Internal Revenue Service
United States Department of the Treasury
Ben Franklin Station
P.O. Box 7604, Room 5203
Washington, D.C., 20044

November 4, 2022

Re: Implementing the Clean Energy Tax Incentives in the Inflation Reduction Act — Responding to Treasury Department and Internal Revenue Service Notices 2022-46 through 2022-51

Dear Secretary Yellen, Commissioner Rettig and Deputy Commissioner O'Donnell:

On behalf of Evergreen Collaborative, I write to offer the following comments on the implementation of the Inflation Reduction Act's (IRA) Clean Energy Tax Incentives. We appreciate the opportunity to provide feedback on the Treasury Department's and Internal Revenue Service's Requests for Information. Evergreen is a climate policy organization focused on advancing an ambitious, actionable policy roadmap for an all-out mobilization to defeat climate change and to create millions of jobs building a thriving, just, and inclusive clean energy future.

As you know, clean energy tax credits represent the bulk of the IRA's investments to combat climate change. These historic credits – for clean electricity, clean transportation, manufacturing and industry, buildings, energy storage and more – will help put us on the path to reach President Joe Biden's goal of reducing domestic climate pollution 50-52% by 2030, cut energy costs for American consumers, enhance our energy security, create new good-paying jobs for our workers, and reduce the fossil fuel pollution that poisons our communities. The tax credits and credit enhancements related to clean electricity generation and energy storage, in particular, are vitally important to advancing President Biden's vital goal of 80% clean power by 2030 and 100% carbon-free electricity by 2035.

All of this means that the Treasury Department (Treasury) and Internal Revenue Service (IRS) have an outsize role to play in implementing the majority of the IRA's climate investments and thus determining whether we reach the IRA's full climate, jobs and justice potential. We look forward to collaborating with you on the implementation of these historic credits in the months and years ahead.

Below Evergreen provides comments in response to Treasury and IRS Notices 2022-46 through 2022-51, regarding implementation of the IRA's Clean Energy Tax Incentives.

Response to Energy Generation (Notice 2022-49):

In a separate letter, Evergreen joined other climate and environmental groups in recommending several overarching principles that Treasury and IRS consider in issuing guidance under this section, including: the importance of speed in issuing guidance but not at the expense of clarity, comprehensiveness, or accessibility; the use of clear and accessible language; the upholding of environmental integrity and the establishment of emissions safeguards; the prioritization of equity and justice; and a focus on the creation of high quality jobs connected to training pathways.

In addition, Evergreen makes several recommendations in response to this RFI regarding implementation of specific energy generation incentives: First, Treasury and IRS should firmly clarify that eligible projects can elect to claim either the clean electricity investment credit (ITC) or the clean electricity production credit (PTC). Guidance should also be issued providing definitions of several terms, including a definition of "interconnection property" that includes any network upgrades that the taxpayer must pay for and are required in the interconnection study, and technologies that add to or modify existing grid systems to ensure their reliable operation. Clear definitions of this and other terms are essential for projects to determine with certainty whether they are eligible for these credits and what specific investments would qualify.

Furthermore, Treasury and IRS should also issue guidance related to hybrid projects that contain both energy generation and energy storage components. Treasury and IRS should clarify that a single wind or solar project can elect to claim the PTC for the energy generation components while electing to claim the ITC for connected energy storage elements. A large percentage of renewable energy projects in development today contain both generation and storage components. Indeed, the co-location of increasing numbers of new clean generation and storage technologies, both incentivized in the IRA, provides a benefit to the reliability and pollution footprint of the U.S. electricity grid that fulfills important policy goals intended by this legislation. Neglecting to clarify this stackability would create unnecessary uncertainty.

Importantly, Treasury and IRS should also conduct a full lifecycle assessment of greenhouse gas emissions when determining eligibility for the Clean Electricity ITC and PTC that begin in 2025. Without adequately considering upstream and downstream emissions, some technologies that would actually contribute to climate change might paradoxically be considered eligible for clean electricity credits as net-zero emissions technologies. These polluting technologies that should be deemed

ineligible for clean electricity tax credits include generation from natural gas, hydrogen, and biomass. Regarding natural gas (or "fossil gas" or "methane gas"), Treasury and IRS should consider upstream methane leaks associated with gas production and transport. These leaks of methane, a highly potent greenhouse gas, should disqualify all gas plants from the PTC and ITC (including gas plants with full carbon capture). Regarding biomass energy, Treasury and IRS should consider all upstream emissions related to logging, transport, processing, drying, and land-use changes. These emissions make clear that biomass (including forest biomass) plants are ineligible as zero-emissions resources, even with full carbon capture on plant smokestacks. Even after considering the potential for forest regrowth down the line, carbon emissions from combustion will remain in the atmosphere for decades — incompatible with the relatively short time frame to cut emissions — and upstream emissions from logging, transport, processing, and drying cannot be abated by regrowth. For these reasons, Treasury and IRS should state that biomass power generation is ineligible for the PTC and ITC.

Similarly, the full lifecycle emissions of plants that burn hydrogen should be very carefully considered before qualifying them as eligible. Hydrogen plants that burn "gray hydrogen" (produced using methane gas) are likely ineligible because of their upstream fossil fuel combustion and supply chain emissions from fossil fuel extraction and methane leaks. Those that burn "blue hydrogen" (produced using methane gas with carbon capture) are likely ineligible because of the likelihood of methane leaks and other emissions from natural gas production and transport. Even plants claiming to burn "green hydrogen" (produced using electrolysis from electricity) should be ineligible unless the electricity used to create the hydrogen has been verified to come from 24/7 carbon-free electricity, as such a projects use of considerable electricity from the grid would create emissions from additional combustion at fossil fuel power plants. These scope 2 emissions are vital to consider — otherwise these clean electricity tax credits might actually *increase* U.S. carbon emissions and undermine the integrity of the program and the impact of the IRA. Treasury and IRS should set out very clear guidelines for hydrogen to ensure such power is in fact zero-emitting.

Furthermore, and very importantly, Treasury and IRS should prohibit the PTC from being claimed in any project that produces electricity from hydrogen that was produced in a project claiming the Hydrogen Production Tax Credit (45V). This could result in "credit cycling," wherein clean hydrogen receives the 45V credit and is then used to produce electricity, benefitting from the PTC, which is then again used for the production of clean hydrogen and benefits from 45V.

Regarding the credit enhancement provided for projects in low-income communities or serving affordable housing and qualified low-income economic development projects (the "Environmental Justice (EJ) Capacity Limitation"), Evergreen has separately submitted more-detailed comments jointly with Earthjustice. Guidance for this provision should be very straightforward for the taxpayer, and Treasury and IRS should include clear definitions for each of the categories where a renewable energy project can benefit from an increased EJ Capacity Limitation tax enhancement.

Furthermore, the Secretary should provide further guidance on what constitutes a financial benefit under Section 48(e)(2)(D). For low-income economic benefit projects, direct benefits such as bill savings may be the most straightforward manner to define the term financial benefit, though for affordable housing and community projects tenants may not receive direct financial benefits due to the structure of the tenant/landlord utility agreement. In the case of building and community scale projects, indirect financial benefits such as solar subscriptions, rent stabilization or otherwise should be considered as long as they will be specifically felt by the benefitting community. It is critically important that to the greatest extent possible, the burden falls on the taxpayer rather than the beneficiary to prove eligibility for financial benefits. We also recommend that Treasury and IRS work with the Departments of Energy (DOE) and Housing & Urban Development (HUD) to develop a project dashboard to categorize or map where approved projects will be located.

Finally, Congress was very clear in its intentions in the IRA in providing credit enhancements for projects that met a variety of policy goals – including investments in Energy Communities and Environmental Justice Communities, the taxpayer's payment of Prevailing Wages and utilization of Registered Apprentices, and use of Domestic Content in a project. And, that these policy goals are each and all important. Therefore, we recommend in the strongest terms that forthcoming guidance from Treasury and IRS should make clear that these tax credits and related enhancements (discussed in Notice 2022-51) are "stackable" and can all be applied to the same eligible project, other than where Congress has expressly said otherwise.

Response to Credit Enhancements (Notice 2022-51):

Energy Communities:

In the Inflation Reduction Act, Congress provides tax credit enhancements with the specific goal to induce clean energy and economic investment in "Energy Communities," that have historically relied upon fossil fuel infrastructure, employment and tax revenue. The IRA broadly sets out three different ways of defining these Energy Communities: 1) a Census Tract, or immediately adjacent tract, wherein a coal mine has closed after 1999 or a coal-fired power plant has closed after

2009; 2) a Brownfield site, as defined under the federal Comprehensive Environmental Response, Compensation, and Liability Act, and in particular including mine-scarred land; and 3) a metropolitan statistical area or non-metropolitan statistical area that has since 2009 has had 0.17% or more of its employment, or 25% of more of its local tax revenues, related to fossil fuel industries, and that has an employment rate above the national average the year prior to the one that determines project eligibility. These definitions are broad — an indication that Congress intends for this credit enhancement to reach a significant number of Energy Communities. It is now incumbent upon Treasury and IRS to issue guidance that will provide taxpayers — potential investors in these Energy Communities — with certainty and clarity to ensure these public policy goals are materialized.

Forthcoming federal guidance should provide clear definitions of these community-defining terms, and, where possible, should identify them in proactive rulemaking and publicly-available maps or dashboards. We recommend that Treasury and IRS work in collaboration with the Department of Energy (DOE) and the Environmental Protection Agency (EPA) to identify and produce data that will help taxpayers identify Energy Communities as such. Some inputs needed to prove Energy Community eligibility are difficult to source, like local tax revenues which are not always systematically collected or aggregated by local governments for different industry sectors. Other existing data sets that attempt to identify these areas show different results, so official data produced in collaboration between these agencies will provide certainty and clarity for developers. We believe that a rule similar to the rule in § 1397C(f) Enterprise Zones Rule would be appropriate for helping to determine whether a project is located in an Energy Community.

Also, very importantly, these community circumstances are subject to change, such as when a remediation of a Brownfield site is completed, or when federal, state or local lawmakers redraw the boundaries of a Census tract or Metropolitan Statistical Area. These changing circumstances could discourage investment if they threaten to affect a project's eligibility for this credit enhancement during its eligible use life. Therefore, federal guidance should make clear that an energy property that benefits from this credit enhancement will continue to qualify for this enhancement throughout the project operation or the availability of said enhancement in federal law, whichever concludes first. In addition, in following Congress' legislative intent to provide tax incentive for the costs of interconnection, under this section of the IRA, the project should receive the credit enhancement amount if the point of grid interconnection for a project is located in a qualifying Energy Community.

Prevailing Wage and Apprenticeship Standards:

The Inflation Reduction Act also seeks to incentivize new clean energy projects that meet high-road labor standards – specifically, that the taxpayer pay prevailing wages and utilize registered apprentices in the construction of the project. These two standards will help ensure that the clean energy infrastructure resulting from this legislation will support good jobs attached to training pipelines, which are foundational to delivering on Congress' intent and President Biden's vision for a just and inclusive clean energy economy. Similar policies also have a foundation in proven public policy models pioneered by states — as in the Washington State Clean Energy Transformation Act of 2019. We encourage Treasury and IRS to pursue their implementation in both the spirit and letter of the law.

To start, Treasury, IRS, and the Department of Labor (DOL) should establish an official collaboration so that the former can take advantage of DOL's expertise, technical assistance structures (like in the Good Jobs Initiative), and data on prevailing wages and apprenticeships. Tools should be in place to ensure that the taxpayer is fulfilling the necessary labor requirements as well – for instance, taxpayers should have to show appropriate documents (such as a filed return) to certify that they are in compliance.

Clarity is very important, for the taxpayer as well as for workers, to ensure the goals of this credit are met, and should be provided in forthcoming guidance. For example, on the taxpayer's responsibilities once their request has been received and acknowledged by a registered apprenticeship program. Treasury and IRS should also coordinate with DOL's Office of Apprenticeship and State Apprenticeship Agencies so that growth of apprenticeship programs that is intended and likely to occur as a result of IRA implementation does not compromise on program quality or Equal Employment Opportunity requirements. Good faith communication is also necessary of the taxpayer, such as advance communication to the department regarding the location and nature of the project, which the department should then make publicly available.

Enforcement of these standards is also of utmost importance, and will similarly benefit from a partnership with DOL. Investigations should be initiated by the Secretary as soon as a complaint is filed. With a commitment to stringent enforcement of penalties – increasing for those who commit repeated violations or intentional disregard.

Response to Credit Monetization (Notice 2022-50):

In the Inflation Reduction Act, Congress also intends for widespread accessibility and utilization of clean energy tax credits, with the use of Elective Payment of Applicable Credits ("Direct Pay") and Transfer of Certain Credits ("Transferability"). These should receive prioritized attention from Treasury and IRS in implementation.

Regarding Direct Pay, clear and simple guidance is required from Treasury and IRS for eligible local government and nonprofit entities who can now claim elective payment towards costs of an eligible project, but who do not usually interact with IRS. Treasury and IRS should take every step necessary to streamline the Direct Pay application process, and work with DOE to offer technical assistance so that nonprofit municipalities that are serving low income households and environmental justice communities understand the direct pay option and can effectively use it. Treasury and IRS should include resources like sample filing templates and filing guidance. Because there are different fiscal years and budgeting processes across state and local government entities, Treasury and IRS should offer as much flexibility in timing as possible and multiple filing periods per year for local governments.

Treasury and IRS should also clarify that forming a partnership with a for-profit entity should not inhibit an applicable entity from making an election under 6417(a). There is precedent for this – nonprofit eligible entities can take advantage of other various tax incentives (like real estate tax exemptions) when they've formed a partnership with an eligible for-profit entity. Furthermore, Treasury and IRS should also address the situation in which an eligible entity makes an election to be treated as a taxable entity under IRC 168(h)(6). This shouldn't impede them from being able to make an election under 6417(a).

Response to Incentives for Homes/Buildings (Notice 2022-48):

The Inflation Reduction Act includes unprecedented investments in residential and commercial buildings efficiency and electrification. These incentives will be foundational to delivering on this administration's bold clean buildings agenda, and will be a key demand-side tool for delivering on our carbon reduction goals, as the buildings sector accounts for 13% of U.S. greenhouse gas emissions, directly, and 30% once emissions from related electricity consumption are taken into account. By encouraging building electrification and energy conservation, these credits will help families access upgrades and improvements to their homes that will lower greenhouse gas emissions, save them money on their utility bills, and reduce air pollution and related adverse health impacts, with cleaner appliances.

Across all IRA buildings credits, Treasury and IRS should be straightforward and clear in their guidance so that homeowners, renters and other beneficiaries can easily understand and apply for the benefits available to them. This includes clear and non-technical definitions of eligible technologies and improvements, rating and certification systems, and other definitions.

It is also incredibly important that Treasury and IRS are very clear about the stackability of these credits – guidance must clarify that key buildings tax credits, like 25C can be used concurrently (i.e. “stacked”) with other rebate programs in the IRA, like incentives through the High-Efficiency Electric Home Rebate Program and HOMES energy efficiency rebate program that will be administered by the DOE and State Energy Offices. This will maximize each of these programs’ cost-cutting, pollution-reducing and equity-supporting impacts. It's also important that the various building energy tax credits in the IRA (e.g. 25C, 25D, 45L, and 179D) can stack on top of each other, where applicable.

Furthermore, guidance should also make explicit that these credits are available to renters, and that renters will be treated equally to homeowners in the application process. Renters are important to define as eligible for these credits because they often have a relatively higher energy burden, live in poor infrastructure, and lack AC/heating. Treasury and the IRS should also make every effort to reach out to communities and both educate and receive feedback on the performance of these incentives.

Energy Efficient Home Improvement Credit (25C)

Treasury and IRS guidance should especially clarify 1) that the rebate and tax credit are stackable and 2) the annual credit limit for heat pump projects.

We strongly recommend that Treasury and IRS clarify that the 25C credit can stack with federal, state, local, rebates and incentives. In particular, it should be able to stack with existing programs like the HOMES energy efficiency rebate program and the High-Efficiency Electric Home Rebate Program. This incentive was designed to build upon, not be a replacement for, existing state, local, utility and other available incentives.

Treasury and IRS must also clarify that the maximum incentive level for heat pumps or heat pump water heaters increases to $3,200 annually. This is the total between the $1,200 limit generally and the incentive for heat pump products at $2,000. Building electrification often comes with rewiring costs, in addition to the costs of electric appliances. It also pairs well with weatherization – the taxpayer will pay more

if they do two separate rounds of upgrades rather than doing something like insulation and replacing heat pumps together.

Residential Energy Efficient Property Credit (25D)

Treasury and IRS should also clarify that the 25D Residential Clean Energy Credit, which has been historically used for homeowners' rooftop solar installations, is also eligible to be used for the cost of community solar subscriptions. Community solar projects operate in a wide variety of ways. Guidance is needed to make clear the types of community solar programs that section 25D covers and any applicable limitations.

Energy Efficient Commercial Building Deduction (179D)

The extended 179D credit will help commercial building owners invest in electrification and other energy-efficiency improvements. This will reward architecture, engineering and construction companies for their work to decarbonize buildings. Guidance is needed to further clarify how tenants and building owners purchasing equipment for a specific tenant in a multi-tenant building can take advantage of this credit. Multi-tenant buildings account for over half of commercial square footage. Thus, Treasury and IRS should seriously consider how 179D can be designed for multi-tenant commercial buildings in order to not miss this energy saving opportunity.

New Energy Efficient Home Credit (45L)

This enhanced and expanded credit will incentivize home builders to meet certain decarbonization goals. This will help get ahead of home retrofits, and build maximally energy efficient homes from the start. Treasury and IRS guidance should clarify that the 45L credit can stack with federal, state, local, utility and other rebates and incentives (including the High-Efficiency Electric Home Rebate Program).

Treasury and IRS should also make this tax credit refundable for non-profit contractors of for-sale income-restricted housing.

Response to Consumer Vehicle Credits (Notice 2022-46):

The extension of the 30D Electric Vehicle Tax Credit will help supercharge the transition away from internal combustion engines to electric vehicles (EVs), which will help alleviate Americans' vehicle fuel costs, enhance U.S. energy security, and cut climate and other air pollution. The long-term extension of this credit, and the new 25E tax incentive for purchase of a used electric vehicle, will also make them accessible to more Americans.

In order for the 30D credit to be maximally accessible, guidance should specify that leased vehicles qualify for the credit. Leasing is often a more affordable option than purchasing a car outright and as electric vehicles make up a greater percentage of the market, lower income customers should not be excluded from accessing the credit because they lease a vehicle instead of owning it, nor should the credit be applied to the lessor.

Under the 25E credit, in order to capture the full scope of low income consumers, guidance should clarify that the credit can be earned even if the car has been sold more than once.

As demand for EVs grows, so will investment in critical minerals mining and supply chains. To that effect, Treasury and IRS should clarify definitions related to critical mineral sources, in particular the meaning of the term “value” as it relates to the battery and critical minerals. We interpret value to mean monetary value. Treasury and IRS must also provide further guidance on compliance procedures in relation to extraction, processing and recycling that will allow eligibility and develop a process to make clear to consumers which vehicles are eligible for tax credits. There should also be guidance to clarify tracking methods for batteries in order to allow for transparency in reporting requirements. Battery information can be tracked and shared digitally through a scanned code or with a physical label on the battery. We ask that Treasury and IRS work with the other federal agencies (such as DOE, EPA, Department of Transportation) to develop a battery labeling system that meets the new sourcing requirements and is clear and well-communicated throughout the supply chain.

Treasury and IRS should develop guidance that allows the clean vehicle credits to be utilized at the greatest rate possible to prepare for future market transformation. As electric vehicles are increasingly sold directly to the consumer from the manufacturer, Treasury and IRS should issue guidance affirming that customers who purchase a vehicle from a manufacturer can still claim the credit under 30D, as long as the manufacturer complies with all relevant requirements.
Additionally, the 45W commercial clean vehicle tax credit will have the greatest market impact if all tax exempt entities are able to qualify.

Response to Manufacturing Credits (Notice 2022-47):

The full suite of clean energy tax incentives passed by Congress in the IRA will help seize clean energy’s full economic potential and assert American leadership in the growing global clean technology industries of the 21st century.

The production tax credits for the domestic manufacturing of solar, wind and advanced battery technologies in Section 45X should be prioritized by Treasury and IRS in any necessary guidance and clarity for taxpayers to take full advantage of these credits expeditiously. Already since the passage of the IRA have we seen announcements of major investments by firms planning to onshore significant domestic new advanced clean energy manufacturing capacity, and with it create American jobs.

Regarding the 48C Advanced Energy Project Credit, the Secretary of Energy will determine "other advanced energy property designed to reduce greenhouse gas emissions" that are eligible for the credit. We recommend that Treasury, IRS, and DOE consider this provision broadly in order to incentivize the adoption of many different innovative technologies that reduce climate and traditional air pollution, from both new and fast-growing clean energy technology industries, and also in the application of decarbonization technologies in traditional, legacy heavy industries.

Section 48C also includes a set-aside for projects in former coal mine and power plant communities, utilizing similar definitions as those in the aforementioned definitions of Energy Communities. While Congress passed these and related incentives and enhancements designed to drive new clean energy economic investment into Energy Communities and other disadvantaged communities, many such communities do not have the technical or financial resources necessary to realize these goals. Treasury and IRS should work with DOE to provide technical and financial assistance for communities hoping to take advantage of the 48C credit, as well as specific points of contact that can advise businesses on how to meet application requirements. Treasury and IRS should also prioritize projects that have received public input and community and labor participation – in particular projects that have involved workers and fenceline communities early in the project creation and application process. This will help create long-term, permanent jobs that will strengthen and diversify the local economy. Developers should invite input from Community Based Organizations on matters related to local hires, and labor unions on matters related to training opportunities and labor standards. Community Workforce Agreements and Community Benefit Agreements should also be encouraged.

Thank you for your consideration of our comments on each of these RFI notices. We look forward to working with you to ensure these credits reach their intended potential, by efficiently, effectively and equitably making them available to the American communities, workers and businesses who are prepared to build a new clean energy economy; one with lower energy costs, more good jobs and equitable economic opportunity, and rapid reductions in the pollution that's driving climate change and adverse health outcomes.

Sincerely,
Sam Ricketts
Co-founder and Senior Advisor
Evergreen Collaborative

CC: Mr. John Podesta, Senior Advisor to the President for Clean Energy Innovation and Implementation