November 4, 2022

Re: Requests for Comments on Upcoming Energy Guidance (Notice 2022-50)

Dear US Treasury Department and Internal Revenue Service,

Thank you for the opportunity to provide comments regarding Elective Payment of Applicable Credits and Transfer of Certain Credits (Notice 2022-50). We applaud the ambitious nature of the clean energy generation incentives outlined in the Inflation Reduction Act of 2022, and we appreciate the opportunity to provide input as the IRS and US Treasury develop detailed guidance to support effective implementation.

Solar One is an environmental nonprofit that designs and delivers programs to bring the benefits of clean energy to all New Yorkers. We provide comprehensive solar technical assistance to building owners, affordable housing providers, government institutions, and community organizations to facilitate high-impact solar projects. Our staff has decades of experience in the solar industry, and we have completed predevelopment for more than 800 solar projects in New York City's high-barrier market segments, including hundreds of affordable housing, tax-exempt, and low-income community solar projects. Based on that experience, we are pleased to share the following recommendations/comments for your consideration.

Thank you for your consideration and for your forthcoming guidance.

Sincerely,

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SOLAR ONE COMMENTS ON NOTICE 2022-50

2022-50.01(4)(A) STATE-REGULATED NONPROFITS ELIGIBLE FOR DIRECT PAY

In many states there are entities that receive nonprofit status at the state level but have not received a tax determination letter for 501c3 status from the IRS. These nonprofit organizations, as defined by their state tax code, should also be eligible for the direct pay option. This provision would impact certain Housing Development Fund Corporations, for example, that exist as non-profit affordable multifamily rental buildings or low-income housing cooperatives in New York. The intention of the Direct Pay provision is to make tax credits accessible to tax-exempt entities, and these state-level nonprofit organizations should not be excluded.

2022-50.02(8) SIMPLE AND STREAMLINED PROCESS FOR TRANSFERABILITY

The new provisions for transferability ensure that far more people and entities will be available to take up the available tax credits. In addition, this provision could allow state nonprofit housing developers and other entities without tax liability like multifamily condominiums/cooperatives to transfer the tax credits with less transaction costs. However, in order to ensure the transferability provision achieves these important goals, the process for transferring tax credits must be straightforward and accessible without the need to hire additional legal and financial consultants.

Currently, entities with little-to-no tax liability take advantage of federal tax incentives by forming a tax credit investment partnership. These partnerships often require significant legal expense, investment, and generally benefit the investor more than the project developer. In order for transferability to be truly effective, it must be significantly simpler and allow for low-capacity entities to take advantage of it.

2022-50.01(9) SIMPLE AND STREAMLINED PROCESS FOR DIRECT PAY

Direct Pay is another critical provision that will allow nonprofit organizations to take advantage of the new tax credits and adders. These nonprofit organizations are often the entities building solar projects that bring clean energy to LMI communities. As stated above, in order for this provision to be effective in expanding access to tax credits for nonprofit organizations, the process to receive Direct Pay must be straightforward and accessible. We recommend implementing a simple system that nonprofit fiscal/accounting staff can apply for and secure without relying upon outside legal counsel or other expense consultants.