



December 9, 2022

The Honorable Janet Yellen
Secretary
U.S. Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

The Honorable Douglas O'Donnell
Acting Commissioner
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224

**Re Request for Public Input on Implementing the Inflation Reduction Act's
Clean Energy Tax Incentives**

Dear Secretary Yellen and Acting Commissioner O'Donnell:

Bank of America welcomes the request for public comment from the Treasury Department ("Treasury") and the Internal Revenue Service (the "IRS") regarding implementation of the Inflation Reduction Act's¹ clean energy tax incentives. We provided comments with respect to Treasury and the IRS's initial set of notices requesting comment, released on October 5², and again appreciate the opportunity to engage with Treasury and the IRS throughout the implementation process. This letter responds to the November 3 request for comment.³

At Bank of America, we align our activities to help create economic prosperity while also addressing important societal priorities. This includes working with our clients to help shape a just transition toward the low-carbon, sustainable energy future. For many years, we have been working to reduce the environmental impact of our own business and operations. We achieved carbon neutrality in our operations in 2019 and have committed to achieving Net Zero in our financing activities, operations, and supply chain before 2050. Working with clients in every sector, we are making significant progress.

In 2021, Bank of America announced a goal of supporting our clients by mobilizing and deploying \$1.5 trillion in sustainable finance capital by 2030, of which \$1 trillion is dedicated to supporting the transition toward a low-carbon economy. In support of this goal, we engage with clients across all industry sectors and provide a comprehensive suite of financial solutions that includes lending, capital raising, advisory, investment services, and risk management. In 2021, on behalf of the work our clients are doing, we supported them with approximately \$250 billion in sustainable finance activity toward this goal, of which more than \$155 billion was for climate and environmental transition.

¹ Pub. L. No. 117-169, 136 Stat. 1818 (Aug. 16, 2022).

² Notice 2022-46, Notice 2022-47, Notice 2022-48, Notice 2022-49, Notice 2022-50, and Notice 2022-51 (Oct. 5, 2022)

³ Notice 2022-56, Notice 2022-57, and Notice 2022-58 (Nov. 3, 2022)

Since 2015, we have been a top renewable energy tax equity investor, with a portfolio of approximately \$12 billion at the end of 2021, and we continue to expand our current capabilities to support our clients in their transition to more sustainable, low-carbon business models. We are supporting clients in our asset-based lending, tax equity and placement activities across specific clean energy sub-sectors. Further, we also are developing financial solutions for clients with new and emerging clean energy technologies that will be critical to providing additional carbon reductions beyond traditional renewable energy sources. This includes many technologies addressed and supported by the Inflation Reduction Act (“IRA”), including those focused on in this set of notices.

The transition of personal and commercial vehicles from internal combustion engines to electric motors necessitates significant investments in production capabilities, charging infrastructure, and customer financing solutions. We are positioning ourselves to be a leader in electric vehicle (“EV”) lending to our retail clients through education, offers, strategic alliances and cross-product integration. We are helping to accelerate the adaption by targeting lender relationships with manufacturers and creating co-branded marketing experiences with EV manufacturers or supporting businesses. We’ve also taken steps to support our own employees as they transition to electric vehicles; as of December 31, 2021, we had 254 charging stations installed at Bank of America locations for employee use. Additionally, through our global Electric Vehicle Program, we offer a credit to employees who purchase or lease a new all-electric passenger vehicle, provided certain eligibility criteria are met.

We continue to actively seek opportunities regarding carbon capture to support our clients in hard-to-abate sectors as they transition to a low-carbon economy, which includes both sequestering captured carbon and using it in finished products such as cement and synthetic fuels. We also recognize the importance of removing anthropogenic CO₂ and seek to support direct air capture, bioenergy with carbon capture and sequestration, and biochar.

Hydrogen and fuel cells are emerging alternative technologies for the transportation industry. Bank of America is exploring ways to accelerate hydrogen deployment, at scale, and is engaging with subject matter experts to explore ways to develop and support the necessary infrastructure build-out, technological improvements and cost reductions that will be needed to fully and cost effectively commercialize hydrogen.

On November 3, Treasury and the IRS issued three notices requesting comments on various aspects of extensions and enhancements of energy tax benefits in the IRA. This set of notices follows an initial set of notices requesting comment that was released in October. The most recent notices are:

- Notice 2022-56, which requests comments related to the qualified commercial clean vehicles provisions and the alternative fuel vehicle refueling property;
- Notice 2022-57, which requests comments related to the credit for carbon capture; and
- Notice 2022-58, which requests comments related to the credit for the production of clean hydrogen and the clean fuel production credit.

Bank of America commends Treasury and the IRS for their continued commitment to providing expedited guidance. In response to the latest request for comments pursuant to Notice 2022-56 and Notice 2022-58, we make the following recommendations for guidance to clarify certain provisions of the IRA.

I. Summary

A. Guidance should provide the following clarifications with regard to the new credit for qualified commercial clean vehicles under Section 45W.⁴

- Provide guidance consistent with previously-issued guidance for the heavy-duty hybrid vehicle credit under Section 30B (Notice 2007-46) to determine whether a vehicle is “comparable in size and use” for purposes of the comparable vehicle definition in Section 45W(b)(3) to determine incremental cost, as well as the procedures and documentation that will be required to evidence compliance with these factors.
- Clarify the definition of “mobile machinery” for purposes of Section 45W(c) includes more types of vehicles than motor vehicles.
- Confirm that the requirement in Section 45W(e) that a taxpayer claiming a credit under Section 45W(a) with respect to a vehicle must provide a vehicle identification number for that vehicle, will be satisfied for mobile machinery if the taxpayer provides a serial number or other unique identifier for such mobile machinery.

B. Guidance should clarify what constitutes a “single item” of qualified alternative fuel vehicle refueling property for purposes of Section 30C(b).

C. Guidance should provide the following clarifications with regard to the new credit for the production of clean hydrogen under Section 45V.

- Clarify the standards, procedures and documentation that will be required for verification of production and sale or use of clean hydrogen for purposes of Section 45V(c)(2)(B)(2).
- Clarify whether taxpayers may use market instruments like renewable energy credits or power purchase agreements to offset the carbon intensity of the electricity used to produce clean hydrogen.
- Clarify how renewable natural gas used in the production of clean hydrogen will be treated for calculating the lifecycle greenhouse gas emissions rate.
- Address whether credits claimed by a taxpayer under Section 45V for clean hydrogen produced at a qualified clean hydrogen production facility that includes carbon

⁴ Unless otherwise indicated, all references to “Section” or “Sections” herein are to the Internal Revenue Code of 1986, as amended as of the date hereof (the “Code”), and all references to “Treasury Regulations Section” are to regulations issued by Treasury, as most recently adopted or amended as of the date hereof.

capture equipment will be subject to recapture to the extent that any carbon captured by such carbon capture equipment ceases to be captured, disposed or, or used in a manner consistent with the requirements of Section 45Q.

- Clarify what constitutes “qualified property” that is part of a specified clean hydrogen production facility for purposes of the election to treat clean hydrogen production facilities as energy property for purposes of Section 48(a).

II. Discussion

A. Qualified Commercial Clean Vehicles.

The IRA added new Section 45W, which allows a taxpayer to claim a tax credit for purchasing and placing in service a qualified commercial clean vehicle. The amount of the credit under Section 45W is the lesser of (1) 15 percent of the taxpayer’s basis in the vehicle (or 30 percent in the case of a vehicle not powered by a gasoline or diesel internal combustion engine), and (2) the incremental cost of the vehicle. Under Section 45W(b)(4), the credit is limited to \$7,500 in the case of a vehicle that has a gross vehicle weight rating of less than 14,000 pounds, and \$40,000 for all other vehicles. The definition of a “qualified commercial clean vehicle” under Section 45W(c) includes “mobile machinery.” Section 45W(e) provides that no credit is allowed under Section 45W with respect to any vehicle unless the taxpayer includes the vehicle identification number (VIN) of such vehicle on the tax return for the taxable year. Section 45W(f) grants Treasury and the IRS authority to issue regulations or other guidance to carry out the purposes of Section 45W.

Notice 2022-56 states that Treasury and the IRS plan to issue guidance under Section 45W and requests general comments on the qualified commercial clean vehicles credit as well as comments that address certain specific questions. We recommend that Treasury and the IRS provide the following clarifications with regard to the new credit for qualified commercial clean vehicles under Section 45W.

1. Comparable Vehicle

As previously noted, the amount of the credit under Section 45W is limited to the “incremental cost” of the qualified commercial clean vehicle. Section 45W(b)(2) provides that the incremental cost of any qualified commercial clean vehicle is an amount equal to the excess of the purchase price for such vehicle over the purchase price of a comparable vehicle. Section 45W(b)(3) defines “comparable vehicle” to mean any vehicle that is powered solely by a gasoline or diesel internal combustion engine and is comparable in size and use to such vehicle.

Section 3.01(1) of Notice 2022-56 asks what factors should be considered, and what data sources should be relied on, to determine whether a vehicle is “comparable in size and use” for purposes of the comparable vehicle definition in § 45W(b)(3) to determine incremental cost. We recommend that Treasury and the IRS provide clear guidance on comparable vehicles consistent with previously-issued guidance pursuant to the heavy-duty hybrid vehicle credit under Section 30B, which provided a credit for certain new qualified hybrid motor vehicles. The heavy duty hybrid motor vehicle credit was equal to a percentage of the qualified incremental hybrid cost of

the vehicle, which is the excess of the manufacturer's suggested retail price for the qualified vehicle over the manufacturer's suggested retail price for a comparable vehicle. In Notice 2007-46, the IRS allowed manufacturers to identify their comparable vehicle for purposes of the Section 30B credit. We believe that it would be appropriate for Treasury and the IRS to allow manufacturers to identify their comparable vehicles for purposes of Section 45W as well. Section 4(5) of Notice 2007-46 provided that if more than one model of vehicle is comparable in weight, size, and use to the qualified vehicle, the manufacturer of the qualified vehicle may choose a vehicle of any model that is comparable in weight, size, or use and treat that vehicle as the comparable vehicle for purposes of providing a certification under this notice.

In addition, we recommend that Treasury and the IRS issue guidance on the certification process by which manufacturers may certify compliance with the requirements of Section 45W, including the definition of a comparable vehicle, and by which purchasers may rely on such certification. Section 5 of Notice 2007-46 provided rules for when manufacturer certifications would be permitted and when purchasers would be entitled to rely on those certifications for purposes of Section 30B. We recommend that Treasury and the IRS issue certification and reliance guidance for Section 45W similar to that previously-issued guidance.

2. Mobile Machinery

Under Section 45W(c), a "qualified commercial clean vehicle" is defined to include not only motor vehicles for purposes of title II of the Clean Air Act but mobile machinery, as defined in Section 4053(8) (including vehicles that are not designed to perform a function of transporting a load over the public highways). Section 3.01(2) of Notice 2022-56 asks what, if any, guidance is required to clarify the definition of mobile machinery for the purposes of Section 45W(c). Mobile machinery is generally understood to include many more types of vehicles than motor vehicles for purposes of title II of the Clean Air Act, including forklifts and commercial lawn mowers. Accordingly, we recommend that Treasury and the IRS provide guidance clarifying precisely what constitutes mobile machinery.

3. Vehicle Identification Number

Section 45W(e) provides that no credit is permitted under Section 45W with respect to any vehicle unless the taxpayer includes the VIN of such vehicle on the tax return for the taxable year. This requirement may be easily satisfied for motor vehicles for title II of the Clean Air Act, but it may be challenging in the context of mobile machinery. Further to our prior comment recommending that Treasury and the IRS clarify that mobile machinery includes many types of vehicles other than motor vehicles for purposes of title II of the Clean Air Act, we recommend that Treasury and the IRS specify that the requirement in Section 45W(e) may be satisfied by a taxpayer providing a serial number of other unique identifier for mobile machinery that does not have a VIN.

B. Alternative Fuel Vehicle Refueling Property.

Section 30C provides a credit for the cost of qualified alternative fuel vehicle refueling property. The IRA amended Section 30C to provide that the amount of the tax credit under Section 30C for qualified alternative fuel vehicle refueling property is 30 percent (or 6 percent in

the case of property of a character subject to depreciation) of the cost of such property. The credit under Section 30C with respect to any “single item” of qualified alternative fuel vehicle refueling property placed in service after December 31, 2022, is limited to \$100,000 in the case of any such item of property of a character subject to an allowance for depreciation, and \$1,000 in any other case. Prior to the IRA amendments to Section 30C, available tax credits for qualified alternative fuel vehicle charging stations were limited to \$30,000 for all qualified property placed in service at a location. Section 3.02(2) of Notice 2022-56 asks how should “single item” be defined for purposes of Section 30(c)(b). We believe that the intent of the amendments to Section 30C to increase the limit on the credit available to a “single item” of property rather than applying the limit to all property as a location was to drive incentives for taxpayers to deploy this type of equipment. Therefore, we recommend that Treasury and the IRS define “single item” to mean each individual charger.

C. Clean Hydrogen.

The IRA introduced new Section 45V, which provides a credit for qualified clean hydrogen produced after 2022 at a qualified clean hydrogen production facility during the 10-year period beginning on the date the facility is originally placed in service. The credit under Section 45V is calculated by multiplying the applicable amount by the kilograms of qualified clean hydrogen produced based on the lifecycle greenhouse gas emissions rate that results from the production of qualified clean hydrogen. To qualify for the new credit under Section 45V, hydrogen must be produced in the United States or a United States possession, and the production and sale or use of the hydrogen by the taxpayer must be verified by an unrelated party. A taxpayer may not claim a credit under Section 45V for qualified clean hydrogen produced at any facility that includes carbon capture equipment for which a credit is allowed to any taxpayer under Section 45Q for the taxable year or any prior taxable year. Finally, the IRA also amended Section 48 relating to the energy investment tax credit to allow a taxpayer that owns a qualified clean hydrogen production facility placed in service after December 31, 2022, to make an election to claim the investment tax credit under Section 48 in lieu of the credit under Section 45V.

Notice 2022-58 states that Treasury and the IRS plan to issue guidance under Section 45V and requests general comments credit for the production of clean hydrogen as well as comments that address certain specific questions. We recommend that Treasury and the IRS provide the following clarifications with regard to the new credit for the production of clean hydrogen under Section 45V.

1. Unrelated Party Verification

Section 3.01(5) of Notice 2022-58 asks for comments on the unrelated party verification procedures. We recommend that Treasury and the IRS provide guidance defining an “unrelated party” and also provide guidance regarding the qualifications and licensing requirements, if any, for the unrelated parties, as well as the documentation and certifications, if any, that will be required to be provided by the unrelated party.

2. Renewable Energy Contracts and Virtual PPAs

Section 3.01(4)(f) of Notice 2022-58 asks if indirect book accounting factors that reduce a taxpayer's effective greenhouse gas emissions, including renewable energy credits and power purchase agreements, should be considered when calculating the credit under Section 45V. We do not express a view on whether such indirect book accounting factors should be considered in calculating the credit under Section 45V, but we recommend that Treasury and the IRS provide guidance on whether such factors may be considered, as well as the considerations such as time, location and vintage that should be included in determining the greenhouse gas emissions rate of these factors.

3. Renewable Natural Gas

We recommend that Treasury and the IRS clarify how renewable natural gas used in the production of clean hydrogen will be treated for calculating the lifecycle greenhouse gas emissions rate and specifically to clarify whether renewable natural gas will be treated differently than "traditional" natural gas.

4. Recapture

Section 45V(d)(2) provides that a taxpayer may not claim a credit under Section 45V for qualified clean hydrogen produced at any facility that includes carbon capture equipment for which a credit is allowed to any taxpayer under Section 45Q for the taxable year or any prior taxable year.

If a taxpayer elects to claim a credit under Section 45Q for capturing and utilizing carbon at a facility that produces qualified clean hydrogen and that includes carbon capture equipment, those credits under Section 45Q would be subject to recapture in certain circumstances. Section 45Q(f)(4) authorized Treasury to issue regulations providing for recapturing the benefit of any credit allowable under Section 45Q(a) with respect to any qualified carbon oxide that ceases to be captured, disposed of, or used in a manner consistent with the requirements of Section 45Q. Treasury issued such regulations in Treasury Regulations Section 1.45Q-5.

We recommend that Treasury and the IRS address whether credits claimed by a taxpayer under Section 45V for clean hydrogen produced at a qualified clean hydrogen production facility that includes carbon capture equipment will be subject to recapture to the extent that any carbon captured by such carbon capture equipment ceases to be captured, disposed or, or used in a manner consistent with the requirements of Section 45Q.

5. "Qualified Property" for Section 48(a)(15)

The IRA amended Section 48 relating to the energy investment tax credit to allow a taxpayer that owns a qualified clean hydrogen production facility placed in service after December 31, 2022, to make an election to claim the investment tax credit under Section 48 in lieu of the credit under Section 45V.

Section 3.01(6)(b)(i) of Notice 2022-58 asks what factors Treasury and the IRS should consider when providing guidance on the key definitions and procedures that will be used to administer the election to treat clean hydrogen production facilities as energy property for purposes of the credit under Section 48. We recommend that Treasury and the IRS clarify what constitutes

“qualified property” that is part of a specified clean hydrogen production facility for purposes of the election to treat clean hydrogen production facilities as energy property for purposes of Section 48(a). Specifically, we recommend that Treasury and the IRS define “qualified property” in cases where clean hydrogen production is co-located with a facility that also produces ammonia.

III. Conclusion

We thank you for the opportunity to provide comments regarding implementation of the IRA’s clean energy tax incentives and believe that clarification of the provisions discussed above will improve the ability of taxpayers to use these tax credits to increase the deployment of renewable energy production and infrastructure.

Sincerely,

/s/ James Carlisle
Senior Vice President
Public Policy Federal Government Relations
Bank of America Corporation