



DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

August 30, 2024

via Email

Dear Tribal Leader:

On behalf of the U.S. Department of the Treasury (Treasury), I invite you to a consultation on a Notice of Proposed Rulemaking (NPRM) titled "[Guidance on Clean Electricity Low-Income Communities Bonus Credit Amount Program](#)" (REG-108920-24), which would provide guidance under section 48E(h) of the Internal Revenue Code (Code), added by the Inflation Reduction Act of 2022 (IRA). The Clean Electricity Low-Income Communities Bonus Credit Amount Program (Program) provides an allocated "bonus" or increase in the amount of credit (not a separate bonus credit) for eligible projects "placed in service" by Tribal governments and Tribal enterprises. The consultation will be held virtually on Friday, September 27, 2024, from 1:00 – 3:00 p.m. ET.

You may register for the consultation [here](#).

In addition to Tribal consultation, Treasury will accept written or electronic comments received by October 18, 2024 at 11:59 p.m. Alaska Time. Written comments should be sent to tribal.consult@treasury.gov.

Background:

The IRA first established the Low-Income Communities Bonus Credit Program under section 48(e) of the Code, which provides additional investment tax credit amounts to certain qualifying projects for the 2023 and 2024 program years. Starting in 2025, section 48(e) is replaced with section 48E(h), which is a technology-neutral successor to section 48(e). This expansion of applicable facilities coincides with Treasury's efforts to make the benefits of the Clean Electricity Production Credit and Clean Electricity Investment Credit available to clean energy facilities with a greenhouse gas emissions rate of zero or less.

The section 48(e) bonus credit provided a 10 or 20 percentage point increase to the investment tax credit for qualified solar and wind energy facilities with a maximum net output of less than five megawatts (AC). The section 48E(h) NPRM would propose to open the Program more broadly to allow bonus credit amounts for non-combustion and gasification facilities, including hydropower facilities, marine and hydrokinetic facilities, solar facilities, geothermal facilities, nuclear fission facilities, nuclear fusion facilities,

and certain waste energy recovery properties. The Treasury and the Internal Revenue Service (IRS) expect that many of the procedural aspects of the Program will be similar to the previous program which was available for calendar years 2023 and 2024 and subject to Tribal consultation.

Like the previous section 48(e) program, the Program under section 48E(h) has four categories. For each year, the total annual Capacity Limitation that may be allocated is 1.8 gigawatts of direct current capacity beginning on January 1, 2025. Treasury has not determined category allocations for the 2025 program, including the reservation of allocations for Category 2 concerning Indian Lands. This determination will occur in sub-regulatory guidance.

Category	Bonus
Category 1: Located in a Low-Income Community	10 percent
Category 2: Located on Indian Land	10 percent
Category 3: Qualified Low-Income Residential Building Project	20 percent
Category 4: Qualified Low-Income Economic Benefit Project	20 percent

Like the previous section 48(e) program, these proposed regulations would provide a reservation of fifty percent (50%) of Capacity Limitation in each of the four categories for certain Additional Selection Criteria relating to facility ownership and geographic criteria. The ownership criteria would be based on the characteristics of the applicant that owns an applicable facility.

A facility would meet the Ownership Criteria if it is owned by a Tribal Enterprise (as defined in paragraph (h)(2)(iii)), Alaskan Native Corporation (as defined in paragraph (h)(2)(iv)), a renewable energy cooperative (as defined in paragraph (h)(2)(v)), or a qualified tax-exempt entity (as defined in paragraph (h)(2)(vii)) such as an Indian Tribal Government. These Ownership Criteria would be analogous to the Ownership Criteria in the section 48(e) final regulations.

A facility would meet the Geographic Criteria if it is located in a Persistent Poverty County, which is generally defined as any county where 20 percent or more of residents have experienced high poverty rates over the past 30 years. In addition, certain census tracts with high energy burden or cost and/or exposure to PM2.5 pollution are eligible. The definitions of applicable characteristics are defined in the NPRM. Indian Lands, under Category 2, would be excluded from the Geographic Criteria.

NPRM Highlights:

Types of Applicable Facilities: The NPRM clarifies that the types of qualified facilities eligible for the Program would be only those non-combustion and gasification qualified facilities (non-C&G facilities) that Treasury and the IRS have determined have a greenhouse gas (GHG) emissions rate of not greater than zero. The NPRM provides a list of categorical non-C&G facilities and provides that Treasury and the IRS may add more facilities in later Program years.

Less than Five Megawatts Requirement: Section 48E(h)(2)(A)(ii) requires that an applicable facility have a maximum net output of less than 5 megawatts (measured in alternating current). The NPRM would provide that the determination of whether an applicable facility has a maximum net output of less than 5 MW (as measured in AC) is based on the nameplate capacity of the applicable facility. However, the preamble to the NPRM explains that Treasury and the IRS believe that allocating amounts of Capacity Limitation to a group of related qualified facilities with an aggregate total maximum net output equal to or greater than five megawatts (as measured in alternating current) could concentrate allocations in a smaller number of communities, which would not further the purpose of efficient allocation of a federal tax credit program with a national impact.

Treasury and the IRS therefore intend to deprioritize the review of applications for an applicable facility that together with other qualified facilities (1) share a point of interconnection, (2) produce electricity using the same technology, (3) are owned by the same taxpayer, and (4) have an aggregate total maximum net output (as determined by the sum of the maximum net output of the applicable facility and each qualified facility under proposed §1.48E(h)-1(b)(3)(ii)) equal to or greater than five megawatts (alternating current). Deprioritized applications will be considered after other applications in the current allocation round or a subsequent allocation round at the discretion of Treasury and the IRS. An application for review may be deemed to not be part of a group of related qualified facilities with a total combined maximum net output equal to or greater than five megawatts if it has an interconnection agreement for less than five megawatts.

Project Viability Documentation: To ensure that allocations will be awarded to facilities that are likely to meet the four-year placed-in-service deadline, the NPRM would require applicants to submit certain information, documentation, and attestations when applying for an allocation that demonstrates project eligibility and viability. The Treasury and the IRS expect these documents would be similar to those utilized for the section 48(e) program and will be published in procedural guidance.

Disregarded Entities: The NPRM would propose adding additional information with respect to disregarded entities and partnerships. The proposed rules would specify that

if an applicant wholly owns an entity that is the owner of an applicable facility, and the entity is disregarded as separate from its owner for Federal income tax purposes (disregarded entity), the applicant, and not the disregarded entity, is treated as the owner of the applicable facility for purposes of the Ownership Criteria. For corporations incorporated under the authority of either section 17 of the Indian Reorganization Act of 1934, 25 U.S.C. 5124, or section 3 of the Oklahoma Indian Welfare Act, 25 U.S.C. 5203), the NPRM would provide that applications for an allocation of increased credit capacity may be made as a Tribal Enterprise. The NPRM describes additional rules that would apply to partnerships.

Category 3, Qualified Residential Property: The NPRM would provide that a Qualified Residential Property could either be a multifamily rental property or single-family rental property. The NPRM would also clarify that a facility does not need to be installed directly on the building to be considered installed on a Qualified Residential Property if the facility is installed on the same or an adjacent parcel of land as the Qualified Residential Property, and the other requirements to be a Category 3 facility are satisfied.

Category 3, Financial Benefits: The NPRM would expand financial benefits delivery mechanisms to account for future technologies and require a higher discount rate for low-income subscribers. Category 3 includes eligible projects operated by a Tribal government or Tribally Designated Housing Entities. The NPRM would propose a discount rate of 30%, up from 20% in the section 48(e) final regulations.

To satisfy the requirements of a Category 3 facility, the financial benefits of the electricity produced by the facility must be allocated equitably among the occupants of the dwelling units of the Qualified Residential Property. The same rules for financial benefits for Category 3 facilities apply to both multi-family property and single-family Qualified Residential Property. Additionally, at least 50 percent of the financial value of the electricity produced by the facility must be equitably allocated to the Qualified Residential Property's occupants who are designated as low-income occupants under the covered housing program or other affordable housing program.

Consultation Content:

Pursuant to [Executive Order 13175](#); the [Presidential Memorandum for Tribal Consultation and Strengthening Nation-to-Nation Relationships](#); the [Presidential Memorandum on Uniform Standards for Tribal Consultation](#); and Treasury's [Tribal Consultation and Coordination with Tribal Nations Policy](#), Treasury is commencing

expedited consultation on this NPRM to inform the development of final guidance to implement section 48E(h).¹

Specifically, Treasury requests the assistance of Tribal leaders in addressing all aspects of the NPRM that may have an impact on Tribal interests, including on these topics:

1. The 48(e) program contained a 200 MW set aside for Category 2-Indian Lands. As explained above, this NPRM does not propose set asides for any eligible categories, including for Indian lands.
 - a. Do Tribes seek a specific set aside for the Indian Lands category for the 48E(h) program in future sub-regulatory guidance and, if so, what should that amount be?
2. The NPRM describes a list of clean energy facility categories that qualify for the Program under section 48E(h) and provides a process for addition of more facility categories.
 - a. What questions or comments do Tribes have regarding the list and/or the process for adding further facility categories?
3. The NPRM describes Treasury's intent to deprioritize review of applications for an applicable facility that together with other qualified facilities (1) share a point of interconnection, (2) produce electricity using the same technology, (3) are owned by the same taxpayer, and (4) have an aggregate total maximum net output equal to or greater than five megawatts (alternating current).
 - a. What questions or recommendations do Tribes have regarding this requirement?
4. To establish project viability, the NPRM proposes to require applicants to submit certain information, documentation, and attestations that are similar to the section 48(e) program.
 - a. Are modifications necessary with respect to any of the application requirements used for the 2023 and 2024 program years to ensure access by Tribes and Tribal entities with viable projects?
 - b. Can certain facility categories, such as those on Indian lands, demonstrate project viability with other types of documentation? If so, please share your recommended documentation.
5. The NPRM addresses the filing process for disregarded entities and clarifies that Tribal enterprises that are federally chartered may continue to file as a Tribal enterprise.
 - a. What questions or recommendations do you have regarding these proposed rules?
6. A Category 3 facility would not need to be installed directly on the building to be considered installed on a Qualified Residential Property (QRP) if the facility is installed on *the same or an adjacent parcel of land* as the QRP and the other requirements to be a Category 3 facility are satisfied.

¹ Treasury ordinarily provides 30 days' notice prior to a consultation and a 30-day comment period following the consultation. Due to IRA implementation timelines, this consultation is being held on an expedited timeline to ensure Tribal leader feedback is received to inform the development of final guidance.

- a. What questions or comments do Tribes have regarding these installation parameters for eligible single-family projects?
 - b. If customization of the installation requirements is suggested for single-family projects, what parameters do you recommend?
7. For Category 3 projects, the NPRM proposes a discount rate of 30%, up from 20% in the previous program to establish financial benefits for low-income residential building projects.
 - a. What questions or recommendations do Tribes have regarding these proposed rules?
8. What other questions or recommendations, if any, do Tribes have regarding the NPRM?

You may register for the Tribal consultation [here](#).

We respectfully request that each Tribe register one person to participate in the consultation. All others are welcome to register as listen-only participants.

In addition to Tribal consultation, Treasury is accepting written or electronic comments received by October 18, 2024 at 11:59 p.m. Alaska Time. Written comments should be sent to tribal.consult@treasury.gov.

Please note that consultations are off the record and not for press purposes.

We will send out an Agenda and a list of registered speakers before the consultation.

We hope that you will be able to join us for this important discussion and value your participation.

Sincerely,

Chief Lynn Malerba
Treasurer
U.S. Department of the Treasury