Internal Revenue Service
United States Department of the Treasury
Ben Franklin Station
P.O. Box 7604, Room 5203
Washington, D.C., 20044

Submitted via regulations.gov (IRS and REG–110412–23)

June 26, 2023

Re: Additional Guidance on Low-Income Communities Bonus Credit Program

National Housing Trust (NHT) and Stewards of Affordable Housing for the Future (SAHF) appreciate the opportunity to provide comments, and offer the following recommendations on the additional guidance on the Low-Income Communities Bonus Credit Program.

1. **Expand the Means of Allocating Financial Benefits Equitably**

The Notice of Proposed Rulemaking acknowledges that:

> "…in some states or jurisdictions it may not be administratively, or legally, possible to apply utility bill savings on residents' electricity bills."

In fact, only 21 states and D.C. have statewide metering policies that support sharing solar savings in affordable multifamily housing as a credit on resident utility bills (see graphic below).[1] Furthermore, even in jurisdictions with supportive policies, the processes may not be in place to align credits with the resident utility bills so that the credit can be incorporated into the utility bill.

In some scenarios, affordable housing owners may be able to distribute financial benefits directly to residents when the option to provide an on-bill credit is not available. However, in cases where the residents receive specific types of financial assistance (e.g. HUD and USDA rental assistance), a direct financial distribution from the building could *conflict* with program regulations and/or impact resident annual income and rent calculations. For example, HUD has

[1] These states allow for aggregated and/or virtual net metering. Burton, Robin, and Tyler Orcutt. 2022. "Community Solar Policy Screening Workbook for Multifamily Affordable Housing Building Portfolios." NREL

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determined that providing financial benefits in the form of gift cards or cash payments would generally be included in family annual income.[2] A tenant may risk losing their federal assistance if income rises above a certain level. Due to these complexities, the Treasury Department and IRS should provide flexibility in how a facility owner or lessee shares financial benefits with tenants to ensure that residents in every state can benefit from the solar bonus tax credit.

Since 2014, NHT has partnered with affordable housing owners across the country to develop, finance, and install 13MW of renewable energy projects. Prior to the availability of the Community Renewable Energy Facility in D.C., we partnered with building owners to provide an array of benefits to residents funded by solar savings including:

- Community meals and groceries for residents;
- Direct rent relief to families affected by Covid-19;
- Transportation support (Metro card/credits);
- Payroll to support resident service coordinators and increased resident service; and programming.

We recommend that the Treasury Department and IRS amend Section c, Impact of Metering on Delivery of Financial Benefits, on page 35794 of the Federal Register notice, to include the following:

> "The Treasury Department and IRS propose that tenants receive the financial value associated with utility bill savings in the form of a credit on their utility bills to the extent feasible. However, the financial benefits of the electricity produced by the facility cannot be distributed to residents in master-metered buildings in the form of a credit on their utility bills. In addition, the Treasury Department and the IRS are aware that in some States or jurisdictions, it may not be administratively, or legally, possible to apply utility bill savings on residents' electricity bills. Therefore, the Treasury Department and IRS propose that financial benefits can be allocated equitably among the occupants of the dwelling units of such a property in several ways including, but not limited to, the following means:
>
> (a) Electricity at a below-market rate
> (b) Discounted credit on resident utility bills or rent
> (c) Job training and workforce development
> (d) Payroll for additional building support staff
> (e) Building upgrades
> (f) Free or reduced cost high-speed internet service
> (g) Resident services

[2] HUD, Treatment of Solar Benefits for Residents in Master-metered Buildings, https://www.hud.gov/sites/dfiles/Housing/documents/MF_Memo_re_Community_Solar_Credits_in_MM_Buildings.pdf

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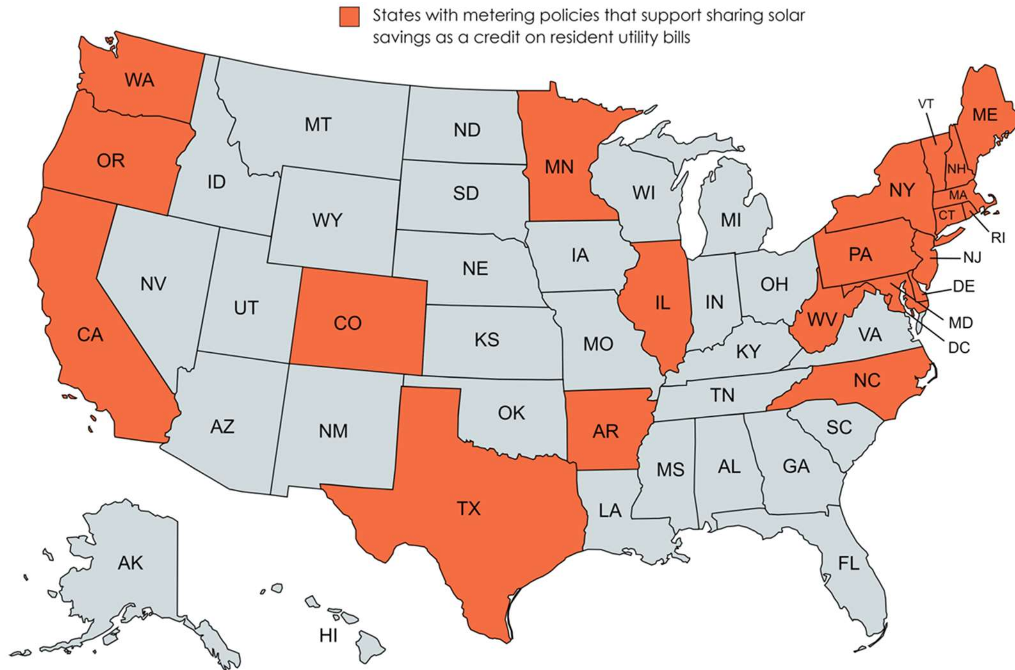

2. Ensure that Non-Profit Managing or General Partners in a LIHTC Partnership Qualify under the Ownership Priority Selection Criteria

The Treasury Department and IRS propose ownership criteria as one of two additional selection criteria for prioritizing applicants. The ownership category is based on the characteristics of the applicant that owns the qualified solar and wind facility. Qualified tax-exempt entities would qualify under the ownership criteria.

The current definition of "qualified tax-exempt entity" would essentially exclude LIHTC properties from qualifying under the ownership criteria. LIHTC transactions typically include a single purpose for-profit owner that is controlled by either a non-profit or for-profit. Many LIHTC projects are developed and owned by tax-exempt nonprofits under this structure and should not be disadvantaged in the additional selection criteria. Including tax-exempt non-profits aligns with the goal of supporting mission-driven organizations that are legally required to reinvest net earnings in their work.

We recommend the Treasury Department and IRS amend the definition of qualified tax-exempt entity by adding the text below in red.

e. Qualified tax-exempt entity

A "qualified tax-exempt entity" for purposes of the Ownership Criteria is:

(1) An organization exempt from the tax imposed by subtitle A of the Code by reason of being described in section 501(c)(3) or section 501(d);

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(2) Any State, the District of Columbia, or political subdivision thereof, any territory of the United States, or any agency or instrumentality of any of the foregoing;

(3) An Indian Tribal government (as defined in section 30D(g)(9)), political subdivision thereof, or any agency or instrumentality of any of the foregoing; or

(4) Any corporation described in section 501(c)(12) operating on a cooperative basis which is engaged in furnishing electric energy to persons in rural areas

<u>A qualified tax-exempt entity can include an organization that meets Criteria (1) and serves as the managing member or general partner of a legal entity that owns the facility.</u>

3. Provide Flexibility in the Benefit Sharing Agreement Requirements

The Treasury Department and IRS propose to require a signed benefits agreement between the building owner and the tenants if the facility and building are commonly owned, or an agreement between the facility owner and building owner if the facility and qualified residential property have different ownership. The guidance does not specify whether the agreement with tenants must be signed by all tenants or a tenant association on behalf of tenants.

Tenant engagement and input is critical whenever a building owner is making significant modifications to their buildings. Residents should have a voice in decisions about how they should benefit from renewable energy. However, building owners will face challenges in securing the required signatures. It will be time-consuming and administratively burdensome and costly to secure signatures for all tenants, and in many buildings, active tenant associations do not exist.

We recommend revising the benefit-sharing agreement requirement while also ensuring that tenants are adequately consulted. The Treasury Department and IRS can require building owners to develop a benefits sharing plan that must be communicated to tenants, with owners ensuring that sufficient time is given for tenants to provide feedback on the plan.

HUD’s Green and Resilient Retrofit Program (GRRP) includes such a requirement. Building owners are required to conduct at least one meeting with residents to inform them of scope of work and solicit resident input. The owner must provide HUD evidence of resident engagement by submitting the dates of resident engagement and a record of the questions, comments, and owner responses to resident comments on the proposed plan and scope of work that were discussed at the meetings. The Treasury Department and IRS could adapt this approach to require building owners inform residents about the benefits sharing plan.

In addition, building owners could be required to include a description of the benefits in resident leases to ensure that new residents are aware of the benefits sharing plan.

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4. **Expand the Qualifying Geographic Criteria**

We support the use of geographic criteria as a factor in prioritizing allocations of scarce Capacity Limitation since it will allow IRS to give preference to communities that can benefit most from new investments in qualified facilities. In addition, we support the use of multiple geographic designations, which allow IRS to target multiple metrics.

We recommend that the Qualified Census Tract (QCT) geographic definition from the Low Income Housing Tax Credit (LIHTC) program as one option under the Geographic Criteria. The QCT designation denotes census tracts where either (1) 50% or more of the households have an income less than 60% of the Area Median Gross Income, or (2) the poverty rate is over 25%. It is an appropriate mechanism for the Geographic Criteria because (1) it captures neighborhood-level data, which represent actual community experience; (2) its data is updated annually, based on a three-year lookback; and (3) it would align the Geographic Criteria with the geographic priorities of the LIHTC, the federal housing program most likely to be used in conjunction with the Low-Income Communities Bonus Credit Program.

In addition, we recommend reconsidering the use of USDA's Persistent Poverty Counties (PPC) as a poverty measure because county-level designation masks significant variation within counties and does not capture persistent poverty within counties not registering as PPCs. For example, D.C. does not qualify as a persistent poverty county but 21% of D.C. census tracts, representing 20% of D.C. residents, are considered persistent poverty census tracts.[3] Indiana does not have any PPCs, but 9% of census tracts are persistent poverty tracts.[4]

5. **Eliminate the Requirement that the Facility Must be Sized to No More than 110% of Historical Customer Load**

Facility sizing requirements should be set at the local/utility level and not specified in the program requirements. Limiting the size of the facility will reduce the amount benefits available to tenants. In D.C., Pepco allows facilities to be sized up to 180% of customer load. This has allowed NHT, for example, to develop a facility that serves the residents of Savannah Apartments, as well as surrounding residents. An artificial limit on the facility size may make such projects ineligible and fail to account for future electrification needs likely to arise with more extreme weather and decarbonization efforts underway.

Once again, thank you for the opportunity to comment on this important program. If you have any further questions, please do not hesitate to reach out Todd Nedwick, Senior Director of Sustainability Policy at National Housing Trust (tnedwick@nhtinc.org) or Lauren Westmoreland, Vice President, Energy & Sustainability at Stewards of Affordable Housing for the Future (lwestmoreland@sahfnet.org).

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[3] https://www.census.gov/content/dam/Census/library/publications/2023/acs/acs-51%20persistent%20poverty.pdf
[4] Ibid

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