

Comment from Appalachian Voices

Appalachian Voices is a regional nonprofit organization focused on energy and environmental justice issues. Our coal impacts team works to address the impacts of surface coal mining in the Central Appalachian states of Tennessee, Kentucky, Virginia, and West Virginia, and our economic transition and energy justice teams work directly in Appalachian communities to support a just transition in fossil-fuel impacted areas and to reduce energy burdens for low-income people.

Our organization is uniquely positioned to help inform and guide implementation of the Energy Communities tax credit bonus and low-income programs. We have worked extensively with communities and partners to identify places where reclamation of legacy coal mines could yield transformative economic impacts for the surrounding communities. We develop these ideas into viable project concepts and help local partners secure funding to implement innovative projects. Furthermore, our Norton, Virginia staff have worked in Southwest Virginia for seven years with the Solar Workgroup of Southwest Virginia to establish a solar industry hub in the coalfield region of Virginia, successfully establishing the first Central Appalachian SolSmart communities, helping to launch a new solar company based in the region, and helping to establish the first solar project on a former mine site in the state. Lastly, our Executive Director, Tom Cormons, is a member of the White House Environmental Justice Advisory Council (WHEJAC). Mr. Cormons' participation in the WHEJAC has given our organization a thorough understanding of the goals of the administration's environmental justice initiatives.

We appreciate the opportunity to provide input to the Treasury Development and welcome future opportunities to collaborate in order to maximize the benefits of clean energy tax incentives to disadvantaged communities. Please see attached for our organizational comments.



Appalachian Voices

Protecting the Central and Southern Appalachian Mountain Region

Internal Revenue Service
CC:PA:LPD:PR (Notice 2022-51)
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Re: Comments in Response to Notices 2022-51 and 2022-49

Appalachian Voices is a regional nonprofit organization focused on energy and environmental justice issues. Our coal impacts team works to address the impacts of surface coal mining in the Central Appalachian states of Tennessee, Kentucky, Virginia, and West Virginia, and our economic transition and energy justice teams work directly in Appalachian communities to support a just transition in fossil-fuel impacted areas and to reduce energy burdens for low-income people.

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Prevailing Wage, Apprenticeship, Domestic Content, and Energy Communities Requirements Under the Act Commonly Known as the Inflation Reduction Act of 2022 (Notice 2022-51)

Energy Communities

(1) Section 45(b)(11)(A) provides an increased credit amount for a qualified facility located in an energy community. What further clarifications are needed regarding the term “located in” for this purpose, including any relevant timing considerations for determining whether a qualified facility is located in an energy community? Should a rule similar to the rule in § 1397C(f) (Enterprise Zones rule regarding the treatment of businesses straddling census tract lines), the rules in 26 C.F.R. §§ 1.1400Z2(d)-1 and 1.1400Z2(d)-2, or other frameworks apply in making this determination?

We recommend a broad interpretation of the definition of “energy communities” to be inclusive of as many impacted communities as possible. Where projects straddle census tract lines, if either census tract is eligible, the project should be eligible for the bonus. The benefits of clean energy development do not stop at the boundaries of a census tract, and neither do the negative impacts of a closed power plant or coal mine. As coal-fired power units and coal mines close, local governments often lose significant tax revenue, putting everything from schools to water treatment facilities in danger of being severely underfunded. Clean energy projects constructed at the boundaries of communities grappling with the decline of fossil fuel economies will benefit from the jobs, direct and indirect economic benefits, and tax revenue associated with those projects. New investments in energy communities can help replace lost tax revenue, jobs, and other economic activity. When determining whether a facility is “located in” an energy community, the Treasury Department should consider the local government entities most affected by revenue losses, and ensure its education and outreach efforts encourage investments in these areas.

Broadly, the Treasury Department should provide both an online map of areas/census tracts eligible for the bonus tax credit (i.e., an Eligibility Map), as well as a clear eligibility guidance document describing the different criteria that make a site or community eligible for the bonus tax credit. The guidance document should be distributed to eligible energy communities and clean energy companies and be available online, and the map should be updated quarterly.

Furthermore, because the eligibility status of a community may change over time as additional mines and plants close and new brownfields are added to the EPA's database, the Treasury Department should also set forth a process by which state, tribal, and local government entities, clean energy companies, and other community members can request to add areas to be included as eligible energy communities. This process should be communicated to state and local governments, nonprofits, and community organizations, as well as clean energy companies.

(2) Does the determination of a brownfield site (as defined in subparagraphs (A), (B), and (D)(ii)(III) of § 101(39) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601(39))) need further clarification? If so, what should be clarified?

The legal definition of "brownfield" is likely inaccessible to most members of the general public and will need clarification, which should be provided in the proposed eligibility guidance documents. The Treasury Department's Eligibility Map should clearly identify eligible brownfield sites as well as a clear process by which clean energy developers, localities, and other members of the public can request to add brownfield sites to the Eligibility Map. This is especially important for brownfield sites because databases of brownfield sites are incomplete – many brownfield sites are not listed publicly. The Treasury Department should also work with local and regional government entities to provide them with information about the bonus tax credit availability and how they can add eligible brownfield sites to the tax credit Eligibility Map. For brownfields specifically, this process should go through state and tribal governments responsible for brownfield remediation.

Often, the boundaries of a brownfield site are not precise. In order to support clean energy industry development in areas experiencing industrial decline, clean energy projects located on or adjacent to a brownfield site should be eligible for the "energy communities" tax credit bonus. The Treasury Department's outreach materials and efforts should be coordinated with the EPA and state environmental protection agencies so project applicants accessing brownfields funding from state and federal agencies are aware of the clean energy tax credits incentives and can incorporate clean energy projects into their plans.

We recommend providing clarity regarding whether sites fully remediated and redeveloped under the brownfields program prior to the passage of the IRA would be considered an eligible "brownfield site" in this definition of "energy communities." Specifically, the Treasury Department must clarify whether any site that has been remediated under the Brownfields program prior to the passage of the IRA will qualify for the bonus. If so, these sites must be incorporated into the Eligibility Map.

(3) Which source or sources of information should the Treasury Department and the IRS consider in determining a “metropolitan statistical area” (MSA) and “nonmetropolitan statistical area” (non-MSA) under § 45(b)(11)(B)(ii)? Which source or sources of information should be used in determining whether an MSA or non-MSA meets the threshold of 0.17 percent or greater direct employment related to the extraction, processing, transport, or storage of coal, oil, or natural gas, and an unemployment rate at or above the national average unemployment rate for the previous year? What industries or occupations should be considered under the definition of “direct employment” for purposes of this section?

We request clarification in the guidance regarding whether the 0.17 percent threshold will be calculated using the cumulative number of employees of the listed industries and fuel sources, or whether the 0.17 percent must be within one industry (e.g., coal *or* natural gas). We recommend that the guidance allow for the 0.17 percent threshold to include multiple fossil-fuel-based industries in order to include communities that are dependent on multiple fossil fuel industries.

(4) Which source or sources of information should the Treasury Department and the IRS consider in determining census tracts that had a coal mine closed after December 31, 1999, or had a coal-fired electric generating unit retired after December 31, 2009, under § 45(b)(11)(B)(iii)? How should the closure of a coal mine or the retirement of a coal-fired electric generating unit be defined under § 45(b)(11)(B)(iii)?

The Mine Safety and Health Administration (MSHA) is the most comprehensive source of information regarding the closure status of coal mines. MSHA classifies mines as either Active, Abandoned, Abandoned/Sealed, Intermittent, New Mine, Non-Producing Active, or Temporarily Idle. We recommend that the Treasury define eligibility to include census tracts with any mine that has been classified as either “abandoned” or “abandoned/sealed” since December 31, 1999, and/or any mine currently classified as “temporarily idled.” Communities with such mines are experiencing job losses and loss of tax revenue, and often such mines do not restart production; “Temporarily Idle” is often simply a step before a coal mine becomes “Abandoned.” Furthermore, some mines classified as “non-producing” may only have reclamation activities taking place and will not produce coal again in the future. Others may be classified as “non-producing” because the mine is active but has not yet begun producing coal. We suspect that, in most cases, other closed mines within census tracts will convey eligibility; however, given the ambiguity of the “non-producing” status, we suggest allowing state and local government entities and other stakeholders to request that census tracts be added as eligible energy communities based on other sources of mine production data. Such data sources could include information from state regulatory agencies or the Office of Surface Mining Reclamation and Enforcement.

The Treasury Department's Eligibility Map should be updated quarterly after MSHA reports are updated to ensure that any new mine abandonments are captured in the map.

For defining "closure," coal-fired electric generating units face similar issues to coal mines. Many plants cease operations or begin the closure process years before finally closing. It may be of little benefit to the power plant workers and surrounding community to start planning and developing clean energy projects only after a coal plant has closed or fully decommissioned. Development should begin as soon as closure is a certainty.

For power plants, once the decision is firmly made to close a coal plant, the surrounding census tract should be eligible for the tax credit bonus. Eligibility should therefore apply once a coal-fired generating unit is listed by the EIA as retiring within two years. This advanced support is necessary because community transition support should start before the plant is closed and taxes (or Payments In Lieu of Taxes) and jobs are lost.

Furthermore, because clean energy project development can take multiple years of planning, permitting, and development, we encourage the Department to adopt a "once eligible, always eligible" policy regarding energy communities. In other words, once a census tract becomes eligible, it should remain eligible indefinitely regardless of any change to mine status to avoid confusion and complications with clean energy project development.

(5) For each of the three categories of energy communities allowed under § 45(b)(11)(B), what past or possible future changes in the definition, scope, boundary, or status of a "brownfield site" under § 45(b)(11)(B)(i), a "metropolitan statistical area or non-metropolitan statistical area" under § 45(b)(11)(B)(ii), or a "census tract" under § 45(b)(11)(B)(iii) should be considered, and why?

As stated above, clean energy projects located on or adjacent to a brownfield site should be eligible for the tax credit bonus for the life of the tax credit, and full remediation of that site should not result in a site no longer being considered a "brownfield," and therefore no longer eligible as an "energy community." Doing so would not only result in uncertainty that would prevent investment, but could also have the unintended consequence of discouraging the remediation of brownfield sites, as the potential loss of the tax credit bonus could result in job losses.

Furthermore, it is critical that any future changes or adjustments made to the boundaries of a metropolitan statistical area, non-metropolitan statistical area, or census tract do not revoke eligibility for any areas initially eligible for a tax credit bonus. Clean energy investors should also have certainty that no changes will be made in future years to make initially eligible areas

ineligible. Projects take years to plan, and many will rely on the tax incentives in the IRA. Any doubts about future eligibility would discourage investments in hard-hit energy communities.

(6) Under § 45(b)(11)(B)(ii)(I), what should the Treasury Department and the IRS consider in determining whether a metropolitan statistical area or non-metropolitan statistical area has or had 25 percent or greater local tax revenues related to the extraction, processing, transport, or storage of coal, oil, or natural gas? What sources of information should be used in making this determination? What tax revenues (for example, municipal, county, special district) should be considered under this section? What, if any, consideration should be given to the unavailability of consistent public data for some of these types of taxes?

(7) Please provide comments on any other topics relating to the energy community requirement that may require guidance.

Clarity, outreach, communication, and collaboration across agencies will be key to ensuring these tax incentives reach energy communities and maximize benefits.

As stated above, in order to maximize the benefits of the energy tax credit bonuses and the number of communities benefiting from the clean energy transition, the Treasury Department should publish an Eligibility Map with the ability to search for specific census tracts so that eligible entities and clean energy companies know which areas qualify as energy communities. In order for the tax credit bonus to spur investments in energy communities, any entity investing in clean energy will need to have certainty that their project is eligible. Because many of the available databases are incomplete, and because the eligibility status of a community may change over time, the Treasury Department should also set forth a process by which state and local government entities, clean energy companies, and other community members can request to add areas to be included as eligible energy communities.

We recommend the Treasury also establish a hotline and question-and-answer resources to guide applicants and relevant stakeholders regarding eligibility. Lastly, the Treasury Department should collaborate with the Department of Energy and the Interstate Agency on Coal and Power Plant Communities to ensure that eligible and potentially eligible communities are aware of the bonus tax credit availability and the process by which they can request to add their communities to the eligibility map. This outreach should include:

- Targeted communications to:
 - local and national tax preparation firms and agencies
 - municipal tax departments
 - chambers of commerce
 - SEIA state/regional chapters
 - USDA extension agencies

- Government and quasi-governmental economic development entities
- Public webinars
- Summary fact sheets
- Website mapping tool
- Social media
- Radio and TV promotions

Certain Energy Generation Incentives (Notice 2022-49)

Low-Income Program

(1) Sections 48(e)(4)(A) and 48E(h)(4)(A) require the Secretary to establish a program to allocate amounts of environmental justice capacity limitation to applicable facilities. In establishing such program, the Secretary must provide procedures to allow for an efficient allocation process.

(a) What should the Treasury Department and the IRS consider in providing guidance regarding the application process for taxpayers seeking an allocation of the environmental justice capacity limitation?

(b) How can the application procedures and application process be made accessible to taxpayers?

(c) How can the process incorporate community input, engagement, and benefit for projects seeking an allocation of the environmental justice capacity limitation?

Application Process

We recommend a simplified, one-step application process via an online portal. Because many low-income communities lack reliable internet access, Treasury should also ensure that printable applications and program materials are made available for use by eligible applicants.

Furthermore, we recommend that the Department of Treasury consult with the Department of Energy, non-profit organizations, and community-based groups that have developed or pursued community solar projects, as these entities have direct experience with the many obstacles that such projects face and will be able to provide helpful insights on how the burden of application can be minimized.

The Department should ensure a transparent project application queue. Project applicants should be able to see online or call the Department to verify their position in the application queue.

Award Transparency

Information on the locations of projects that have been awarded allocations and remaining available capacity should also be available online and updated regularly. The Department should

also provide periodic updates on the progress of allocating the annual capacity limitation and on the locations of projects that have been awarded allocations to help ensure geographic diversity.

Application Support

We also recommend that the Department develop resources such as a hotline and question-and-answer resources to help applicants navigate the application and claim processes.

To ensure that the low-income solar and wind program is accessible to taxpayers seeking an allocation and transparent to local community members, the Treasury Department should provide a publicly-accessible map (Eligibility Map) on the most recent and reliable available data identifying which communities qualify as “low-income.” In addition, the Department should provide a self-nomination mechanism for communities and organizations to present supplemental information to demonstrate that additional communities should also qualify as low-income.

The Treasury Department should conduct focused and targeted outreach to local governments and nonprofit and community development organizations working with or serving disadvantaged communities to provide education on the availability of the low-income adder program, as well as technical assistance to help ensure that such entities are able to apply for allocations with proposed projects that maximize equity benefits.

Eligibility

We encourage the Department to take a “Once verified, always verified approach” to certifying the eligibility of income-qualified participants. This would mean not requiring any previously verified participant in a qualifying project to re-certify their income eligibility. The program’s priority goal should be to provide meaningful energy savings to participants, helping to improve their overall financial circumstances. Progress toward that goal should not disqualify anyone from continued participation in a qualified project, and projects that help to lift many participants above the income criteria should not be penalized for doing so.

Environmental justice communities should always have an opportunity to provide meaningful input that is taken into account in the design of projects sited within their communities. Thus, in allocating amounts of the environmental justice capacity limitation, the Treasury Department should require applicants to include information about outreach activities, community input solicited and incorporated, and ongoing community engagement and outreach throughout the project’s duration. In the selection process, projects where community input is demonstrably integrated into the project design should be prioritized.

(5) Is guidance needed to clarify the meaning of the term “financial benefit”?

We recommend the Treasury to define and interpret the term “financial benefit” broadly. Projects benefiting low-income households face significant obstacles in development, state policies can limit how low-income households can benefit from clean energy projects, and low-income households can benefit from clean energy projects in a variety of ways. A broad definition of “financial benefits” will support multiple uses that deliver real benefits to communities beyond electricity savings, especially in states with more limiting clean energy policies. That means that more projects will be able to take advantage of these adders in ways that serve their communities.

Lastly, financial benefits should be calculated on an annual basis. Doing so reduces the impact of seasonal fluctuations in solar production, electricity consumption, and bill credit amounts.

(6) What is a financial benefit of the electricity produced by an applicable facility other than electricity acquired at a below-market rate for occupants of low-income residential building projects and low-income economic benefit projects?

In existing low-income solar programs across the country, projects have delivered financial benefits in the form of prepaid cash cards, rent reductions, energy efficiency investments, and new building amenities in multi-family housing like playgrounds and laundry facilities. Allowing this kind of flexibility can be an important way to encourage innovation in the market.

We suggest requiring a higher standard of proof for projects seeking to provide financial benefit through an alternative means in order to discourage potential bad actors from taking advantage of this flexibility. Such proof may be quite specific to the nature of the stated benefit and require program staff to identify these proof methods on a per-project basis.

(8) Please provide comments on any other topics relating to the environmental justice capacity limitation under §§ 48(e) and 48E(h) that may require guidance

In general, we encourage the Treasury to provide more opportunities for feedback from environmental justice communities and nonprofits. The questions in these RFIs are technical and inaccessible. It was difficult for our organization, with paid staff experienced working at the federal level, to make contact with officials at Treasury, and we are aware that Treasury convened listening sessions with industry professionals, but these were not open sessions.

Targeted outreach should ensure that the voices of environmental justice communities, from both community-based organizations and individuals, are included and prioritized in the eventual guidance that the Department issues. Outreach should include opportunities for broad community input, like virtual listening sessions, additional opportunities to provide public comment, intentional conversations with community leaders, and existing community tables for additional outreach suggestions. The Department should also consult with the White House Environmental

Justice Advisory Council (“WHEJAC”), the Environmental Protection Agency’s National Environmental Justice Advisory Council (“NEJAC”), and its newly formed Advisory Committee on Racial Equity.

The Treasury Department should take proactive steps to improve the transparency and accessibility of the tax incentives. We recommend the following:

- *Multiple Languages*: Disseminate information about the tax incentives in multiple languages to ensure that taxpayers with limited English proficiency can obtain relevant information.
- *Non-Profit/Low-Income Household Hotline*: The Treasury Department should develop a program by which non-profits and low-income households can receive assistance related to questions about the applicability of certain tax incentives. This could have a web-interface similar to the Interactive Tax Assistant along with a direct phone number that taxpayers can call to reach someone who can help answer relevant questions. This assistance should be provided in multiple languages.
- *Detailed Questions-and-Answers Documents*: The IRS should publish a detailed questions-and-answers resource that provides clear answers and guidance for common questions that arise.
- *Technical Assistance for Low-Income Households, Nonprofits, Local Governments, and Community Groups*: The Treasury Department should coordinate with other federal agencies to provide technical assistance to nonprofits and local governments that qualify for direct pay of certain tax credits to help them understand how they can use them.

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Thank you for your consideration of these comments.

Regards,

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