Comment from PosiGen, Inc.

PosiGen, Inc. is pleased to respond to Notice 2022-51. Please note that this document also includes responses to Notices 2022-48 and 2022-49, and will also be filed in response to those notices.

PosiGen®
Solar Energy and Energy Efficiency

819 Central Avenue, Suite 210
New Orleans, LA 70121

November 4, 2022

SUBMITTED VIA REGULATIONS.GOV

Internal Revenue Service
RE: Notice 2022-49
Room 5203
P.O. Box 7604
Ben Franklin Station
Washington, DC 20044

RE: ***Notice 2022-49***: Request for Comments on Certain Energy Generation Incentives
Notice 2022-51: Request for Comments on Prevailing Wage, Apprenticeship, Domestic Content, and Energy Communities Requirements Under the Act Commonly Known as the Inflation Reduction Act of 2022
Notice 2022-48: Request for Comments on Incentive Provisions for Improving the Energy Efficiency of Residential and Commercial Buildings

I. Introduction

PosiGen, Inc. welcomes the opportunity to respond to the Treasury Department's request for comments included in Notices 2022-49, 2022-51 and 2022-48. Treasury's implementation of the clean energy tax provisions included in the *Inflation Reduction Act* (the "***IRA***") will be critical to the transition to a clean energy economy that benefits all Americans. As the leading provider of residential rooftop solar and energy efficiency solutions for low-to-moderate income ("***LMI***") homeowners, PosiGen has a unique and valuable perspective on these topics. PosiGen looks forward to continuing to be the leader in efforts to expand the benefits of renewable energy to as many Americans as possible.

Since 2011, PosiGen's mission has been to significantly improve our customers' lives, strengthen disadvantaged communities, create sustainable local jobs, and support place-based climate resilience through clean energy. PosiGen is closing the clean energy affordability gap by delivering solar energy and energy efficiency upgrades to LMI homeowners. Throughout the country, LMI consumers bear the largest energy burden, have been disproportionately impacted during the COVID-19 pandemic, and are currently facing a period of rising energy costs not seen in over 40 years. The IRA is consistent with PosiGen's purpose to make "Solar for ALL" a reality, and our vision to "save families money and transform communities with clean energy."

To date, the company has served over 20,000 residential customers across 8 states. PosiGen's lease program covers the full cost to design, engineer, install, operate, maintain, and insure the solar system with no upfront cost to the homeowner, no minimum credit score, and no income eligibility requirements. In addition to the solar energy system, PosiGen provides energy efficiency upgrades to all lease customers at no extra cost and guarantees that the customer will save money on their energy expenses. PosiGen's LMI-focused approach has made Louisiana the national leader in equitable solar adoption where 72% of solar adopters have an annual income below $100,000 and 37% below $50,000.[1] PosiGen's Solar For All partnership with Connecticut Green Bank included 4,400 families (65% of whom were below median income levels) who saved on average $700 in their first year of participation.[2] PosiGen believes that key provisions of the IRA will provide opportunities to greatly expand our offerings and serve more customers, which will result in cleaner, more prosperous and more resilient LMI communities across the country.

PosiGen is encouraged by the guiding principles set forth by Treasury in connection with the IRA implementation process. PosiGen is grateful that Treasury is committed to robust and broad public engagement and supports its goals to "work expeditiously to provide clarity and certainty to taxpayers, so the climate and economic benefits of this historic legislation can be felt as quickly as possible." PosiGen also believes that effective guardrails must be part of the process to "ensure the benefits" of the IRA "are delivered as Congress intended." We look forward to working with Treasury staff and other stakeholders to ensure that the IRA is implemented in as efficient and effective a manner as possible, and consistent with congressional intent.

II. Notice 2022-49: .06 IRA Addition of Special Program for Certain Facilities Placed in Service in Connection with Low-Income Communities (Sections 48(e) and 48E(h))

PosiGen strongly supports the special program for qualifying facilities placed in service in connection with low-income communities (the "LIC Program"). This program applies to both the Section 48 credit (in place from January 1, 2023, through December 31, 2024) and the Section 48E Clean Electricity Investment Credit that comes into effect on January 1, 2025. We believe this new incentive can greatly expand the amount of clean energy offered to LMI communities, particularly by residential rooftop solar companies such as PosiGen.

At the same time, we recognize the inherent complexities of a tax credit that is allocated by the Secretary, as well as the limitations imposed by capping the annual environmental justice allocation amount at 1.8GW. Our responses below are designed to provide specific and tangible suggestions to help Treasury implement the LIC Program in a way that navigates the complexities while simultaneously making the program as simple and straightforward as possible for the low-income residents intended to benefit from it.

<u>(1)(a)</u> *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?*

Treasury's implementation of the program should balance the competing goals of providing businesses the certainty they need to meaningfully participate in the LIC Program, while ensuring that the finite environmental justice capacity limitation is distributed in an efficient and equitable manner. Additionally, Treasury will need to implement safeguards to ensure that allocations are made to businesses best able to provide the intended benefits of the LIC Program, and that allocation amounts do not go to waste or result in unnecessary project delays.

---

[1] Data from the Lawrence Berkeley National Laboratory Solar Demographics Tool, *available at* https://emp.lbl.gov/solar-demographics-tool.

[2] "Solar for All Program Created Savings for Homeowners (2015 – 2021)," *available at* https://www.ctgreenbank.com/Solarforall/.

The LIC Program design process should recognize a few key principles and realities:

- The LIC Program is intended to benefit low-income residents through allocation of environmental justice capacity limitation. Consequently, stakeholders involved in designing the Program should keep this question top-of-mind when considering design elements: "**Does this benefit low-income residents**?"[3]
- Different project types, of varying complexity and proximity to low-income residents, may be eligible for a credit under the LIC Program; the application and distribution processes should reflect these differences.
- The 10 percent and 20 percent credits are fundamentally different in terms of the types of projects they are designed to incentivize; the application and distribution processes should reflect these differences.

PosiGen suggests the 10 percent qualified solar and wind facility credit increase (Section 48(e)(2) and Section 48E(h)(2)(A)(iii)(I)) be structured as described below. We believe the 20 percent credit increase for qualified low-income residential building projects and qualified low-income economic benefit projects could be designed similarly but with modifications to reflect that these projects are significantly larger, more complex, and take much longer to complete.

A. Rolling Applications on First-Come, First-Served Basis

PosiGen supports the concept of a rolling application process that would operate on a first-come, first-served basis. Our view of how that process should work is detailed further below. We believe this is the fairest manner by which to allocate a limited amount of credits each year. We are concerned that a once-or-twice per year open application window could create the incentive for participants to capture as much credit allocation all at once as possible, which could reduce the likelihood that the credits will be used effectively and efficiently. Additionally, limited application windows conflict with the project development cycle for residential solar projects, which are developed on an ongoing basis and require more certainty to ensure the full value of the credits flow to the LMI households. This has been true of residential energy programs with limited application windows across the country, which has caused boom and bust cycles that can lead to consumer harm. This fundamental tension between limited application windows and ongoing project development is the primary reason nearly all residential solar programs operate on a continuously open basis.

B. Minimum Set-Asides (Sub-Allocations) By Project Category

We believe the brevity and relative lack of detail in the statute indicates the desire by congressional tax-writers to have Treasury effectively "fill in the blanks." There is nothing in the statute that would prohibit Treasury from creating sub-allocations within the 1.8GW per year cap in order to reserve minimum amounts based on type of project. The statute clearly contemplates 3 different categories of projects,

---

[3] In a statement on the House floor during consideration of the bill as amended by the Senate, Ways and Means Chairman Richard explained that "in selecting projects for allocation, the [Ways and Means] Committee intends for the Secretary to take into account which projects demonstrate the greatest health and economic benefits for disadvantaged individuals . . ." Chairman Neal Comments, Congressional Record of August 12, 2022, p.H7664).

and we believe Treasury should create sub-allocation set-asides for each category in order to ensure a diverse set of projects that serve all segments of low income communities. Of the 3 categories, qualified solar and wind facilities is likely to be the category with greatest demand and greatest potential to accelerate the development of clean energy projects that benefit low-income residents.

According to Wood Mackenzie's and SEIA's quarterly "U.S. Solar Market Insight" report, the residential solar segment installed 1360MW_{dc} in Q2 2022, while commercial solar installed 336MW_{dc} and community solar installed 228MW_{dc}.[4] Residential rooftop solar can be installed quickly and efficiently (within 3-6 months from inception in most cases). It can also provide the largest energy savings and most direct resilience benefits to LMI customers and communities. **As such, we ask Treasury to set aside at least 50% of the yearly 1.8GW allocation, 900MWs, for projects that qualify as single family qualified solar and wind facilities**. Should this allocation subsequently be determined as too high or too low, we suggest a mechanism by which Treasury could change the set-aside allocation in a subsequent year, as discussed below.

Some have suggested an "open pool," an amount that would be initially set aside and then opened to all participants once the minimum set asides are reached. We do not believe such a concept is necessary due to the safeguards built into the approach we are suggesting, including limitations on project size and amounts of allocation that can be reserved at any one time by a single taxpayer.

C. Two Step Application Process: Reservation and Claim

PosiGen believes that the application process for allocations should be bifurcated in 2 critical respects.

First, the LIC Program should grant a capacity allocation to either a developer in connection with a specific project (a "Project Reservation") or to a developer, to be used on certain project types subject to certain requirements (an "Experienced Developer Reservation"). These distinct reservation paths are described further below.

Second, upon being placed in service (as that concept is already defined in existing tax law), the project developer would notify Treasury of the final eligible credit to be claimed ("Claim of Credit"). This second step in the application process is detailed further below.

1A. <u>Project Reservation (Small Projects)</u>

Any developer who wishes to reserve a portion of environmental justice credit under the LIC Program as it relates to qualified solar and wind facilities no larger than 25kW_{dc} (each, a "Small Project")[5] should be required to provide the following basic information to Treasury (collectively, the "Basic Eligibility Information"):[6]

- Business entity information, such as place of incorporation and identity of officers;
- Appropriate business licensure;

---

[4] U.S. Solar Market Insight report; executive summary *available at* https://www.seia.org/research-resources/solar-market-insight-report-2022-q3.

[5] The PosiGen systems installed on its customers' homes are, on average, smaller than 10$kW_{dc.}$

[6] As project size and complexity increases, developers should be required to provide more information.

- Proof of appropriate insurance; and
- Applicable registrations required for the developer to operate in a particular jurisdiction.

Treasury should establish a public, web-based application interface, with real-time, or nearly real-time data on dashboards to track capacity allocations and the remaining capacity in each set aside. A developer who has provided Basic Eligibility Information would be able to interact with the dashboard and apply for a capacity allocation for a Small Project by providing:

- Identifying information for the customer, installer, and project owner; and
- A copy of the signed contract between the installer/project owner and the customer.

The Project Reservation path strikes a balance between requiring critical information to ensure that only legitimate actors are eligible to obtain a capacity allocation and establishing a simple process that will encourage the development of renewable energy in low-income communities and allow for new market entrants to participate in the LIC Program.

1B. Experienced Developer Reservation (Small Projects)

Developers who have provided Basic Eligibility Information and **can also demonstrate** that they developed, own, and operate **least 5MW of solar or wind capacity** during the three years prior to their submission of the Basic Eligibility Information (an "Experienced Developer") would receive an automatic allocation of up to $10MW_{dc}$ (which is equivalent to .56% of the annual environmental justice capacity). Once granted an Experienced Developer Reservation, Treasury's system should not allow the taxpayer to apply for additional capacity through the dashboard until the taxpayer has completed projects and submitted Claims of Credit totaling at least 50% of the amount of the Reservation.

After using at least 50% of an Experienced Developer Reservation, an Experienced Developer could either apply for Project Reservations, or for a supplemental Experienced Developer Reservation (provided that the Experienced Developer cannot hold a reservation of more than $10MW_{dc}$ of combined unused capacity at any point in a given year), depending on available capacity.

Finally, if an Experienced Developer has not submitted Claims of Credit for at least 75% of its Experienced Developer Reservation within one year of its grant, Treasury should require the Experienced Developer to provide proof of eligible projects (such as fully executed contracts with customers). The total capacity amount reflected by adding the capacity of eligible projects would remain part of the Experienced Developer Reservation, while the rest would be withdrawn from the Experienced Developer and deposited back in the appropriate set aside.

The Experienced Developer Reservation path for Small Projects is **good for low-income residents for several reasons**:

- Small Projects are likely to consist primarily of installations on single family homes, and consequently directly benefit low-income residents.
- In order to appropriately market, sell, and price offerings to LMI homeowners, developers need to know, in advance, which credits those offerings will be eligible to receive.
    - Without this certainty, it is likely that many developers would price offerings on the assumption that they will not receive all available credits. This means that if a project

ends up eligible for the additional credit then the developer, rather than the low-income resident, would end up benefiting from it.
    - Other developers may price on the assumption that they will receive available credits, but if after applying for a Project Reservation learn that capacity has been exhausted for the year, may delay progress on the project until the next year's allocation becomes available. This means that the low-income resident would end up waiting unnecessarily to benefit from the renewable energy project.
- It is riskier, and consequently more expensive, for developers to do business with LMI residents. Encouraging enhanced development in these areas, for the benefit of the people who live in them, is the fundamental point of the IRA.

The rationale behind the Experienced Developer Reservation concept is consistent with congressional intent. In fact, Ways and Means Chairman Richard Neal – the author of the LIC Program – spoke to this very point in his statement on the House floor during consideration of bill as amended by the Senate:

> *Additionally, this legislation is* ***designed to provide maximum flexibility to the Secretary*** *in designing an efficient application and allocation process to meet the needs of low-income residents.* ***Specifically, the legislation is intended to allow residential rooftop providers to identify potential customers in qualifying census tracts and submit applications to serve these customers up-front, before these businesses have contractually engaged these customers****. My understanding is that these businesses will need to know if they have received a credit allocation before they can offer the benefits of the credit to these customers* ***so that businesses can provide customers accurate pricing information and cost savings to low-income customers****.*

(Chairman Neal Comments, Congressional Record of August 12, 2022, p.H7664; emphasis added.)

PosiGen believes that the Experienced Developer Reservation provides the best path to jumpstart the LIC Program by giving those most capable of fulfilling its ambitious goals the tools they need to deliver the benefits of the IRA to low-income residents.

2. <u>Claim of Credit</u>

After a project has been placed in service, developers provide the necessary information regarding the completed project to claim the credit. This two-step process is familiar to developers and has been the preferred approach for the most successful solar programs across the country, including in New York, Massachusetts, Illinois, New Jersey, and Connecticut. The two-step process outlined here is simple and inherently prevents abuse that might result in negative impact to U.S. taxpayers because the Claim of Credit cannot occur until a project is placed in service.

D. Comprehensive Program Review

PosiGen believes that Treasury should conduct a comprehensive program review periodically, such as every 3 years. The primary purpose of this review would be to evaluate whether the set-asides (sub-allocations) should be adjusted based on the demand in the previous years. Such a review would also give Treasury the opportunity to assess if other aspects of the program needed to be also adjusted.

(1)(b) *How can the application procedures and application process be made accessible to taxpayers?*

PosiGen supports Treasury working with other relevant departments and agencies to create an easily accessible website that would update in real time (but in no event less than daily) the amount of credit allocation reserved, claimed, and available – broken down by each sub-allocation/set aside. Treasury should look to successful state programs, such as the New York Sun program,[7] that have instituted such a website. The LIC Program website should also include a link to a list of low-income communities qualifying under the Section 45D definition and Indian lands qualifying under Section 2601(2) of the Energy Policy Act of 1992. The website should allow for applications as well as submission of any other required materials. An all-electronic process is the most certain way to provide for an efficient process for taxpayers.

(1)(c) *How can the process incorporate community input, engagement and benefit for projects seeking an allocation of the environmental justice capacity limitation?*

One fundamental difference between the 3 categories in the LIC Program is that the IRA requires a showing of financial benefit to low-income households for the 20 percent credit categories but not the 10 percent category. As such, we would suggest that Treasury not go beyond the statute in requiring any financial benefit for purposes of qualified solar and wind facilities. PosiGen certainly supports direct engagement with local communities and we pride ourselves on our relationships with those that live where we operate. However, we do not recommend implementing a requirement that is not rooted in the IRA or intent language.

(2) *What stage of completion, if any, should be required of the taxpayer at the time of application for or allocation of amounts of environmental justice capacity limitation (since the taxpayer will have four years to place the facility in service)?*

See Section II(C), above.

(3) *What methods currently exist or need to be designed for a taxpayer to certify that a project is being built in a low-income community, on Indian land, or as part of a low-income residential building project or a qualified low-income economic benefit project?*

With respect to qualified solar and wind facilities, this method should be straightforward. If Treasury, in consultation with other parts of the federal government, can design a website that lists all qualifying low-income communities and Indian lands on an annual basis, taxpayers should be able to rely on this information in their applications.

(7) *What should the Treasury Department and the IRS consider in providing guidance regarding the recapture of the benefits of the credit increase allowed under Sections 48(e) and 48E(h) when property ceases to be property eligible for such credit increase? How should the one-time restoration of eligibility be documented before recapture?*

---

7 NY-Sun Solar Program, *available at* https://www.nyserda.ny.gov/All-Programs/NY-Sun/Contractors/Dashboards-and-incentives.

We believe that Treasury needs to clarify that a solar or wind energy facility in development will not cease to be qualifying property just because its location ceases to be designated as a low-income community or Indian land before such project is placed in service. If a project is timely placed in service, the only requirement should be that the property ***at time of reservation*** was located within a qualified area. If the qualifying project is taken out of service after receipt of the credit, then existing recapture provisions should apply; if the overall credit is recaptured because a system is taken out of service, the additional credit amount associated with the LIC Program should be treated the same way.

III. Notice 2022-51: Request for Comments on . . . . Domestic Content, and Energy Communities Requirements

A. Domestic Content

PosiGen believes that if a single project consists of energy property described in more than one subsection of section 48(a)(3)(A), the taxpayer should be able to choose whether to treat the different types of energy properties as part of the same energy project or separate energy projects. For example, if a taxpayer places in service solar shingles that are energy property described in section 48(a)(3)(A)(i) and associated energy storage technology described in section 48(a)(3)(A)(ix), the taxpayer should be able to choose whether to aggregate the solar energy property and energy storage technology into one energy project, or to treat the solar energy property as one energy project and the energy storage technology as another energy project, for purposes of the Domestic Content Bonus.

B. Energy Communities

PosiGen believes that Treasury should ensure that "energy communities" are **clearly defined, can be readily identified, and that eligibility for the 10 percent bonus tax credit attaches when qualifying projects commence construction.**

PosiGen believes that implementation of the Energy Communities Credit should be sensitive to three principles:

First, it should be simple and straightforward to locate an "energy community."

- Many of these communities have not shared in the benefits of renewable energy, and expanding operations to do business in them will be costly.
- The more certainty a developer has that it is working in an energy community, the more likely a central goal of IRA will be fulfilled: to expand access to renewable energy in the communities that need it most.
- Treasury should designate a publicly available source for identifying energy communities that are eligible for the Energy Communities Credit.

Second, once a community is designated an "energy community," the geographic area should maintain that designation for a specified, meaningful period of time.

- Ramping up to expand into an energy community requires significant investment of capital, time, and resources. Renewable energy developers should be able to rely on that designation in advance, and trust that an area will remain an "energy community" for a significant period of time after market entry.
- If an energy community falls out of the definition for some reason (for example, if numbers associated with unemployment change), the area should nonetheless remain an "energy community" for at least two years after the change.

Third, eligibility for the Energy Communities Credit should attach to a renewable energy project when construction work begins.

- Renewable energy projects differ, but all take time.
- Developers need to know as early as possible that a particular project will be eligible for the Energy Communities Credit, in part so that if for some reason a particular community falls out of the definition mid-development, the project remains eligible.

IV. Notice 2022-48, Request for Comments on Incentive Provisions for Improving the Energy Efficiency of Residential and Commercial Buildings

PosiGen urges Treasury to ensure that those who offer Energy Efficiency Services associated with the Energy Efficient Home Improvement Credit **meet certain standards**. PosiGen is committed to energy efficiency, and has made it a standard part of its offering to consumers since 2012. In short, PosiGen pairs each installation of a solar system on a lease customer's home with an in-home energy efficiency assessment conducted in accordance with Building Performance Institute standards. We then work with the customer to select from a suite of efficiency improvements designed to increase savings and comfort, as well as identify health and safety issues – all for no additional charge. Typical measures include air and duct sealing, insulation, light bulbs, and programmable thermostats.

PosiGen looks forward to engaging with Treasury to ensure the implementation of the Energy Efficient Home Improvement Credit is successful. To that end, **PosiGen believes that home energy auditors who do work associated with the credit should meet the same standards set forth for auditors under the Department of Energy's Home Energy Score™ program**, as described here: https://betterbuildingssolutioncenter.energy.gov/home-energy-score/become-assessor

V. Conclusion

PosiGen supports the urgency with which the Treasury Department is endeavoring to promulgate guidance to implement the critical clean energy incentives discussed in this letter. We applaud the Department's stated commitment to clarity and certainty, robust public engagement, and sound stewardship to ensure that the benefits of the clean energy incentives in the IRA are delivered as intended by Congress. Consistent with the comments in this letter, PosiGen urges Treasury to issue guidance that will make the new law as accessible, transparent, and user-friendly as possible. Lastly, PosiGen intends these comments to be complementary to and broadly aligned with the comments filed by the Solar Energy Industries Association.

Thank you for the opportunity to comment. Should you have questions, please do not hesitate to reach out to PosiGen's Chief Compliance and Policy Officer, Steven Burt, at sburt@posigen.com.

Sincerely,

Thomas A. Neyhart
Chief Executive Officer,
PosiGen, Inc.