

June 30, 2023

Internal Revenue Service
P.O. Box 7604
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Submitted via Regulations.gov to Docket no. IRS-2023-0025

**Re: Additional Guidance on Low-Income Communities Bonus Credit Program, IRS /
REG-110412-23**

The undersigned organizations representing environmental justice, equity, environmental, community-based, and grassroots organizations and coalitions and allied partners appreciate the opportunity to provide feedback on the Notice of Proposed Rulemaking (“NOPR”) issued by the Department of Treasury and Internal Revenue Service (hereinafter, “Treasury”) providing additional guidance on the Low-Income Communities Bonus Credit program. Treasury’s implementation of this program will directly impact whether the most disadvantaged communities benefit from this program.

I. Proposed Definitions and Requirements

A. Energy Storage Technology Installed in Connection with Solar and Wind Facility

We support Treasury’s proposed definition of “installed in connection with” for energy storage technology to be considered “eligible property” under section 48(e)(3). The proposed definition, in combination with the proposed safe harbor, is simple and clear, which should make it easier and more accessible for potential applicants to plan for incorporating storage into proposed projects. Deploying storage in low-income and disadvantaged communities helps to meet the resiliency needs of these communities, which are generally more likely to be at risk for prolonged power outages, especially in combination with severe weather and climate events and social and medical vulnerability.¹ In addition, grid-connected storage can provide further benefits, including improving frequency regulation, integration of renewables through time-shifting and capacity firming, and load management, as well as transmission and distribution deferral.

We request that Treasury clarify that the power rating of the connected energy storage technology will not be counted against a project’s allocation. The proposed Nameplate Capacity Test specifies that the nameplate capacity of the energy storage technology does not affect the assessment of that test, but that relates only to the purpose of determining whether the facility is “located in a low-income community,” “on Indian Land”, or in a particular geographic area.

¹ Do, V., McBrien, H., Flores, N.M. *et al.* Spatiotemporal distribution of power outages with climate events and social vulnerability in the USA. *Nat Commun* 14, 2470 (2023).
<https://doi.org/10.1038/s41467-023-38084-6>

B. Financial Benefits for Qualified Low-Income Residential Building Projects

We support Treasury's general approach of reserving allocations under Category 3 exclusively for applicants that would apply the financial benefits so that net energy savings are equitably passed on to building occupants. However, we recommend that Treasury adopt a baseline requirement of passing on at least 25% of net energy savings to tenants, to ensure that meaningful financial benefits are afforded to households in Category 3.

We are further concerned that building owners may face substantial difficulty in calculating the "gross financial value of the annual energy produced" as defined, considering the complexity of electricity rate structures in many jurisdictions, which may vary depending on the time of day and time of year. We suggest that Treasury consider whether utility bill statements or other approaches based on existing, accessible information can be relied upon. In addition, we recommend that Treasury provide guidance to potential applicants on existing technical assistance resources that may be able to assist affordable housing providers on calculating and reporting this data.

We also support the proposed requirement of a signed benefits sharing agreement between the building owner and tenants, but are concerned that unscrupulous landlords may furnish one-sided contracts which tenants may not have the ability to contest or negotiate. We recommend that Treasury provide further guidance on the contents of such a benefits sharing agreement, including specific required consumer protection disclosures, such as resources tenants can access to better understand or renegotiate the agreement. Treasury should also consider whether to adopt a model affidavit or agreement between building owners and tenants based on the options considered and used in California's Solar on Multifamily Affordable Housing program² or the California Public Utility Commission's San Joaquin Valley Disadvantaged Communities pilot projects.³

We strongly support Treasury's proposal that applicants follow guidance issued by the U.S. Department of Housing and Urban Development (HUD) regarding community solar credits in both sub-metered and master-metered buildings. However, Treasury must ensure that further tenant protections are provided in this program.

Renters' rights and protections should be a critical element of making allocations to building owners. The § 48(e) adder provides a significant benefit to owners of low-income housing rentals by allowing them to receive a significantly higher amount of Investment Tax Credit. While ensuring financial benefits pass to tenants is essential, and required by statute, it is

² "Affidavit Ensuring 100% Tenant Economic Benefit."

https://calsomah.org/sites/default/files/docs/Affidavit_Ensuring_Tenant_Economic_Benefit.pdf

³ Resolution E-5043 "Authorization for Pacific Gas and Electric Company, Southern California Edison Company, and Southern California Gas Company to implement a split incentives agreement for San Joaquin Valley pilot participants pursuant to Decision 18-12-015." (April 17, 2020).

<https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M333/K595/333595009.PDF>

not the only type of tenant protection necessary. To ensure this benefit for owners does not cause harm to tenants, Treasury should require that rents are not raised after the project is installed. Other Treasury programs that provide benefits to owners of low-income housing require tenant protections. For example, the Low Income Housing Tax Credit requires that tenants in low-income housing that receive the credit must pay no more than restricted rent levels for 30 years. 26 U.S.C. § 42. The federal Weatherization Assistance Program also requires tenant protections for projects receiving money from the program.

There is a significant risk of evictions or rent increases for renters if their buildings install energy facilities and then pass down those costs to renters. Many tenants are currently on the brink of displacement as at least 40% of renters are housing cost-burdened in most metro areas across the country, and these numbers are rapidly increasing.

Therefore, in addition to ensuring that tenant's bills decrease after the installation of solar, Treasury should also include the following tenant protections:

- **Rent Protection:** Tenants should not be subject to rent increases due to the installation of the solar or wind project. Restricting rent increases after installation, for the course of the life of the solar or wind facility, provides a direct benefit for tenants and is consistent with protections provided by the Low Income Housing Tax Credit.
- **Eviction Protection:** Tenants should be protected from all wrongful evictions for at least five years. Without this type of restriction, there is a risk that building owners not already subject to good-cause eviction rules will simply evict the current tenants during or after a project is installed in order to rent to new tenants at a higher rate.
- **Relocation Assistance/Right of Return:** Tenants should be provided relocation assistance if necessary to relocate during construction, and they should be guaranteed a right of return after the work is completed.
- **Sales Restriction:** The building owner should not be allowed to sell the property for at least 5 years after the solar or wind facility has been installed. Given the substantial benefit of receiving the increased tax credit amount, and to ensure the continuity of tenant protections and benefits which may not be extended by a new building owner, landlords should be prohibited from selling properties after receiving an allocation under this program.
- **Enforcement:** Treasury should ensure that strong enforcement mechanisms are in place for all tenant protections. There are existing tenant protection reporting mechanisms that HUD utilizes in regards to federal housing assistance programs, which could provide an opportunity to use existing infrastructure to support and protect tenants under this program.

In the case of master-metered buildings, we support Treasury's proposal to require the building owner to pass on savings to residents, "such as by providing certain benefits to the building residents beyond those provided prior to" the wind/solar facility being placed in service.

To ensure that residents receive meaningful benefits, in addition to the HUD guidance on passing on community solar to residents in master-metered buildings, we recommend that Treasury provide further guidance that clarifies requirements for these passed-on benefits. In particular, direct payments or other financial benefits like rent reductions should be the preferred form of such benefits.

II. Proposed Program Requirements and Structure

A. **Placed in Service Prior to Allocation Award**

We understand that Treasury must balance considerations from various stakeholders in designing the application process to ensure fairness and accessibility along with practicability; in that vein, we appreciate the proposed addition of a rolling application process following the initial application window. To ensure that potential applicants have sufficient information to make plans and secure financing, we urge Treasury to provide as much transparency as possible regarding the application process. In particular, Treasury should provide clear and timely information about the number of days the initial application window will be open, as well as expected timelines for Treasury to make decisions during the rolling application process. Periodic updates on Treasury's progress towards allocating the allocation, as well as any reserved allocations, would also be helpful information for potential applicants.

B. **Additional Selection Criteria**

Overall, we appreciate Treasury's proposal to reserve 50 percent of each facility category for applications that meet at least one of the Additional Selection Criteria, which functions to prioritize projects based on location or certain characteristics of the project's owner. In 2021, President Biden issued [Executive Order 13985](#), "Advancing Racial Equity and Support for Underserved Communities Through the Federal Government," with the goal of pursuing a comprehensive approach to advancing equity for all, including people of color and others who have been historically underserved, marginalized, and adversely affected by persistent poverty and inequality. This 50 percent reservation of facility category allocations is critical in meeting the goals laid out in E.O. 13985. Promoting equity in accordance with this E.O. requires closing the wealth gap at multiple levels, which this bonus credit program has the power to do. The requirement to equitably distribute financial benefits ensures that the benefits of clean energy get passed down to those who can benefit most. The set-asides for Tribes and affordable housing also ensure that these sectors are allowed a fair shot at delivering clean energy benefits to often overlooked populations. This 50 percent reservation of applications that meet additional selection criteria further ensures that half of the projects will go to projects that are led by emerging businesses, have diverse ownership, are community owned, or are targeted in communities that have been underserved and historically excluded from investment. Closing the wealth gap and racial wealth gap, which [Treasury has indicated a desire to do](#), requires intentional action to promote Minority, Women and Disadvantaged owned Business Enterprises (MWDBEs), community ownership of assets, and other alternative ownership models.

We urge Treasury to take additional steps to ensure that all projects that receive allocations provide direct benefits to households or the local community. While Category 3 and 4 projects are already required to provide financial benefits, projects in Category 1 or 2 may not necessarily provide direct benefits to households or the local community.

We suggest incorporating a new category of Additional Selection Criteria based on whether the project provides benefits to the local community and its members. Criteria for this “provision of benefits” category could include:

- Targeted hiring provisions, local procurement standards for MWDBEs, Community Workforce Agreements and Community Benefit Agreements;
- Provision of direct financial benefits to community members, such as energy bill savings or reduction of energy burden; and
- For Category 1 projects, actual low-income status of households who would be benefited.

1. Geographic Criteria

In particular, we support Treasury’s proposed geographic criteria inclusion of Persistent Poverty Counties and disadvantaged communities (DACs) identified by the Climate and Economic Justice Screening Tool (CEJST) as at or above the 65th percentile for low income and at or above the 90th percentile for energy cost or PM2.5 exposure. This prioritization will help focus project selection towards those communities which most need and could benefit from the type of community-scale clean energy investments the LICBC program was designed to incentivize. To further improve this prioritization and help meet Treasury’s program goals of increasing adoption of and access to renewable energy facilities in low-income and other communities with environmental justice concerns as well as providing social and economic benefits to individuals and communities that have been historically overburdened with pollution, adverse human health or environmental effects, and marginalized from economic opportunities, we recommend adding the following processes and criteria to the geographic criteria:

- DACs identified by CEJST under additional relevant burden categories, including health, legacy pollution, water and wastewater, and workforce development;
- A process for communities to be recognized as communities with environmental justice concerns based on state environmental justice screening tools, such as CalEnviroScreen; and
- A self-nomination process for communities to submit additional information to demonstrate that they are communities with environmental justice concerns which may not be captured by CEJST or other screening tools.

We also reiterate our recommendation in our November 4, 2022 Request for Information response for Treasury to provide an publicly-accessible mapping tool to identify the areas that meet the geographic criteria.

2. Ownership Criteria

While we appreciate Treasury's intent in developing the proposed ownership criteria, we are concerned that the requirements for a "qualified renewable energy company" are not closely tailored to advance Treasury's goals for the LICBC program.

Instead of a category for a "qualified renewable energy company," we respectfully suggest an alternative approach of focusing on the benefits directly provided by the proposed project, as described above.

3. Employment of Workers from Low-Income Communities

If Treasury decides to retain the qualified renewable energy companies concept with the ownership criteria, then such companies should be required to enter into Community Workforce Agreements that incorporate the following community benefits to ensure workers within low-income and disadvantaged communities benefit from the wealth building opportunities provided by the LICBC program:

- Targeted hiring provisions that specify the percentage of work hours for local, low-income, and disadvantaged workers (i.e., low-income or government benefits recipients, returning citizens, individuals experiencing homelessness, single parents, marginalized communities, or workers suffering from chronic unemployment);
- Specific apprenticeship provisions that provide for direct entry options for approved pre-apprenticeship programs, on the job training, and a specified percentage of apprentices from target demographics, i.e. low-income, disadvantaged workers;
- Local procurement standards for MWDBEs to ensure diversity and equity among contractors and subcontractors that can also lead to additional wealth building opportunities for local, low-income, and disadvantaged workers; and
- Compliance monitoring provisions that include sanctions for noncompliance to ensure the qualified renewable energy companies are accountable to the low-income, disadvantaged communities where qualified renewable energy projects are sited.

C. Documentation and Attestations to be Submitted when Placed in Service

If Treasury decides to adopt the "provision of benefits" category we have proposed above, then the submission of appropriate documentation and attestations should be required to show compliance with those criteria. This could include signed Community Workforce Agreements or Community Benefits Agreements, or attestations that targeted hiring provisions or local procurement standards are used in installing the project.

In addition, we recommend that Treasury ensure that all submitted documentation, such as the proposed spreadsheet for Category 4 facilities, adequately protect the privacy of individuals and households.

III. Additional Comments

A. Outreach, Technical Assistance, and Justice40

We reiterate the recommendations made in our RFI response regarding the need to conduct outreach and provide technical assistance, especially to community-based organizations, local governments, and other entities that represent or work with low-income and disadvantaged communities. This outreach and technical assistance must be provided with cultural competency and in languages other than English, to improve access for potential applicants and community members with Limited English Proficiency.

We further reiterate our recommendation that Treasury identify the LICBC program, along with the entire suite of energy tax credits in the Inflation Reduction Act, as a “Covered Program” under the Justice40 initiative.

B. Annual Reporting And Verification Of Benefits

In addition to the documentation and attestations proposed as part of an application to the program and when a project is placed in service, we recommend that Treasury require that applicants receiving allocations under Categories 3 and 4 report annually on benefits provided to households. This reporting requirement is intended to provide data to evaluate the program’s effectiveness in providing benefits to households, and should strike a balance between minimizing burdens on taxpayers while also providing sufficient oversight. This reporting can be combined with random audits to verify that promised bill savings are realized.

C. Clarification for Category 3 Facilities

The statutory text specifies that a facility shall be treated as “part of” a qualified low-income residential building project if “such facility is installed on a residential rental building which participates in a covered housing program.” 26 U.S.C. § 48(e)(2)(B). We request clarification that that installation on a “residential rental building” extends to the curtilage of the building, including carports, sheds, and open space on the same property.

We applaud the efforts of the Department of Treasury and Internal Revenue Service in designing and implementing the LICBC program. Thank you for considering these comments. If you have any questions, please contact Sylvia Chi at sylvia@justsolutionscollective.org.

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