



To: U.S. Department of the Treasury, Internal Revenue Service
From: Lynn Heller, CEO, Climate Access Fund
Date: November 4, 2022
Re: Comments in Response to Notice 2022-50

Thank you for the opportunity to respond to the Treasury Department and IRS Request for Comments on Notice 2022-50, related to the Inflation Reduction Act.

The Climate Access Fund ("CAF") was established in 2017 in Baltimore, Maryland as an independent 501(c)(3) green bank aimed at reducing the energy burden and carbon footprint of low-income households by facilitating access to community solar. CAF's primary purpose is to fill gaps in the solar market that are preventing more low-income households from benefiting from solar power. CAF does so by offering innovative financing to solar developers to incentivize them to serve more low-income households, directly developing and managing innovative low-income-centered community solar projects, and advocating for statewide policies that increase low-income access to community solar.

Section 3. Request for Comments

.01 Elective Payment of Applicable Credits (§ 6417).

(4) With respect to an election under § 6417(a) made by a partnership or S corporation pursuant to § 6417(c)(1) for any applicable credit determined with respect to any facility or property held directly by a partnership or S corporation:

(a) What, if any, issues could arise when a partnership or S corporation makes an election under § 6417(a) and what, if any, guidance is needed with respect to such issues?

CAF urges Treasury to clarify that a single-member, disregarded entity that is wholly owned by a 501(c)3 nonprofit organization qualifies as an applicable entity and may own the project. In other words, CAF urges Treasury to treat such a disregarded entity as a 501(c)3 applicable entity for the purposes of Direct Pay. This will allow 501(c)3 organizations to establish structures to protect their officers and directors from project liability; without this clarification, 501(c)3 organizations may not be able to apply to be applicable entities.

(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 16 treated as applicable entities under § 6417(d)(1)(B), (C), or (D) for purposes of § 6417?

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(b) What types of structures are anticipated to be used by applicable entities, and taxpayers who have elected to be treated as applicable entities under § 6417(d)(1)(B), (C), or (D), when seeking to apply § 6417(a)?

For liability purposes, a 501(c)3 applicable entity is likely to establish a single-member, wholly owned, disregarded entity (LLC) to own the solar project. As a result, in order for a 501(c)3 to participate in Direct Pay, its single-member, wholly owned, disregarded entity would also need to be treated as an applicable entity.

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

Shared ownership of an applicable facility is an important potential financial benefit of low-income economic benefit projects, as it provides an opportunity to accelerate wealth-building in under-resourced communities. Most community solar projects are owned by institutional and corporate investors, often out-of-state, and the financial benefits of long-term ownership of the facility do not accrue to under-resourced communities. The Climate Access Fund has developed a model for sharing project ownership with low-income members of the communities in which projects are located: subscribers who pay their bills consistently and on time are provided equity shares in the project and are eligible to earn an expected return over time.

The Direct Pay option included in the Inflation Reduction Act is a welcome innovation, as it will allow smaller projects like Solar4Us @ Henderson-Hopkins that are unable to attract the attention of traditional tax equity investors to benefit from the federal investment tax credit. It will also improve project economics by eliminating the need to cover expensive tax equity transaction costs. Yet with the Direct Pay requirement that an applicable entity (nonprofit organization) must own 100% of the facility during the recapture period (in contrast to traditional tax equity rules where ownership can be shared with other investors), shared ownership with low-income households during the recapture period will not be possible, which will limit the overall financial benefit of the project available to members of the community.

CAF urges Treasury to make an exception to the 100% ownership rule during the recapture period for taxpayers who plan to share ownership of the facility with low-income households.