political subdivision or instrumentality thereof or a 501(c)(3) organization (as defined in section 150(a)(4)).

(g) Special arbitrage rule

In the case of any qualified forestry conservation bond issued as part of an issue, section 54A(d)(4)(C) shall be applied to such issue without regard to clause (i).

(h) Election to treat 50 percent of bond allocation as payment of tax

(1) In general

If--

(A) a qualified issuer receives an allocation of any portion of the national qualified forestry conservation bond limitation described in subsection (c), and

(B) the qualified issuer elects the application of this subsection with respect to such allocation,

then the qualified issuer (without regard to whether the issuer is subject to tax under this chapter) shall be treated as having made a payment against the tax imposed by this chapter, for the taxable year preceding the taxable year in which the allocation is received, in an amount equal to 50 percent of the amount of such allocation.

(2) Treatment of deemed payment

(A) In general

Notwithstanding any other provision of this title, the Secretary shall not use the payment of tax described in paragraph (1) as an offset or credit against any tax liability of the qualified issuer but shall refund such payment to such issuer.

(B) No interest

Except as provided in paragraph (3)(A), the payment described in paragraph (1) shall not be taken into account in determining any amount of interest under this title.

(3) Requirement for, and effect of, election

(A) Requirement

No election under this subsection shall take effect unless the qualified issuer certifies to the Secretary that any payment of tax refunded to the issuer under this subsection will be used exclusively for 1 or more qualified forestry conservation purposes. If the qualified issuer fails to use any portion of such payment for such purpose, the issuer shall be liable to the United States in an amount equal to such portion, plus interest at the overpayment rate under section 6621 for the period from the date such portion was refunded to the date such amount is paid. Any such amount shall be assessed and collected in the same manner as tax imposed by this chapter, except that subchapter B of chapter 63 (relating to deficiency procedures) shall not apply in respect of such assessment or collection.

(B) Effect of election on allocation

If a qualified issuer makes the election under this subsection with respect to any allocation--

- (i) the issuer may issue no bonds pursuant to the allocation, and
- (ii) the Secretary may not reallocate such allocation for any other purpose.

Sec. 54C New clean renewable energy bonds

(a) New clean renewable energy bond

For purposes of this subpart, the term "new clean renewable energy bond" means any bond issued as part of an issue if--

- (1) 100 percent of the available project proceeds of such issue are to be used for capital expenditures incurred by governmental bodies, public power providers, or cooperative electric companies for one or more qualified renewable energy facilities,
- (2) the bond is issued by a qualified issuer, and
- (3) the issuer designates such bond for purposes of this section.

(b) Reduced credit amount

The annual credit determined under section 54A(b) with respect to any new clean renewable energy bond shall be 70 percent of the amount so determined without regard to this subsection.

(c) Limitation on amount of bonds designated

(1) In general

The maximum aggregate face amount of bonds which may be designated under subsection (a) by any issuer shall not exceed the limitation amount allocated under this subsection to such issuer.

(2) National limitation on amount of bonds designated

There is a national new clean renewable energy bond limitation of \$800,000,000 which shall be allocated by the Secretary as provided in paragraph

(3), except that--

- (A) not more than 33 1/3 percent thereof may be allocated to qualified projects of public power providers,
- (B) not more than 33 1/3 percent thereof may be allocated to qualified projects of governmental bodies, and
- (C) not more than 33 1/3 percent thereof may be allocated to qualified projects of cooperative electric companies.

(3) Method of allocation

(A) Allocation among public power providers

After the Secretary determines the qualified projects of public power providers which are appropriate for receiving an allocation of the national new clean renewable energy bond limitation, the Secretary shall, to the maximum extent practicable, make allocations among such projects in such manner that the amount allocated to each such project bears the same ratio to the cost of such project as the limitation under paragraph (2)(A) bears to the cost of all such projects.

(B) Allocation among governmental bodies and cooperative electric companies

The Secretary shall make allocations of the amount of the national new clean renewable energy bond limitation described in paragraphs (2)(B) and (2)(C) among qualified projects of governmental bodies and cooperative electric companies, respectively, in such manner as the Secretary determines appropriate.

(d) Definitions

For purposes of this section--

(1) Qualified renewable energy facility

The term "qualified renewable energy facility" means a qualified facility (as determined under section 45(d) without regard to paragraphs (8) and (10) thereof and to any placed in service date) owned by a public power provider, a governmental body, or a cooperative electric company.

(2) Public power provider

The term "public power provider" means a State utility with a service obligation, as such terms are defined in section 217 of the Federal Power Act (as in effect on the date of the enactment of this paragraph).

(3) Governmental body

The term "governmental body" means any State or Indian tribal government, or any political subdivision thereof.

(4) Cooperative electric company

The term "cooperative electric company" means a mutual or cooperative electric company described in section 501(c)(12) or section 1381(a)(2)(C).

(5) Clean renewable energy bond lender

The term "clean renewable energy bond lender" means a lender which is a cooperative which is owned by, or has outstanding loans to, 100 or more cooperative electric companies and is in existence on February 1, 2002, and shall include any affiliated entity which is controlled by such lender.

(6) Qualified issuer

The term "qualified issuer" means a public power provider, a cooperative electric company, a governmental body, a clean renewable energy bond lender, or a not-for-profit electric utility which has received a loan or loan guarantee under the Rural Electrification Act.

Sec. 54D Qualified energy conservation bonds

(a) Qualified energy conservation bond

For purposes of this subchapter, the term "qualified energy conservation bond" means any bond issued as part of an issue if--

- (1) 100 percent of the available project proceeds of such issue are to be used for one or more qualified conservation purposes,
- (2) the bond is issued by a State or local government, and
- (3) the issuer designates such bond for purposes of this section.

(b) Reduced credit amount

The annual credit determined under section 54A(b) with respect to any qualified energy conservation bond shall be 70 percent of the amount so determined without regard to this subsection.

(c) Limitation on amount of bonds designated

The maximum aggregate face amount of bonds which may be designated under subsection (a) by any issuer shall not exceed the limitation amount allocated to such issuer under subsection (e).

(d) National limitation on amount of bonds designated

There is a national qualified energy conservation bond limitation of \$800,000,000.

(e) Allocations

(1) In general

The limitation applicable under subsection (d) shall be allocated by the Secretary among the States in proportion to the population of the States.

(2) Allocations to largest local governments-

(A) In general

In the case of any State in which there is a large local government, each such local government shall be allocated a portion of such State's allocation which bears the same ratio to the State's allocation (determined without regard to this subparagraph) as the population of such large local government bears to the population of such State.

(B) Allocation of unused limitation to State

The amount allocated under this subsection to a large local government may be reallocated by such local government to the State in which such local government is located.

(C) Large local government

For purposes of this section, the term "large local government" means any municipality or county if such municipality or county has a population of 100,000 or more.

(3) Allocation to issuers; restriction on private activity bonds

Any allocation under this subsection to a State or large local government shall be allocated by such State or large local government to issuers within the State in a manner that results in not less than 70 percent of the allocation to such State or large local government being used to designate bonds which are not private activity bonds.

(f) Qualified conservation purpose

For purposes of this section--

(1) In general

The term "qualified conservation purpose" means any of the following:

(A) Capital expenditures incurred for purposes of--

(i) reducing energy consumption in publicly-owned buildings by at least 20 percent,

(ii) implementing green community programs,

(iii) rural development involving the production of electricity from renewable energy resources, or

(iv) any qualified facility (as determined under section 45(d) without regard to paragraphs (8) and (10) thereof and without regard to any placed in service date).

(B) Expenditures with respect to research facilities, and research grants, to support research in--

(i) development of cellulosic ethanol or other non-fossil fuels,

(ii) technologies for the capture and sequestration of carbon dioxide produced through the use of fossil fuels,

(iii) increasing the efficiency of existing technologies for producing non-fossil fuels,

(iv) automobile battery technologies and other technologies to reduce fossil fuel consumption in transportation, or

(v) technologies to reduce energy use in buildings.

(C) Mass commuting facilities and related facilities that reduce the consumption of energy, including expenditures to reduce pollution from vehicles used for mass commuting.

(D) Demonstration projects designed to promote the commercialization of-

(i) green building technology,

(ii) conversion of agricultural waste for use in the production of fuel or otherwise,

(iii) advanced battery manufacturing technologies,

(iv) technologies to reduce peak use of electricity, or

(v) technologies for the capture and sequestration of carbon dioxide emitted from combusting fossil fuels in order to produce electricity.

(E) Public education campaigns to promote energy efficiency.

(2) Special rules for private activity bonds

For purposes of this section, in the case of any private activity bond, the term "qualified conservation purposes" shall not include any expenditure which is not a capital expenditure.

(g) Population

(1) In general

The population of any State or local government shall be determined for purposes of this section as provided in section 146(j) for the calendar year which includes the date of the enactment of this section.

(2) Special rule for counties

In determining the population of any county for purposes of this section, any population of such county which is taken into account in determining the population of any municipality which is a large local government shall not be taken into account in determining the population of such county.

(h) Application to Indian tribal governments

An Indian tribal government shall be treated for purposes of this section in the same manner as a large local government, except that--

- (1) an Indian tribal government shall be treated for purposes of subsection (e) as located within a State to the extent of so much of the population of such government as resides within such State, and
- (2) any bond issued by an Indian tribal government shall be treated as a qualified energy conservation bond only if issued as part of an issue the available project proceeds of which are used for purposes for which such Indian tribal government could issue bonds to which section 103(a) applies.

Sec. 54E Qualified zone academy bonds

(a) Qualified zone academy bonds

For purposes of this subchapter, the term "qualified zone academy bond" means any bond issued as part of an issue if--

- (1) 100 percent of the available project proceeds of such issue are to be used for a qualified purpose with respect to a qualified zone academy established by an eligible local education agency,
- (2) the bond is issued by a State or local government within the jurisdiction of which such academy is located, and
- (3) the issuer--
 - (A) designates such bond for purposes of this section,
 - (B) certifies that it has written assurances that the private business contribution requirement of subsection (b) will be met with respect to such academy, and
 - (C) certifies that it has the written approval of the eligible local education agency for such bond issuance.

(b) Private business contribution requirement

For purposes of subsection (a), the private business contribution requirement of this subsection is met with respect to any issue if the eligible local education agency that established the qualified zone academy has written commitments from private entities to make qualified contributions having a present value (as of the date of issuance of the issue) of not less than 10 percent of the proceeds of the issue.

(c) Limitation on amount of bonds designated

(1) National limitation

There is a national zone academy bond limitation for each calendar year. Such limitation is \$400,000,000 for 2008 and 2009, and, except as provided in paragraph (4), zero thereafter.

(2) Allocation of limitation

The national zone academy bond limitation for a calendar year shall be allocated by the Secretary among the States on the basis of their respective populations of individuals below the poverty line (as defined by the Office of Management and Budget). The limitation amount allocated to a State under the preceding sentence shall be allocated by the State education agency to qualified zone academies within such State.

(3) Designation subject to limitation amount

The maximum aggregate face amount of bonds issued during any calendar year which may be designated under subsection (a) with respect to any qualified zone academy shall not exceed the limitation amount allocated to such academy under paragraph (2) for such calendar year.

(4) Carryover of unused limitation

(A) In general

If for any calendar year--

- (i) the limitation amount for any State, exceeds
- (ii) the amount of bonds issued during such year which are designated under subsection (a) with respect to qualified zone academies within such State,

the limitation amount for such State for the following calendar year shall be increased by the amount of such excess.

(B) Limitation on carryover

Any carry-forward of a limitation amount may be carried only to the first 2 years following the unused limitation year. For purposes of the preceding sentence, a limitation amount shall be treated as used on a first-in first-out basis.

(C) Coordination with section 1397E

Any carryover determined under section 1397E(e)(4) (relating to carryover of unused limitation) with respect to any State to calendar year 2008 or 2009 shall be treated for purposes of this section as a carryover with respect to such State for such calendar year under subparagraph (A), and the limitation of subparagraph (B) shall apply to such carryover taking into account the calendar years to which such carryover relates.

(d) Definitions

For purposes of this section--

(1) Qualified zone academy

The term "qualified zone academy" means any public school (or academic program within a public school) which is established by and operated under the supervision of an eligible local education agency to provide education or training below the postsecondary level if--

(A) such public school or program (as the case may be) is designed in cooperation with business to enhance the academic curriculum, increase graduation and employment rates, and better prepare students for the rigors of college and the increasingly complex workforce,

(B) students in such public school or program (as the case may be) will be subject to the same academic standards and assessments as other students educated by the eligible local education agency,

(C) the comprehensive education plan of such public school or program is approved by the eligible local education agency, and

(D)(i) such public school is located in an empowerment zone or enterprise community (including any such zone or community designated after the date of the enactment of this section), or

(ii) there is a reasonable expectation (as of the date of issuance of the bonds) that at least 35 percent of the students attending such school or participating in such program (as the case may be) will be eligible for free or reduced-cost lunches under the school lunch program established under the National School Lunch Act.

(2) Eligible local education agency

For purposes of this section, the term "eligible local education agency" means any local educational agency as defined in section 9101 of the Elementary and Secondary Education Act of 1965.

(3) Qualified purpose

The term "qualified purpose" means, with respect to any qualified zone academy--

(A) rehabilitating or repairing the public school facility in which the academy is established,

(B) providing equipment for use at such academy,

(C) developing course materials for education to be provided at such academy, and

(D) training teachers and other school personnel in such academy.

(4) Qualified contributions

The term "qualified contribution" means any contribution (of a type and quality acceptable to the eligible local education agency) of--

(A) equipment for use in the qualified zone academy (including state-of-the-art technology and vocational equipment),

(B) technical assistance in developing curriculum or in training teachers in order to promote appropriate market driven technology in the classroom,

(C) services of employees as volunteer mentors,

(D) internships, field trips, or other educational opportunities outside the academy for students, or

(E) any other property or service specified by the eligible local education agency.

Section 45(d)

Qualified facilities

For purposes of this section--

(1) Wind facility

In the case of a facility using wind to produce electricity, the term "qualified facility" means any facility owned by the taxpayer which is originally placed in service after December 31, 1993, and before January 1, 2010. Such term shall not include any facility with respect to which any qualified small wind energy property expenditure (as defined in subsection (d)(4) of section 25D) is taken into account in determining the credit under such section.

(2) Closed-loop biomass facility

(A) In general

In the case of a facility using closed-loop biomass to produce electricity, the term "qualified facility" means any facility--

(i) owned by the taxpayer which is originally placed in service after December 31, 1992, and before January 1, 2011, or

(ii) owned by the taxpayer which before January 1, 2011, is originally placed in service and modified to use closed-loop biomass to co-fire with coal, with other biomass, or with both, but only if the modification is approved under the Biomass Power for Rural Development Programs or is part of a pilot project of the Commodity Credit Corporation as described in 65 Fed. Reg. 63052.

(B) Expansion of facility^v

Such term shall include a new unit placed in service after the date of the enactment of this subparagraph in connection with a facility described in subparagraph (A)(i), but only to the extent of the increased amount of electricity produced at the facility by reason of such new unit.

(C) Special rules

In the case of a qualified facility described in subparagraph (A)(ii)--

- (i) the 10-year period referred to in subsection (a) shall be treated as beginning no earlier than the date of the enactment of this clause, and
- (ii) if the owner of such facility is not the producer of the electricity, the person eligible for the credit allowable under subsection (a) shall be the lessee or the operator of such facility.

(3) Open-loop biomass facilities

(A) In general

In the case of a facility using open-loop biomass to produce electricity, the term "qualified facility" means any facility owned by the taxpayer which--

- (i) in the case of a facility using agricultural livestock waste nutrients--
 - (I) is originally placed in service after the date of the enactment of this subclause and before January 1, 2011, and
 - (II) the nameplate capacity rating of which is not less than 150 kilowatts, and
- (ii) in the case of any other facility, is originally placed in service before January 1, 2011.

(B) Expansion of facility^{vi}

Such term shall include a new unit placed in service after the date of the enactment of this subparagraph in connection with a facility described in subparagraph (A), but only to the extent of the increased amount of electricity produced at the facility by reason of such new unit.

(C) Credit eligibility

In the case of any facility described in subparagraph (A), if the owner of such facility is not the producer of the electricity, the person eligible for the credit allowable under subsection (a) shall be the lessee or the operator of such facility.

(4) Geothermal or solar energy facility

In the case of a facility using geothermal or solar energy to produce electricity, the term "qualified facility" means any facility owned by the taxpayer which is originally placed in service after the date of the enactment of this paragraph and before January 1, 2011 (January 1, 2006, in the case of a facility using solar energy). Such term shall not include any property described in section 48(a)(3) the basis of which is taken into account by the taxpayer for purposes of determining the energy credit under section 48.

(5) Small irrigation power facility

In the case of a facility using small irrigation power to produce electricity, the term "qualified facility" means any facility owned by the taxpayer which is originally placed in service after the date of the enactment of this paragraph and before the date of the enactment of paragraph (11).

(6) Landfill gas facilities

In the case of a facility producing electricity from gas derived from the biodegradation of municipal solid waste, the term "qualified facility" means any facility owned by the taxpayer which is originally placed in service after the date of the enactment of this paragraph and before January 1, 2011.

(7) Trash facilities^{vii}

In the case of a facility which burns municipal solid waste to produce electricity, the term "qualified facility" means any facility owned by the taxpayer which is originally placed in service after the date of the enactment of this paragraph and before January 1, 2011. Such term shall include a new unit placed in service in connection with a facility placed in service on or before the date of the enactment of this paragraph, but only to the extent of the increased amount of electricity produced at the facility by reason of such new unit.

(8) Refined coal production facility^{viii}

In the case of a facility that produces refined coal, the term "refined coal production facility" means--

(A) with respect to a facility producing steel industry fuel, any facility (or any modification to a facility) which is placed in service before January 1, 2010, and

(B) with respect to any other facility producing refined coal, any facility placed in service after the date of the enactment of the American Jobs Creation Act of 2004 and before January 1, 2010.

(9) Qualified hydropower facility

In the case of a facility producing qualified hydroelectric production described in subsection (c)(8), the term "qualified facility" means--

(A) in the case of any facility producing incremental hydropower production, such facility but only to the extent of its incremental hydropower production attributable to efficiency improvements or additions to capacity described in subsection (c)(8)(B) placed in service after the date of the enactment of this paragraph and before January 1, 2011, and

(B) any other facility placed in service after the date of the enactment of this paragraph and before January 1, 2011.

(C) Credit period.-- In the case of a qualified facility described in subparagraph (A), the 10-year period referred to in subsection (a) shall be treated as beginning on the date the efficiency improvements or additions to capacity are placed in service.

(10) Indian coal production facility

In the case of a facility that produces Indian coal, the term "Indian coal production facility" means a facility which is placed in service before January 1, 2009.

(11) Marine and hydrokinetic renewable energy facilities^{ix}

In the case of a facility producing electricity from marine and hydrokinetic renewable energy, the term "qualified facility" means any facility owned by the taxpayer-

(A) which has a nameplate capacity rating of at least 150 kilowatts, and

(B) which is originally placed in service on or after the date of the enactment of this paragraph and before January 1, 2012.

^v Code section 45(d)(2)(B), as added by the Energy Act, applies to property placed in service after Oct. 3, 2008.

^{vi} Code section 45(d)(3)(B), as added by the Energy Act, applies to property placed in service after Oct. 3, 2008. Former subpar. (B) redesignated (C).

^{vii} Code section 45(d)(7), as amended by the Energy Act, strikes "facility which burns" and inserts "facility (other than a facility described in paragraph (6)) which uses" for electricity produced and sold after Oct. 3, 2008.

^{viii} Code section 45(d)(8), as amended by the Energy Act, applies to fuel produced and sold after September 30, 2008. Code section 45(d)(8) (as excerpted below and as in the form prior to the amendment) applies to fuel produced and sold before October 1, 2008.

(8) Refined coal production facility

"In the case of a facility that produces refined coal, the term "refined coal production facility" means a facility which is placed in service after the date of the enactment of this paragraph and before January 1, 2009.

^{ix} Code section 45(d)(11), as added by the Energy Act, applies to electricity produced and sold after Oct. 3, 2008.