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U.S. Department of Treasury
1500 Pennsylvania Avenue, NW
Washington, D.C. 20220
www.regulation.gov

November 4, 2022

Re: Feedback on the Requests for Information Related to the Implementation of the Inflation Reduction Act's Tax Incentives

We initially submitted this letter on November 2, 2022 and are re-submitting on November 4, 2022 with identical content but additional signatories.

The undersigned organizations representing over 50 equity, environmental justice, community-based, and grassroots organizations and coalitions located across the United States appreciate the opportunity to provide feedback on the Department of Treasury's requests for information related to the implementation of the Inflation Reduction Act's ("IRA") tax incentives. The Department's implementation of the tax incentive provisions will directly impact whether the most disadvantaged communities benefit from these incentives or whether they are left further behind. Given the Administration's commitment to equity¹ and environmental justice, including the Justice40 initiative, the Department must take affirmative steps to ensure that the needs of environmental justice and low-income communities are prioritized. These comments provide general feedback and comments related to equity considerations in the Department's administration of the tax incentives as well as more specific comments responding to specific requests for information.

Specifically, as described further below, to ensure that the tax incentives are administered as justly and equitably as possible, the Treasury Department must do all the following:

- Provide more opportunities for feedback from environmental justice communities, from both community-based organizations and individuals;
- Take actions to reduce the equity gap given that many tax incentive benefits will not reach environmental justice communities and low-income households;
- Increase transparency and accessibility of information;
- Clarify that taxpayers with an ITIN can qualify for tax incentives;
- Integrate equity considerations throughout the guidance;
- Include the Department of Energy's Office of Economic Impact and Diversity in implementation;

¹ "Advancing Racial Equity and Support for Underserved Communities Through the Federal Government," EO 13985 (January 20, 2021).

- Consider the tax incentives under the Justice40 Initiative;
- Ensure that greenhouse gas emission rates take all emissions into account;
- Ensure that the low-income solar and wind program prioritizes projects that provide the most benefits to local communities, community partnership in project development, and equitable community solar projects; and defines “financial benefit” to focus on reducing energy burden, avoiding adverse consequences for tenants, and ensuring that real benefits reach low-income households and communities;
- Include consumer protections related to transferability for low-income taxpayers;
- Streamline application for direct pay of credits to nonprofits serving low-income and disadvantaged communities;
- Prioritize local hire by requiring reporting and outreach; and
- Prioritize equitable energy efficiency and building decarbonization programs.

We further urge the Department to meaningfully engage with environmental justice communities, prioritize clean, community centered development, and to ensure that its actions do not perpetuate, exacerbate, or create pollution burdens in communities that have disproportionately suffered the negative effects of fossil fuel development and use.

Since all of these comments are tied to the consideration and prioritization of equity, they are being submitted as a single comment.

Overarching Comments:

Need for More Opportunities for Feedback: Initially, the Department should make a focused effort to provide more meaningful opportunities for environmental justice communities to provide feedback on implementation of these tax credits. The expedited time frame and highly technical nature of the requests for information have presented significant barriers to facilitating meaningful feedback from environmental justice communities throughout the country. This type of outreach is crucial for the Department meeting its equity commitments. As the Department’s Strategic Plan recognized: it needs to be “engaging regularly with diverse communities to ensure the Department’s programs increase opportunity in underserved communities.”²

Specifically, we request targeted outreach to ensure that the voices of environmental justice communities, from both community-based organizations and individuals, can be 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

² <https://home.treasury.gov/system/files/266/TreasuryStrategicPlan-FY2022-2026.pdf>

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 for additional outreach suggestions and advice.

Many Tax Incentives Benefits Will Likely Not Reach Environmental Justice and

Low-Income Households: Because Congress declined to make these tax credits refundable, most low-income tax filers will be unable to directly benefit from them. In the case of the § 25D credit, more than 4 in 10 tax filers who have zero or negative tax liability will not be able to claim these credits and 7 in 10 tax filers will not have sufficient tax liability to take full advantage of the credits.³ Given this inherent inequality, the Department should provide guidance and collect information to try to reduce this gap. For example, the Department can take the following steps:

- ***Applicable to 2022-48 only:*** The residential energy tax credits overwhelmingly benefit homeowners over renters, since most energy efficient home improvements and clean energy expenditures will only be applicable to homeowners and landlords. This risks perpetuating the racist legacy of redlining and related practices that have caused a persistent and growing 30-point gap between Black and white homeownership rates.
 - To help mitigate this racial disparity, the Department should conduct targeted outreach and education to promote the select ways in which renters can use these credits, such as for portable, window-unit heat pumps or certain community solar subscriptions. The Department should consult with environmental justice organizations in developing its outreach and education plans, including eliciting feedback from established and trusted sources like WHEJAC and NEJAC. The Department should also consult with its newly formed Treasury Advisory Committee on Racial Equality.⁴
 - To provide certainty to taxpayers, IRS should issue authoritative and easily understandable guidance clarifying the conditions under which community solar subscriptions can qualify for § 25D credits. This guidance should address issues including the community solar project’s corporate structure and contractual arrangements, such as title to electricity generated, and other applicable limitations (including net metering arrangements and documentation of electricity expected to be or actually consumed at the taxpayer’s residence). This should also include guidance on how taxpayers will see this described on their tax forms, and

³ <https://rmi.org/congress-cannot-ignore-residential-solar-tax-credit-inequities/>

⁴ <https://home.treasury.gov/about/offices/equity-hub/TACRE>

how they will navigate filling out taxes the next year, including guidance on how this should be explained in online tax preparation forms.

- ***Applicable to individual credits only (2022-46 and 2022-48)***: As the Department of Treasury’s Equity Action Plan recognizes, in order to evaluate distributional and equity impacts, the IRS needs key demographic data, including race and ethnicity as well as geo-spatial data to determine the impact of the credits on communities. This underscores the need for the Department to complete its work developing a robust and well-vetted model for imputing racial, ethnic, and other relevant demographic data.

This comment provides additional examples below of steps that the Department can and should take to reduce the inequities inherent in the tax incentives regime.

Increase Transparency and Accessibility - To ensure that these tax incentives meet the goals of Justice40 and are administered as equitably as possible, the Treasury Department should take proactive steps to improve the transparency and accessibility of the tax incentives. This request is consistent with and in furtherance of the Department’s 2022-2026 Strategic Plan, which recognizes the need to: “[i]ncrease quality, sharing, and use of financial data with the U.S. public to promote transparency, equity, and accountability in federal spending.”⁵ On this note, we recommend at least the following steps:

- ***Multiple Languages***: Disseminate information about the tax incentives in multiple languages to ensure that taxpayers with limited English proficiency can obtain relevant information. This should include at least the ten most prevalent languages spoken in the United States.
- ***Non-Profit/Low-Income Household Hotline***: The Department of Treasury should also 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, and provide this assistance in multiple languages.
- ***Detailed Questions and Answers Documents***: In addition to a hotline, the IRS should publish a detailed questions and answers resource that provides clear answers and guidance for common questions that arise.
- ***Increased Funding for Low-Income Taxpayer Clinics***: Low-Income Taxpayer Clinics have traditionally been crucial for overcoming the many language, cultural, and other

⁵ <https://home.treasury.gov/system/files/266/TreasuryStrategicPlan-FY2022-2026.pdf>

barriers that communities of color may face when working with the IRS.⁶ These clinics could use additional funding to be able to assist low-income households with applying for the IRA tax incentives.

- *Technical Assistance for Low-Income Households, Nonprofits, Local Governments, and Community Groups:* In addition, technical assistance should be made available to nonprofits and local governments that qualify for direct pay of certain tax credits to help them understand how they can use them.

The IRA includes significant administrative funding for the Treasury Department to implement these provisions, provide taxpayer support, and operational support.⁷ The IRA further includes significant funding to provide taxpayer and operational support.⁸ Consistent with the Justice 40 initiative, at least 40% of this funding should be used to assist with the implementation and increase the access of tax incentives for low-income and disadvantaged communities and the nonprofits and local governments that work with and represent them.

Clarify that Taxpayers with an ITIN Can Qualify: The Treasury Department should clarify that taxpayers with an Individual Taxpayer Identification Number (“ITIN”) can qualify for the IRA’s tax credits. Explicit inclusion of taxpayers with an ITIN is consistent with the language and purpose of the IRA. The clean energy tax incentives are broadly meant to incentivize greater penetration of clean energy and energy efficiency, and thus, clarification that taxpayers with an ITIN can qualify is consistent with this broad purpose.⁹ The statutory language of these tax credits also explicitly applies to “any taxpayer,” demonstrating that inclusion of taxpayers with an ITIN is both appropriate and consistent with the IRA’s plain language.¹⁰ This inclusion would be consistent with existing precedent, as ITIN tax filers may already claim other tax credits, such as the American Opportunity Tax Credit and the Child Tax Credit, and would support and enable people of various citizenship, immigration, and residency statuses to pursue these credits.

Equity Considerations Must Be Integrated Throughout Guidance: The Inflation Reduction Act falls short of the direct, targeted investments that environmental justice advocates have called for under the Justice40 initiative. Indeed, the IRA requires agencies, including the

⁶ <https://www.taxpayeradvocate.irs.gov/about-us/low-income-taxpayer-clinics-litc/>

⁷ IRA appropriates \$500 million for the implementation of the tax provisions. IRA § 13802.

⁸ IRA also appropriates approximately \$3.2 billion for taxpayer services as well as approximately \$25.3 billion for operational support. IRA § 10301.

⁹ See IRA, Subtitle D, Part 1 (naming the section as “Clean Energy and Reducing Carbon Emissions”).

¹⁰ See, e.g., IRA, section 13101(f) (referring to “any taxpayer”); section 13204 (d) (referring to “any taxpayer”); section 13301(b) (referring to “any taxpayer”); section 13401(g)(10) (referring to “any taxpayer”).

Treasury Department, to track equity within the IRA implementation.¹¹ Given this mandate, which will be implemented through the OMB and GAO, it is critical for the Treasury Department to develop a strong, robust foundation for equity considerations in the development of the program. In order to ensure that the IRA’s tax incentives are distributed as justly and equitably as possible, the Treasury Department must center the consideration of equity throughout its implementation efforts. Utilizing federal tax incentives, such as for renewable energy and energy efficiency tax credits, has been historically inequitable. For example, one study found that between 2006 and 2012 approximately 60 percent of the total individual energy credits, worth about \$18 billion, were claimed by the top quintile of households, while only about 10 percent went to the bottom three quintiles.¹² These inequities have contributed to sharp demographic disparities in solar deployment, and it appears that race, more than income, is the strongest predictive factor.¹³ To ensure that equity is prioritized in the implementation of this program, the Treasury Department should incorporate the following elements in guidance and enforcement related to these tax credits:

- *Oversight and Programmatic Evaluation:* The Treasury Department should include requirements for reporting by corporations, developers, and other project sponsors claiming investment and production tax credits to assess the equity impacts of the resulting buildout. Evaluation, including quantifying benefits for Justice40 purposes, should incorporate independent data, including racial and ethnic data, income, and environmental quality and public health indicators, wherever possible instead of relying solely on data reported by taxpayers. Project evaluation should also provide an opportunity for community members to provide input throughout the process, including providing a direct phone line for community members to provide feedback and raise concerns. This request is consistent with the Department’s Strategic Plan’s recognition of the need to increase access to data and evaluation of programs by including the following strategy: “[a]dvance equity in Treasury’s programs and services by increasing access to data that can be used to assess and measure equity and inform program policy and decision-making.”¹⁴ This requested evaluation is similar to another

¹¹ IRA, section 70004 (requiring GAO to provide oversight as to whether the “environmental, economic, and social” impacts of the funds are “equitable”); and section 70005 (requiring the OMB to track “labor, equity, and environmental” standards and performance).

¹² <https://haas.berkeley.edu/wp-content/uploads/WP262.pdf>

¹³

<https://rael.berkeley.edu/wp-content/uploads/2019/06/Sunter-Castellanos-Kammen-TheBeam9-Installing-inequality.pdf>

¹⁴ <https://home.treasury.gov/system/files/266/TreasuryStrategicPlan-FY2022-2026.pdf>

Department evaluation examining racial and ethnic data in relation to another program.¹⁵

In addition to assessing the overall impacts of the program, as further discussed below, this oversight and evaluation should explicitly assess compliance with Justice40. Pursuant to Executive Order 14008, the Administration has established the goal that 40% of the overall benefits of investments related to clean energy, energy efficiency, clean transit, and affordable housing flow to disadvantaged communities. These tax incentives implicate each of these funding categories, and thus should qualify as a Justice40 covered program. The only way to assess whether these goals are being met is to gather data measuring the impact of the funding.

- *Assess Distributional Impacts:* The Treasury Department should assess the distribution impacts, accounting for income and (imputed) race/ethnicity, of the tax incentives. This assessment should examine each of the following, consistent with the Department of Energy’s Justice40 Policy Priorities, including:¹⁶
 - Impacts to energy burden in disadvantaged communities;
 - Impacts to pollution exposures in disadvantaged communities;
 - Impacts to solar and clean energy access in disadvantaged communities;
 - Impacts to clean energy jobs in disadvantaged communities;
 - Impacts to energy resilience in disadvantaged communities; and
 - Impacts to energy democracy in disadvantaged communities.

This should inform programmatic changes or future revisions to the law to reduce persistent disparities in the program.

- *Required Community Engagement:* To more fully realize the potential of Justice40, it is essential that tax credit-supported projects are only built with the local community’s free, prior, and informed consent. To ensure such community consent, at a minimum, the Treasury Department should require taxpayers seeking to claim commercial tax credits for resources that are: (i) either larger than 5 MW or emit greenhouse gases; and (ii) are constructed in disadvantaged communities to conduct robust community engagement activities that are designed with input from local community groups.

¹⁵

<https://home.treasury.gov/news/featured-stories/progress-towards-an-evaluation-of-economic-impact-payment-receipt-by-race-and-ethnicity>

¹⁶ <https://www.energy.gov/sites/default/files/2021-12/Justice40%20FAQS%20Deck.pdf>

This community engagement must be meaningfully accessible to community members, including the provision of interactive language access in communities with limited English proficiency and multiple public meetings scheduled at different times of the day and week. Community engagement activities should be evaluated based on the number of residents actually engaged, as opposed to dollars spent. Finally, the Department must provide an enforceable mechanism by which community members can independently register their objections to a proposed credit-supported project.

- *Align with Department of Energy Justice40 Guidance:* The Treasury Department’s implementation of Justice40 should be aligned and consistent with the Department of Energy, given that the tax incentives are related to the types of projects and resources which fall under the Department of Energy’s jurisdiction and subject matter expertise.

Include Department of Energy’s Office of Economic Impact and Diversity In

Implementation: The Department should collaborate with the Department of Energy’s Office of Economic Impact and Diversity in the implementation of the tax credits. This Office can help ensure that the administration of the tax incentives maximizes benefits to low-income and disadvantaged communities and that the program is designed to optimize Justice40 effectiveness.

IRA Energy Tax Incentives Must be Considered Federal Investments under the Justice40

Initiative: OMB should work with the IRS to explicitly name tax credits as a covered investment to ensure that these incentives are held accountable to the Justice40 Initiative. Established through Executive Order 14008, “Tackling the Climate Crisis at Home and Abroad,” the Justice40 Initiative created an Administration-wide effort to ensure that at least 40% of federal climate and clean energy investment benefits reach communities identified as disadvantaged. To clarify how Agencies should be identifying federal investments, the Office of Management and Budget (“OMB”) released Interim Implementation Guidance for the Justice40 Initiative that further defined “covered investments.” Listed categories of covered investments include “[f]ederal financial assistance as defined at 2 CFR 200.” This definition does not list tax credits, but does include the catchall provision “[o]ther financial assistance,” which is applicable to tax credits.¹⁷ Notably, unlike other definitions of “federal financial assistance” in the Code of Federal Regulations, this definition does not expressly exclude tax credits.¹⁸

Furthermore, the Guidance allows for OMB to determine additional covered investments. Considering the number of tax provisions that can exacerbate the income and wealth disparities

¹⁷ 2 CFR § 200.1.

¹⁸ See, e.g., 24 CFR § 5.109 and 45 CFR § 87.1.

experienced by communities of color¹⁹ and the fact that communities of color are subjected to a disproportionate amount of environmental harms,²⁰ OMB and the IRS must be intentional when it comes to ensuring disadvantaged communities benefit from the health and wealth building opportunities the energy tax incentives provide.

Response to 2022-48 (Energy efficiency):

Energy efficiency and distributed energy resources are some of the best tools for reducing household energy burden and improving a household’s resiliency. And yet, most low-income households are renters who do not control whether efficiency improvements are made and are also less likely to be able to participate in rooftop solar. At the same time, as the country experiences more extreme heat waves, floods, and wildfires, energy burdens among low-income households are expected to rise. In addition to our comments above regarding targeted outreach and education to renters providing authoritative guidance on the application of § 25D to community solar subscriptions; and developing a robust and well-vetted model for imputing racial and ethnic data of taxpayers, we provide the following responses:

.01 Energy Efficient Home Improvement Credit (§ 25C)

(4) Please provide comments on any other topics relating to the § 25C credit that may require guidance.

Allow a 5-Year Period for Energy Property Installed in Conjunction with Panelboard

Upgrades: Section 25C adds certain panelboard upgrades as a “qualified energy property” if they are “installed in conjunction with” certain other types of energy efficiency improvements or energy property, or enables the installation or use of such. However, the legislative text does not specify any temporal element regarding the panelboard’s installation and the installation or use of the other energy property or energy efficiency improvement. A panelboard upgrade is generally a significant investment, as are the kinds of appliances, like heat pumps, that would require such an upgrade, and it is likely that many households would need to save and make such improvements over a number of years. Therefore, to ensure that the low- and moderate-income households are able to maximize the use of this credit, Treasury should clarify in guidance that these costs do not need to be incurred in the same tax year. Specifically, guidance should allow at least a five-year compliance period after the installation of a panelboard for taxpayers to install the corresponding energy property in conjunction with it.

¹⁹ <https://www.cbpp.org/sites/default/files/atoms/files/7-25-19tax.pdf>

²⁰

<https://www.epa.gov/sciencematters/study-finds-exposure-air-pollution-higher-people-color-regardless-region-or-income>

Response to 2022-49 (Energy generation):

.04 IRA Addition of the Clean Electricity Production Credit (§ 45Y)

(2) Section 45Y(b)(2)(C)(i) requires the Secretary to annually publish a table that sets forth the greenhouse gas emissions rates for types or categories of facilities. What should the Treasury Department and IRS consider in publishing this table, including considerations around scope and the factors?

When considering how to establish greenhouse gas emissions rates for types or categories of facilities, it is important for the Department to incorporate into its decision-making the serious public health and environmental quality implications for environmental justice communities. Environmental justice communities are on the frontlines of exposure to the fossil fuel facilities, incinerators, and biofuel facilities that pollute their air, land, and water. Therefore, it is essential that greenhouse gas emissions rates accurately account for the full lifecycle emissions of these facilities, to avoid negatively impacting these communities and perpetuating existing harms. In addition to considering greenhouse gas emissions, the Department should also account for the toxic air, water, and land pollutants that impact community health. A cumulative impact approach to calculating greenhouse gas emissions impacts should also be considered.

Combustion technologies largely do not provide the greenhouse gas reduction benefits needed to meet the United States' climate goals, while also emitting other health-harming pollutants. In fact, when accounting for their full lifecycle emissions, several types of resources and technologies emit more GHGs than conventional fossil fuel combustion and should not be incentivized, including:

- **Incinerators:** Incinerators emit more carbon than coal to produce the same amount of energy, and on average, they emit slightly higher amounts of greenhouse gases than natural gas does.²¹ A recent study shows that incinerators emit more greenhouse gas emissions per unit of electricity than any other power source.²²
- **Biogas:** In addition to NO_x, which damages human health and is particularly dangerous for children,²³ biogas combustion generates carbon dioxide emissions and risks methane leakage, just like fossil gas combustion, because the majority of biogas is methane.²⁴
- **Biomass:** In February 2021, more than 500 scientists and economists wrote to President Biden warning that converting wood to power is a carbon disaster. As they summarized,

²¹ <https://archive.epa.gov/epawaste/nonhaz/municipal/web/html/airem.html#7>;
<http://www.energyjustice.net/incineration/climate>

²² <https://eartharxiv.org/repository/view/2050/>

²³ <https://rmi.org/insight/gas-stoves-pollution-health>

²⁴ <https://doi.org/10.1080/10934529.2018.1459076>;

<https://www.eia.gov/energyexplained/biomass/landfill-gas-and-biogas.php>

“[o]verall, for each kilowatt hour of heat or electricity produced, using wood is likely to add two to three times as much carbon to the air as using fossil fuels.”²⁵

- **Carbon Capture:** Even the most effective carbon capture technology does not limit the GHGs released during extraction, transport, and most of the refining process. Carbon capture also *increases* GHG emissions from the extraction, transport, and refining process because power plants must burn more fuel to power carbon capture equipment—as much as 40 percent more fuel.²⁶

Section 45Y(b)(2)(B) requires that for facilities that produce electricity through combustion or gasification, the greenhouse gas emissions rate must “tak[e] into account lifecycle greenhouse gas emissions, as described in section 211(o)(1)(H) of the Clean Air Act (42 U.S.C. 7545(o)(1)(H)).” That section provides the following meaning for “lifecycle greenhouse gas emissions”:

the aggregate quantity of greenhouse gas emissions (including direct emissions and *significant indirect emissions such as significant emissions from land use changes*), as determined by the Administrator, related to the full fuel lifecycle, *including all stages of fuel and feedstock production and distribution, from feedstock generation or extraction through the distribution and delivery and use of the finished fuel to the ultimate consumer*, where the mass values for all greenhouse gases are adjusted to account for their relative global warming potential.²⁷

Applying this comprehensive lifecycle approach, the greenhouse gas emissions rates, including provisional emissions rates, established for facilities that generate electricity through these types of combustion technologies should all exceed zero and thus not be considered a “qualified facility” under § 45Y. To provide certainty for the public, we encourage the Treasury Department and IRS to expressly establish that the categories of facilities that generate electricity from the combustion of municipal solid waste, biomass, or biogas, or with the application of carbon capture controls, are excluded from the meaning of “qualified facility.”

Given the many impacts of these facilities, when calculating their greenhouse gas emissions rates and provisional emissions rates, the Treasury Department and IRS should ensure that lifecycle emissions analyses include:

²⁵

<https://www.documentcloud.org/documents/20482842-scientist-leter-to-biden-van-der-leyden-michel-suga-moon-february-11-2021>

²⁶ http://precaution.org/lib/ccs_energy_penalty_for_coal_vs_natural_gas.2016.pdf

²⁷ 42 U.S.C. 7545(o)(1)(H) (emphasis added).

- **Fugitive Emissions:** Some types of energy generation processes are plagued with significant GHG leakage that is difficult to prevent or measure. For example, various energy generation processes based on both fossil gas or biomethane leak methane into the air. In fact, estimates have found that on average, over 2% of fossil gas produced in the U.S. is lost to fugitive methane emissions, with a rate as high as 3.7% found in a study of gas produced in the Permian Basin.²⁸ In accounting for such leakage, the Department should use the global warming potential (GWP) data from the latest IPCC report, which finds that methane of fossil origin has a 100-year GWP 29.8 times that of carbon dioxide and a 20-year GWP 82.5 times that of carbon dioxide.²⁹

Similarly, processes that rely on hydrogen leak hydrogen, which has a significant climate-warming potential, to the atmosphere. Recent research shows that hydrogen's GWP is over 30 times larger than that of CO₂ in a 20-year time period and roughly 10 times larger over 100 years.³⁰ Hydrogen's propensity for leakage makes matters worse: research suggests that hydrogen can leak more than methane.³¹

Processes that rely on carbon capture also leak carbon in the processing, transportation, and storage of the carbon.

- **Emissions Associated with Fuel and Feedstock Production Through Consumer Use:** Greenhouse emissions rates must include GHG emissions associated with production and post-production processing, transportation, storage, and end-use. As discussed above, the definition of "lifecycle greenhouse gas emissions" referred to in § 45Y(b)(2)(B) encompasses stages from fuel and feedstock production through "delivery and use of the finished fuel to the ultimate consumer."

The Treasury Department should also include requirements for source monitoring to ensure the accuracy, veracity and robustness of emissions values. In addition, in order to establish the most accurate greenhouse gas emissions rates, the Department should assess the GHG intensity of

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<https://www.scientificamerican.com/article/methane-leaks-erase-some-of-the-climate-benefits-of-natural-gas/>

²⁹ https://www.ipcc.ch/report/ar6/wg1/downloads/report/IPCC_AR6_WGI_Chapter07.pdf

³⁰ <https://acp.copernicus.org/articles/22/9349/2022/>

³¹

<https://www.energypolicy.columbia.edu/research/commentary/hydrogen-leakage-potential-risk-hydrogen-economy>

categories or types of facilities over both a 20-year and 100-year time horizon. This approach will help ensure that resources do not lead to dangerous spikes of short-lived climate pollutants like methane.

.06 IRA Addition of Special Programs for Certain Facilities Placed in Service in Connection with Low-income Communities (§§ 48(e) and 48E(h))

(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?

- (a) **Guidance on application process for taxpayers:** 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 mapping tool based on the most recent and reliable available data identifying which communities qualify as “low-income” under § 45D(e). 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 under § 45D(e). Given that § 45D(e) does not specify the data source for determining what communities are “low-income,” it is possible that more up-to-date data sources exist than what the Department has traditionally used.

The Department should also provide periodic updates on the progress of allocating the annual capacity limitation, including granular, preferably census tract-level data, and more granular than census tract-level data when available, on the locations of projects that have been awarded allocations to help ensure geographic diversity.

- (b) **Accessibility to taxpayers:** The Treasury Department should establish procedures to accept multiple applications each year to ensure that community based-organizations, local governments, and other taxpayers seeking an allocation have multiple opportunities to qualify for the allocation that year. Then, if an allocation is not filled, it should roll over and be available during the next submission date. For example, the Department

could solicit projects each quarter with the first 450 MW in March of 2023. If the entire allocation is not filled, the remainder can be added to the second quarter solicitation.

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.

Furthermore, the application for the program should be accessible, streamlined, and not burdensome. Many nonprofits and community based-organizations do not have the resources and capacity for burdensome applications. The Department should periodically publish transparent information about the availability of the credits and how much of each year's allotment remains available, incorporating project location data, as discussed above. This request is consistent with the original language in the August 3, 2022 version of the Inflation Reduction Act, which required the Department to: "publicly disclose the identity of the applicant, the amount of the environmental justice capacity limitation allocated to such applicant, and the location of the facility for which such allocation is made." Although this provision was removed by the Parliamentarian, it demonstrates Congressional intent for robust reporting to be part of this program.

- (c) **Incorporation of community input, engagement, and benefit:** Environmental justice communities should always have an opportunity to provide meaningful input that is taken into account in the project 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 and 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.

(4) What mechanisms exist for a taxpayer to demonstrate that the financial benefits of the electricity produced by an applicable facility are allocated equitably among the occupants of a low-income residential building project and do not impact the occupants' eligibility for their housing? Similarly, what mechanisms exist for a taxpayer to demonstrate that at least 50 percent of the financial benefits of electricity produced by an applicable facility which is part of a low-income economic benefit project are provided to households within certain income thresholds?

Any assessment of the allocation of the benefits of the project must examine the project holistically. To ensure that at least 50% of the financial benefits from the project go to low-income households, the owner of the project could use the model from the Solar on Multifamily Affordable Housing (“SOMAH”) program in California, which requires that at least 51 percent of the energy produced by the system must be allocated to tenants via virtual net energy metering, and the tenants must receive 100 percent of the economic benefit of the credits on a monthly basis for the life of the system.³²

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

“Financial Benefit” Should Focus on Reduced Energy Burden: The term “financial benefit” should be clarified to expressly focus on reducing households’ energy burden. A main financial goal of the environmental justice capacity limitation program should be reducing the overall energy burden of households. Reduction in energy burden is an accurate metric of a project’s benefits, since if households lease or own part of the project, they may have to pay for that resource. Therefore, the financial benefit that they realize from the project will be the reduced cost of energy combined with any payments that they are making to lease or own part of the project.

“Financial Benefit” Should Exclude Bill Credits That Can Result in Increased Total Tenant Payments: The term “financial benefit” should be further clarified to avoid adverse consequences for tenants. In the case of HUD-assisted housing, bill credits from community solar subscriptions should not be included as a financial benefit if they are not disregarded for purposes of establishing utility allowances. These credits should also not be considered a financial benefit if it is included in calculations of tenants’ income, in order to ensure that tenants do not have to pay increased Total Tenant Payments.

“Financial Benefit” Should Ensure Additionality and Material Benefits to Residents or Households: The term “financial benefit” should be clarified to exclude pre-existing conditions. For example, continued affordability of dwelling units that are already deed-restricted or otherwise required to maintain affordability should be excluded from the meaning of “financial benefit.” However, to maximize flexibility and effectiveness of the environmental justice capacity limitation, extending affordability beyond any such pre-existing conditions may be appropriately considered a financial benefit in some circumstances. Likewise, payments for electricity generated received by a building owner, providing them with asset management or cash flow benefits, should be excluded, since such benefits primarily accrue to the landlord and may only potentially and indirectly benefit residents. In addition, “financial benefit” should be flexible enough to apply to innovative financial structures designed for community wealth-building and mutual aid that are led and managed by community-based organizations.

³² <https://calsomah.org/eligibility-requirements>

(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.

Prioritization to Projects that Provide the Most Direct Benefits to Local Communities: The Department should provide detailed guidance establishing how it will prioritize the selection of projects under the environmental justice capacity limitation. This prioritization should include:

- *Projects that Provide Direct Benefits to Local Communities:* The 10% credit increase in low-income communities could theoretically apply to projects that are installed in a low-income community but provide no benefits to that community. Because this program is critical to reducing the very real gap between low-income households and communities of color and the rest of the United States, this type of disconnect between siting and benefits must be excluded through intentional program design. Environmental justice communities have not traditionally benefited from wind and solar resources.³³ To address this, this program should prioritize allocations from the environmental justice capacity limitation to those projects that provide direct benefits to local low-income communities. In particular, the Department should prioritize projects that guarantee bill savings and reduce the energy burden of low-income households. The Department should also take into account other project elements that can provide potential benefits to the local community, such as whether the project provides for local hiring.
- *Projects That Are Developed in Partnership with Communities:* This program should also prioritize projects that are driven and designed by the communities themselves, not by developers. This can be accomplished with either community-based ownership or by a design process that centers community voices in decision-making in the design and implementation of the project.

This type of prioritization is consistent with the language included in the original version of the Inflation Reduction Act's text from August 3, 2022, which provide the following direction to the Department:

(F) SELECTION CRITERIA.—In determining to which qualified facilities to allocate environmental justice capacity limitation under this paragraph, the Secretary shall take into consideration which facilities will result in—

³³ See, e.g., <https://www.sciencedirect.com/science/article/abs/pii/S2214629620301870>.

(i) the greatest health and economic benefits, including the ability to withstand extreme weather events, for individuals described in section 45D(e)(2),

(ii) the greatest employment and wages for such individuals, and

(iii) the greatest engagement with, outreach to, or ownership by, such individuals, including through partnerships with local governments, community-based organizations, an Indian tribal government (as defined in section 48(e)(4)(F)(ii)), or any Alaska Native Corporation (as defined in section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602(m)).³⁴

While this language was later removed by the Parliamentarian, it demonstrates the legislative intent for this program: Congress chose to provide discretion to the Department to ensure that this program maximizes the benefits to low-income communities. To best meet this purpose, the Department should prioritize projects that provide the greatest health and economic benefits, local employment benefits, and robust and meaningful community engagement, consistent with the language above. Without this prioritization, this program will not meet its intended purpose.

- *Equitable Community Solar*: The Treasury Department should establish priority for allocating amounts from the environmental justice capacity limitation to equitable community solar projects that provide clear and direct benefits to subscribers. Community solar is often the only way that many low-income renters can benefit from and participate in solar development. At a minimum, an equitable community solar program should include:
 - Community partnership in project development;
 - Simple eligibility verification to ensure that subscribers are low-income;
 - Clear and transparent billing practices, ideally via a single bill;
 - Guaranteed energy bill savings;
 - Preference for projects that provide local employment benefits; and

³⁴ See IRA (August 3, 2022 version), section 13103, available at <https://www.congress.gov/bill/117th-congress/house-bill/5376/text/pcs>.

- Preference for projects that combine solar with storage to provide community resilience.

Community solar represents a critical way to ensure that disadvantaged communities benefit directly from this program. The plain language of the IRA contemplates a community-solar type program by defining a “qualified low-income economic benefit project” as one that provides benefits to “households” as plural for a single “project,” and it requires that over 50 percent of those benefits are provided to low-income households.³⁵ Community solar projects meet this type of paradigm because multiple households can receive direct benefits from one project.

Tenant Protection: To ensure that tenants actually benefit from the projects receiving allocations under the environmental justice capacity limitation, they must be protected from raises in rent or utility allowances attributable to the installation of such projects and the electricity generated by them. Similar to California’s SOMAH program, the Department should require that residential property owners receiving allocations under this program are legally barred from raising rents or utility allowances based on the credits.³⁶

Clarify Requirements for “Qualified Low-income Economic Benefit Project”: Consistent with our recommendations above regarding prioritizing projects that provide the most financial benefits, and defining “financial benefit” to focus on reducing household energy burden, Treasury should issue guidance clarifying that a “Qualified Low-income Economic Benefit Project” must provide direct financial benefits to low-income households with a substantial connection to the project, such as subscribers to a community solar project. If our prioritization proposal is not adopted, and “financial benefit” is defined broadly, it is possible for a solar project to qualify if 50% of the value of the electricity generated is paid to the landlord of a deed-restricted affordable housing building, who then retains those payments to improve the property’s cash flow without providing any material benefits to the tenants. This kind of scenario diverges sharply from the Congressional intent of this program and should be avoided by clarifying the requirements for this type of project.

Streamline Income Verification for “Qualified Low-income Economic Benefit Project”: A Qualified Low-income Economic Benefit Project must provide the financial benefits of the electricity produced by the facility to households with income less than 200% of the federal poverty line or less than 80% of the area median gross income. To ensure maximum participation of low-income residents, it is essential that the process for verifying income is simple, flexible, and not burdensome. We encourage the Treasury Department to issue guidance allowing

³⁵ IRA, section 13103.

³⁶ <https://calsomah.org/eligibility-requirements>

residents to show their qualifying income level using a wide range of documentation, including proof of coverage in other public assistance programs with the same income requirements.

Response to 2022-50 (Elective payment and transferability):

Include Protection Related to Transferability for Low-Income Taxpayers: Section 6418 of the Code allows for the transferability of credits for cash for both. Section 13401 and 13402 of the IRA further allow for transferring credits related to electric vehicle sales. Problematically, the transfer of credits may be transacted in a market based system, and less sophisticated taxpayers who face language and economic barriers may feel pressure to enter transactions that do not provide them with a reasonable value of the tax credits. Further, these taxpayers may not understand the application of certain credits and feel pressured to enter transfer agreements that later may lead to penalties. The Treasury Department must include consumer protections, especially for low-income taxpayers, to ensure that they receive a reasonable value for tax credits. This could be achieved, for example, by working with Community Development Agencies to help facilitate transactions.

Streamline Application for Direct Pay of Credits to Nonprofits Serving Low-Income and Disadvantaged Communities: Section 6417 allows nonprofits and municipalities to receive direct-pay for tax credits under the Inflation Reduction Act. To assist nonprofits and municipalities that are serving low-income households and households in environmental justice communities, the Treasury Department should include a streamlined application process with technical assistance that will help ensure that these entities understand the direct pay option and can apply for it. The Treasury Department should also ensure that the payment for direct pay is timely. In addition, because nonprofit community-based organizations often partner with mission-aligned, for-profit developers to develop solar projects, the Department should consider developing an accessible method for splitting tax credits between nonprofit and for-profit partnerships.

Response to 2022-51 (Wage, apprenticeship, etc.): The Treasury Department should develop robust tracking and oversight requirements with relation to equity and labor requirements. The IRA requires agencies, including the Treasury Department, to track labor and equity within the IRA implementation.³⁷ Given this mandate, which will be implemented through the OMB and GAO, it is critical for the Treasury Department to develop a strong, robust foundation for labor and equity considerations in the development of the program.

Incorporate or Coordinate with Pre-Apprenticeship Opportunities: To better ensure that career pathways are created for disadvantaged or underrepresented workers, as well as to supply

³⁷ IRA, section 70004 (requiring GAO to provide oversight as to whether the “environmental, economic, and social” impacts of the funds are “equitable”) and section 70005 (requiring the OMB to track “labor, equity, and environmental” standards and performance).

qualified workers, Treasury should consider incorporating or coordinating with quality pre-apprenticeship programs as part of the apprenticeship requirement. As described in High-Road Workforce Guide for City Climate Action:

Since registered apprenticeships are extremely competitive, have complex entry requirements, and can be difficult to navigate, pre-apprenticeship training programs are an effective way to support disadvantaged workers' access to apprenticeship programs.

Pre-apprenticeship programs provide training and support services to prepare disadvantaged workers for apprenticeship programs.

...Quality pre-apprenticeship programs have significant potential to provide a sustainable pathway out of poverty and raise the skill level of disadvantaged or underrepresented workers.

Pre-apprenticeship programs promote equitable access to careers that have historically been inaccessible to women, returning citizens, and people of color, including immigrants, who have been disproportionately affected by structural racism. Most pre-apprenticeship programs are designed to prepare individuals to enter and succeed in a registered apprenticeship program.³⁸

Any incorporation or coordination with pre-apprenticeship programs should focus on those that include the federal Department of Labor's core elements of "a quality pre-apprenticeship," including:

1. Approved curriculum for training;
2. Recruitment, educational, and professional development to guide underrepresented individuals on a path to long-term success;
3. Access to financial, mentoring, or other necessary support services;
4. Hands-on training opportunities working with apprentices or journey-level workers on a project site, which is valuable for giving participants a better idea of what a job in construction or manufacturing would be like; and
5. Linkage to a registered apprenticeship program formalized through an articulation agreement or facilitated entry.³⁹

Local Hire and Hiring from Groups Facing Employment Barriers: Local hire is an important and effective way to provide direct economic benefits to communities. Local hire is particularly needed in both energy communities and low-income communities to provide well-paying, stable

³⁸ https://emeraldcities.org/wp-content/uploads/2021/11/workforce-guide_4.12.21_form.pdf

³⁹ https://emeraldcities.org/wp-content/uploads/2021/11/workforce-guide_4.12.21_form.pdf

jobs. The Department can take important steps to help incentivize local hire through its administration of the tax incentives. Specifically, the Department can take the following steps:

- **Require Reporting of Local Hire Outreach and Preferences:** The Department should require that projects claiming the wage and apprenticeship adder provide documentation to support their claim. As part of this documentation, the Department should require reporting on all efforts to provide outreach on employment opportunities to the local community, as well as their local hire preferences. This documentation and data should be reported and monitored in ways that make the information transparent and easily accessible. It should also be regularly updated and published, for example on a quarterly basis. Documentation and data collection should include:
 - Stated hiring goals, hiring plans/mechanisms, and resulting hires, including reporting on demographics of hires, including race and ethnicity, gender, local and disadvantaged workers. For identification of local hires, Treasury should consider requiring reporting on the primary residence zip codes of hires. The Department can employ a similar type of evaluation as it has used for Economic Impact Payments.⁴⁰
 - Requirements for hours worked for all workers, by race, ethnicity, and gender as well as disaggregated by employer/employment type, trade, journey- vs. apprentice-level, union status, and referral source. This reporting should also include information about whether the jobs are short or long term to assess how many jobs last past the installation of a given project. This reporting, among other things, will enable review of compliance with federal antidiscrimination laws and regulations by all participants, identifying patterns of discrimination and indicating any systemic barriers or challenges.
 - The participation of Disadvantaged Business Enterprises (DBE) should be encouraged and tracked.
- **Encourage Local Hire in Low-Income and Energy Communities, and Hiring Groups that Face Employment Barriers:** Developers should be encouraged to include local hire as well as hiring groups that face barriers to employment, as included within the Work Opportunity Tax Credit.

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<https://home.treasury.gov/news/featured-stories/progress-towards-an-evaluation-of-economic-impact-payment-receipt-by-race-and-ethnicity>

- **Work with the Department of Labor (“DOL”) to ensure compliance to labor standards as set forth or prioritized by federal regulations:** The Treasury Department should also work with DOL to ensure compliance with labor standards, including having a definition of minimum federal standards for equitable and inclusive local hire.
- **Require documentation on hiring processes/mechanisms and resulting contracts:** Treasury should review this information to determine whether the hiring involved equity stakeholders and DBE representatives in a public and transparent process, utilizing best practices to advance diversity and opportunity.

.04 Energy Community Requirement

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

Accessibility and Self-Nomination: To ensure that information related to the energy community is accessible, the Treasury Department should publish a mapping tool that provides a visualization of what areas qualify as an energy community. This should include all areas that meet the definition based on the best available information including updated information from the U.S. Environmental Protection Agency for brownfields and fossil fuel sites and updated information from the Department of Labor on employment. The Treasury Department should also set forth a process by which local community members can ask for their community to be included within the definition of an energy community because the information related to employment, local tax revenues, and brownfields may be incomplete. These data sources should be easily accessible and understandable to ensure that interested entities and households understand whether a potential tax adder for an energy community is applicable.

Conclusion

To ensure that the tax incentives are administered as justly and equitably as possible, the Treasury Department must do all the following:

- Provide more opportunities for feedback from environmental justice communities, from both community-based organizations and individuals;
- Take actions to reduce the equity gap given that many tax incentive benefits will not reach environmental justice communities and low-income households;
- Increase transparency and accessibility of information;
- Clarify that taxpayers with an ITIN can qualify for tax incentives;
- Integrate equity considerations throughout the guidance;
- Include the Department of Energy’s Office of Economic Impact and Diversity in implementation;

- Consider the tax incentives under the Justice40 Initiative;
- Ensure that greenhouse gas emission rates take all emissions into account;
- Ensure that the low-income solar and wind program prioritizes projects that provide the most benefits to local communities, community partnership in project development, and equitable community solar projects; and defines “financial benefit” to focus on reducing energy burden, avoiding adverse consequences for tenants, and ensuring that real benefits reach low-income households and communities;
- Include consumer protections related to transferability for low-income taxpayers;
- Streamline application for direct pay of credits to nonprofits serving low-income and disadvantaged communities;
- Prioritize local hire by requiring reporting and outreach; and
- Prioritize equitable energy efficiency and building decarbonization programs.

We further urge the Department to meaningfully engage with environmental justice communities, prioritize clean, community-centered development, and to ensure that its actions do not perpetuate, exacerbate, or create pollution burdens in communities that have disproportionately suffered the negative effects of fossil fuel development and use.

Thank you for considering these comments. If you have any questions, please contact Sylvia Chi at sylvia@justsolutionscollective.org.

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