



October 31, 2022

VIA ELECTRONIC SUBMISSION

Department of Treasury
Internal Revenue Service
CC:PA:LPD:PR (Notice 2022-50)
Room 5203, P.O. Box 7604
Ben Franklin Station
Washington, D.C. 20044

Comments of Solar United Neighbors & the Institute for Local Self-Reliance
Re. Notice 2022-50: Request for Comments on Elective Payment of Applicable
Credits and Transfer of Certain Credits

Solar United Neighbors and the Institute for Local Self-Reliance appreciate the opportunity to respond to the Department of Treasury's Request for Comments (RFC) regarding the monetization of certain credits, issued pursuant to the addition of elective payment provisions under § 6417 and elective credit transfer provisions under § 6418 of the Internal Revenue Code (Code) by § 13801 of Public Law 117-169, commonly known as the Inflation Reduction Act of 2022 (IRA).

Statement of Interest

Solar United Neighbors (SUN) is a national non-profit organization dedicated to creating a clean, equitable energy system that benefits everyone, with rooftop solar at the cornerstone. Nationwide, we represent the interest of solar owners and have a supporter network of more than 350,000 people. We have organized more than 350 solar bulk purchases to help individuals and organizations learn about solar and go solar together. We have helped homes, small businesses and non-profit organizations install over 64 MW of distributed solar combined.

The Institute for Local Self-Reliance (ILSR) is a national nonprofit research and educational organization founded in 1974. ILSR has a vision of thriving, diverse, equitable communities. To reach this vision, we build local power to fight corporate control. This includes advocating for policies to enable local clean energy solutions

that harness the power of citizens and communities, as part of our Energy Democracy initiative.

Through our 30 Million Solar Homes campaign and in coalition with numerous solar advocacy organizations, SUN and ILSR advocated for many of the policies that were included in the IRA.

Response to Request for Comments

In issuing these comments in response to selected questions (see below), SUN and ILSR seek to help the Department of Treasury implement rules to ensure that smaller, less traditional projects, community-owned or locally owned projects, and under-resourced applicants do not face a disadvantage in accessing new and existing solar tax credits. Enabling these smaller projects to efficiently access all eligible credits, including through direct payment of applicable credits, with certainty will help to keep the most value of those credits in the communities the legislation intended to benefit. We also seek to emphasize the importance of soliciting meaningful public engagement and participation in the implementation process.

.01 Elective Payment of Applicable Credits (§ 6417)

Question: (2) With respect to the Secretary's discretion to determine the time and manner for making an election under § 6417(a): (b) What factors should the Treasury Department and the IRS consider in determining the time and manner for making the election?

Response: With respect to the manner of such direct payments, additional steps should be taken to provide certainty to eligible entities. We recommend establishing a pre-approval process through which, on a strictly voluntary basis, interested entities can attain confirmation that they will be eligible for direct payment of applicable credits prior to entering into financing agreements, contracts or other commitments. This could be done based on an entity's tax status. Many eligible entities, such as non-profit organizations with small budgets, may be unwilling to enter into binding loan agreements that may be necessary to fund a new solar installation on their property without certainty that they will qualify for direct payments of applicable credits as expected. Giving eligible entities the option of applying for pre-approval would help address this issue and improve access. As part of such a pre-approval process, eligible entities should be able to confirm their eligibility for direct payments for both the base credit and any adders for which they qualify, contingent on meeting other requirements.

Question: (5) With respect to the definition of the term “applicable entity” in § 6417(d)(1): (a) What, if any, guidance is needed to clarify which entities are applicable entities for purposes of § 6417(d)(1)(A), and which taxpayers may elect to be treated as applicable entities under § 6417(d)(1)(B), (C), or (D) for purposes of § 6417?

Response: SUN and ILSR encourage broad interpretation of the term “applicable entity.” It is our position that all tax-exempt entities should be included under this umbrella, including entities explicitly named in § 6417(d)(1)(A) as well others not explicitly named, such as housing authorities, libraries, universities, houses of worship, hospitals, and other tax-exempt organizations

The term “any State or political subdivision thereof,” in particular, leaves uncertainty regarding the applicability of local government entities. SUN and ILSR believe that the intent of the law is to allow state and local governments, counties, municipalities, school districts, etc. Additional clarification on this matter is needed to confirm that all state and local government entities, as well as the additional tax-exempt entities listed above, can access direct payments of applicable credits.

Clarifying that otherwise eligible entities in Puerto Rico or other U.S. Territories are eligible for this provision is also critical.

Question: (8) Section 6417(d)(4)(A) provides that, in the case of any government, or political subdivision described in § 6417(d)(1), and for which no return is required under § 6011 or 6033(a), the payment described in § 6417(a) is treated as made on the later of the date that a return would be due under § 6033(a) if such government or subdivision were described in § 6033 or the date on which such government or subdivision submits a claim for credit or refund at such time and in such manner as the Secretary provides. What factors should the Treasury Department and the IRS consider when providing guidance to clarify the timing and manner of a payment made by these governments or political subdivisions?

Response: Ensuring accessibility should be a guiding principle for implementation of the new provisions for direct payments of applicable credits. For these direct payments to be truly accessible to the tax-exempt entities they are intended to benefit, the process for claiming and receiving direct payments must be as clear, straightforward, and efficient. Many intended beneficiaries, such as under-resourced government subdivisions and community-based non-profit organizations, have limited time and resources available to dedicate to pursuing such payments. The

time and costs associated with claiming and receiving direct payments will directly reduce their value to these intended beneficiaries, and the goal should therefore be to keep both to a necessary minimum.

With respect to the timing of direct payments, we suggest that eligible entities be able to receive such payments more frequently than the once per year that tax returns are generally issued, e.g. within 90 days of submitting a claim. In many cases, tax-exempt entities are less able to tolerate financial uncertainty and less able to take on the added costs of bridge financing than their corporate counterparts. More frequent direct payments of applicable credits would reduce costs and uncertainty, and would improve access to clean energy.

Question: (13) Please provide comments on any other topics that may require guidance.

Response: There are several other relevant topics that we would like to bring to the Department's attention for additional guidance. These fall under the following categories:

- Pathways for demonstrating basis,
- Inclusions in basis,
- Requirements for finance companies,
- Applicability in Puerto Rico and other territories of the U.S., and
- Applicability to individuals.

First, regarding pathways for demonstrating basis:

We recommend providing multiple pathways for demonstrating basis so that smaller projects and projects pursued by under-resourced entities are not required to provide the same level of documentation and due diligence as larger-scale projects and projects pursued by well-resourced developers. Many non-profit organizations may be unable to meet such requirements. Demonstrating basis should not prevent resource-limited organizations and the smaller solar installers they may work with from accessing applicable credits.

An example of multiple pathways for demonstrating basis that would address this issue could be:

1. Pathway 1: Full accounting on basis.
This pathway would be suitable for entities pursuing any project that wish to include project costs beyond those easily documented in a simple installation contract.

2. Pathway 2: Expedited basis.

This pathway would be suitable for projects below a certain size. We would suggest 1 MWac to align with similar size-based differentiations throughout the IRA. Entities pursuing such projects could choose to claim applicable credits and payments thereof by providing an abbreviated set of documents, including:

- An executed contract showing the full system installation cost as basis,
- Proof of status qualifying the entity for direct payment of applicable credits under § 6417(a), and
- Additional proof, as needed, to demonstrate qualification for any applicable adder credits beyond the base credit.

Any entities that opt for Pathway 2 under this example should be able to:

- Apply for and provide all necessary documentation and proof, including for basis and for qualification, online.
- Receive direct payment of applicable credits on an expedited timeline, such as within 90 days of submitting a claim, in order to reduce project financing costs and uncertainty.

Regarding inclusions in basis:

We suggest that the Department determine and define a reasonable rate at which financing costs for short-term construction loans, also known as bridge financing, can be included in basis. As direct payments for applicable credits will likely not be received by eligible entities until projects have reached a later stage of development or possibly completion, many eligible entities will need to rely on this type of financing in order to meet up-front financial obligations, such as payments to contractors. To a reasonable extent, these often unavoidable added costs should be eligible for inclusion in basis.

Regarding requirements for finance companies:

We encourage the Department to require any finance company providing financing for a project receiving direct payments for applicable credits to validate that the financed system has achieved full interconnection approval from the utility before the company disburses final payments to the contractor.

In the solar residential market, SUN has witnessed instances in which loan providers have paid contractors in full before the system was fully connected and turned on. This can create a situation in which the system owner is unable to get a contractor to

finish the job, since that contractor has already been made whole by the financing company's early payout. Smaller tax-exempt organizations, in particular, may not be aware of this potential issue and fall prey to this practice when going solar. The Department is in a strong position to set a standard of good contractor behavior by requiring that finance providers enforce proper due diligence on all projects, regardless of size, via the implementation of direct pay and other portions of this Act, and should take advantage of that opportunity.

Regarding applicability in Puerto Rico and other territories of the U.S.:

SUN works in Puerto Rico, and is aware that many other non-profit organizations that do as well will be interested in receiving direct payments for applicable credits under § 6417(a). It is our expectation that entities in Puerto Rico and other territories of the U.S. will be eligible to receive such payments, so long as they meet other eligibility requirements. However, additional clarification to confirm that and elaborate on how such entities can elect to receive direct payments would be useful.

To enhance accessibility in territories as well as parts of the U.S. in which languages other than English are spoken by a large portion of the population, we suggest that all instructions and guidance be issued in additional prevalent languages, including Spanish.

Regarding applicability to individuals:

Finally, we would like to take the opportunity provided by this RFC to express our disappointment that individuals who do not pay federal income taxes or who pay very limited federal income taxes are not eligible to receive direct pay for the residential clean energy credit in Section 25D of the Code. This exclusion unfairly limits the ability of retirees and low-income individuals, among others, to access federal tax credits that help many others afford solar energy and other clean energy investments.

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