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Re: **Comments from Clean Energy States Alliance on Notice 2022-46, Notice 2022-47, Notice 2022-48, Notice 2022-49, Notice 2022-50, and Notice 2022-51 issued by the U.S. Department of the Treasury and the Internal Revenue Service on October 5, 2022**

The staff of the Clean Energy States Alliance (CESA) is pleased to provide this response to the U.S. Department of the Treasury and the Internal Revenue Service (IRS) regarding the notices referenced above. In these comments, "Treasury" will refer indistinctively to the U.S. Department of the Treasury and the IRS.

These comments reflect the perspective of CESA, a national nonprofit coalition of public agencies and organizations working together to advance clean energy. CESA members—almost all of which are state agencies—include many of the most innovative, successful, and influential public funders of clean energy initiatives in the country. The comments in this document do not necessarily represent the views of individual CESA member organizations or of CESA funders.[1]

CESA's comments pertain to all of the notices referenced above in that comments relate to the relationship between the states and Treasury in implementing Public Law 117-169, 136 Stat. 1818 (August 16, 2022), commonly known as the "Inflation Reduction Act of 2022" (IRA), and the role of state energy agencies in helping Treasury define and implement the IRA guidelines from Treasury.

First, we argue that Treasury should actively engage with state energy agencies nationwide to receive feedback and information on interactions with state clean energy policies and programs (A). **Second**, we provide several process-based recommendations by which Treasury can seek and consider the states' feedback and input (B).

[1] The National Renewable Energy Laboratory (NREL) is an affiliate member of CESA. Representatives of NREL have neither contributed to nor reviewed the comments in this document.

A. Interactions Between the IRA and State Clean Energy Policies and Programs

Meeting the congressional intent of the IRA requires that states be consulted and that their input be considered on a number of topics, including the areas listed below in this Section (A). State energy agencies nationwide have been the leading source of clean energy policies and programs in the country for several decades. As a result, many existing policies and programs are likely to be impacted by the IRA.

The topics and examples provided below are not a comprehensive list of the types of matters that should be discussed with states but are offered as an illustration of where state energy agencies can bring significant expertise to Treasury to ensure that all levels of government work in synergy in meeting the clean energy goals and the intent of the IRA.

1. Areas Where Both Flexibility and State/Federal Coordination are Needed

   Coordination with states will be required to make sure that the Treasury guidelines do not directly contradict the criteria set by states for certain state programs or bring further complexity to an already patchworked clean energy policy environment.

   For example, several provisions of the IRA refer to "low-income communities," whose definition is codified in 26 U.S. Code § 45D(e). Numerous states have their own definitions and criteria for such communities (or similar terms like "disadvantaged communities" or "vulnerable communities") and state incentive programs are often conditioned to clean energy products and services being offered in such communities following the criteria set by states. This is the case for instance in California, Maine, Maryland, Massachusetts, New York, Oregon, and Virginia. In some states, such definitions are the result of extensive stakeholder processes.

   While some elements of the federal definitions are set in stone in the legislation, the IRA's implementation details will matter greatly to ensure that state policies and programs continue to have the intended effect on these populations. Indeed, states have learned that serving low-income communities requires specific and sustained attention in incentivizing the private sector to make them a priority, in line with the IRA's legislative intent. As such, the approach and definitions should be coordinated with states. Items to discuss could include the process by which the federal maps will be created, or the potential to create a single geospatial resource that also highlights areas that meet the definitions set by states to meet state-based requirements.

   Alignment between Treasury and states on such topics would provide clarity to the private sector and community stakeholders, while helping state energy agencies pursue their state-specific policy priorities.

2. Areas Where States' Existing Processes Should Take Precedence and be the Standard Used by Treasury to Best Respond to Local Conditions

Deference should be given to state definitions when layering additional federal requirements in the guidelines would lead to a lack of clarity for state policymakers and increase the administrative burden on the private sector in a way that could only delay the financing and deployment of clean energy assets necessary to meet climate goals.

For example, under 26 U.S. Code § 48(e)(2)(c), solar projects under 5MW in size that are part of a "qualified low-income economic benefit project" can receive an additional twenty percentage points in Investment Tax Credit value (ITC). A qualified low-income economic benefit project is a solar facility for which "at least fifty percent of the financial benefits of the electricity produced by such facility are provided to households with income of:

a. less than two hundred (200) percent of the poverty line (as defined in 26 U.S.C § 36B(d)(3)(A)) applicable to a family of the size involved, or
b. less than eighty (80) percent of area median gross income (as determined in 26 U.S.C § 142(d)(2)(B))."

Administering this section of the IRA will require that Treasury set up income verification processes. Income verification is already part and parcel of many state solar programs with a focus on bringing the benefits of solar to low income families. Every state program that requires income verification follows its own criteria,[2] and deference to states' processes in this matter would create continued flexibility for the states to respond to the signals received from local communities and businesses with which they have interacted on these issues for many years.

Further, while we do not doubt that there may be operational benefits for solar companies to harmonizing some aspects of income verification processes nationwide, any national measures should be discussed with the states taking into account their collective expertise on this matter.

Many other areas surely would benefit from bringing flexibility to the states to respond to local constraints and local opportunities, warranting special consideration be given to states' input in this IRA guidelines definition process by Treasury.

3. Areas Where Greater Clarity is Required from the States' Perspective(s)

As the primary driver of clean energy policies and programs nationwide, states are uniquely positioned to share which areas of the IRA would create confusion or be particularly problematic without further guidelines. The passage of the IRA must not have the unintended consequence of slowing down innovative state-level policymaking.

Few stakeholders have as much crosscutting experience in developing and delivering clean energy programs as states collectively do. States will continue to design and

[2] State income verification requirements have taken many forms, from self-attestation to automatic qualification based on a solar customer's previous participation in a federal or state program to independent income verification processes.

deliver new programs as they find themselves at the cutting edge of clean energy policy; ambiguity for states will result in the slowing down of the policy engine of the country as states try to make sense of guidelines, if they are developed without their input and implemented without a built-in feedback mechanism.

For example, because many states are developing new programs or redesigning existing programs to ensure that community solar projects benefit all populations equitably, clarification on how specifically the "financial benefits" from 26 U.S. Code § 48(e)(2)(c) referred to above are calculated will be of prime importance and states will not be able to keep pace in community solar policy development without answers to specific questions that they will have.

Similarly, states that are designing solar programs for low- and moderate-income single-family homeowners will want to know whether 26 U.S. Code § 48(e)(2)(c) could be applied to a single-family home that meets its income and financial benefit sharing requirements. It will be difficult for states to set appropriate incentive levels without knowing what to expect from Treasury.

Further, the allocation process to be set forth under 26 U.S. Code § 48(e)(4), in particular, the timelines and conditions should be coordinated with state actors to ensure maximum impact.

B. Process-Based Recommendations for States' Feedback and Input

In order to receive feedback and input from states, we recommend that Treasury take the following steps.

1. Dedicated Roundtable with States

   Treasury should invite states to participate in a roundtable specifically dedicated to discussing the interactions between the IRA and state clean energy policy. As detailed above, states, as the main policy engine of the country in the clean energy sector, bring a unique perspective to Treasury.

   Recognizing that Treasury's time is limited, CESA would like to offer to take the lead in setting up the aforementioned roundtable with state energy agencies across the country for Treasury to receive feedback at Treasury's convenience.

2. Feedback and Input Processes Over Time and Permanent Liaison for States with Treasury and DOE

   Treasury should **start designing a process by which it will, over time, receive and consider feedback from the states**. It is vital that Treasury be proactive in creating clear and effective communication channels with state energy agencies to receive feedback on a *sustained* basis as the market adapts to the IRA and its implementation guidelines.

   Long-lasting and successful policy requires that implementation be adaptive; for that reason, the CESA staff recommends that Treasury now start putting in place processes and systems by which such feedback will be heard and integrated in the future.

One such process is the appointment of a U.S. Department of Energy (DOE) and Treasury permanent liaison, specifically dedicated to answering questions from state energy agencies relating to IRA implementation. As detailed above, states will face unique challenges and opportunities. States will also be the nexus of activity for multiple pieces of the IRA. A dedicated team will be necessary to ensure that the states understand how all of the pieces of the federal IRA implementation puzzle fit together, and that valuable time is not wasted going through lengthy triage processes across federal agencies.

A joint DOE/Treasury office dedicated to serving the states' needs and to ensuring that the states accurately interpret Treasury guidance would have an outsized impact in unlocking the potential of the IRA. CESA will gladly collaborate with Treasury, DOE, and others to ensure that learnings from one state are adequately communicated to others, which is a core part of our mission, and a core service to our state members.

3. Plain English Educational Resources

   Lastly, due to the innately obfuscating nature of tax regimes, CESA recommends that Treasury produce plain English training material for state energy agencies and other stakeholders in addition to the implementation guidelines that are the subject of these comments.

Our team would welcome a conversation to discuss these issues further and organize a roundtable with state energy agencies for Treasury.

Respectfully,

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