June 29, 2023

Internal Revenue Service
CC:PA:LPD:PR (REG-110412-23)
Room 5203
P.O. Box 7604, Ben Franklin Station
Washington, DC 20044

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

To Whom it May Concern:

On behalf of the members of the Novogradac Low-Income Housing Tax Credit Working Group (the LIHTC Working Group), we appreciate the opportunity to comment on the Notice of Proposed Rulemaking, Additional Guidance on Low-Income Communities Bonus Credit Program (the Notice). The LIHTC Working Group was established to provide a platform for low-income housing tax credit (LIHTC) industry participants to work together to resolve technical and administrative LIHTC program issues, and provide recommendations to make the LIHTC even more efficient in delivering benefits to help build and preserve affordable housing and serve low-income residents. Our group includes nonprofit and for-profit developers, syndicators, investors, lenders, lawyers and other affordable housing professionals.

Attached please find the LIHTC Working Group's comments including requests for guidance and recommendations regarding the Notice. Our comments are meant to provide the U.S. Department of Treasury (Treasury) and the Internal Revenue Service (IRS) with information needed to help guide their decisions as they make plans to implement the IRA's energy provisions.

Please do not hesitate to contact us if you have any questions regarding our comments or if we can be of further assistance. We would be happy to discuss our comments in further detail. Thank you in advance for your time and consideration.

Yours very truly,

Novogradac and Company LLP

By

Dirk Wallace, Partner

Attachment: LIHTC Working Group Comments on Notice of Proposed Rulemaking, Additional Guidance on Low-Income Communities Bonus Credit Program

Notice of Proposed Rulemaking, Additional Guidance on Low-Income Communities Bonus Credit Program
Novogradac LIHTC Working Group

Explanation of Proposed Rules

I. Proposed Definitions and Requirements

C. Financial Benefits for Category 3 and Category 4 Allocations

1. Financial benefits for Qualified Low-Income Residential Building Projects

a. Facility and Qualified Residential Property Have Same Ownership

> *If the facility and building are commonly owned, a signed benefits sharing agreement between the building owner and the tenants would be required. The Treasury Department and the IRS request comments on how to adjust definitions of gross financial value to account for scenarios in which building occupants are compensating the facility owner for energy services.*

Comments

We respectfully request Treasury to reconsider the requirement for a signed benefits sharing agreement between the building owner and the tenants. We expect it will be an administrative burden and hurdle for the building owner to obtain signed agreements from all tenants. In addition, effectively requiring all tenants to approve the project or including only tenants which agree would likely work against the goal of equitably allocating the benefits of a renewable energy project to all tenants. We recommend eliminating the requirement for a signed benefits sharing agreement between the building owner and the tenants.

We recommend that the facility owner and/or building owner provide notice to residents of the expected financial benefits, and the proposed method of allocating the financial benefits. Such notice period should allow for comments from residents to be submitted and responded to by the building owner.

Explanation of Proposed Rules

I. Proposed Definitions and Requirements

C. Financial Benefits for Category 3 and Category 4 Allocations

1. Financial Benefits for Qualified Low-Income Residential Building Projects

c. Impact of Metering on Delivery of Financial Benefits

> *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. The Treasury Department and the IRS request comments on this issue and how financial benefits, such as services and building improvements, can be provided to residents in such residential buildings.*
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> *For master-metered buildings, the Treasury Department and the IRS propose that because residents do not have individually metered utilities and do not receive utility bills, the building owner must pass on the savings through other means, such as by providing certain benefits to the building residents beyond those provided prior to the qualified solar and wind facility being placed in service.*

Comments

We respectfully request Treasury to reconsider the requirement for tenants to receive the financial value associated with utility savings in the form of a credit on their utility bills for sub-metered buildings. We expect that it is administratively costly and difficult, if not infeasible, to be able to deliver financial benefits to the tenants as a credit on their utility bills. In addition, it may not be possible due to state

regulations and local distribution company restrictions. We expect this would require either an existing utility infrastructure or program, a third-party service provider, and/or additional administrative time from building owners which generally do not have experience with utility credits or billing.

We recommend allowing the benefits to be provided through other means that can be provided equitably to the tenants similar to the guidance for master-metered buildings. Specifically, financial benefits should be allowed to accrue to the common area meters and then be disbursed equitably to occupants based upon any approved method – without regard to metering configuration and without requiring a bill credit allocation method. Qualified low-income residential building owners and Category 3 facility owners should be allowed to allocate the financial benefits by selecting from a list of pre-approved allocation methods. Such benefits should be defined by HUD and applicable to all properties, regardless of whether the residential unit is sub-metered or if the building is master-metered.

We noted in the HUD memorandum on master-metered buildings with solar, the memo provided the following examples of potential benefits to tenants without requiring a bill credit allocation:

- Job training and workforce development
- Additional support staff
- Facility upgrades
- Free or reduced cost of high-speed internet service
- Financial literacy programs and services
- Wellness programs and services
- Shuttle services
- Community events and/or support for resident associations

We recommend the Treasury not to limit the allocation of benefits solely to on-bill credits applied to resident paid sub-metered electric accounts, but rather to define (in consultation with HUD) clear allowable methods to allocate financial benefits, which can be achieved independently from shares of value or credits on a residential electric bill.

Explanation of Proposed Rules

I. Proposed Definitions and Requirements

C. Financial Benefits for Category 3 and Category 4 Allocations

2. Financial Benefits for Qualified Low-Income Economic Benefit Projects

For a facility to be treated as part of a qualified low-income economic benefit project, section 48(e)(2)(C) requires that at least 50 percent of the electricity produced by the facility be provided to qualifying low-income households. To satisfy this standard, the Treasury Department and the IRS propose to require that the facility serves multiple households and at least 50 percent of the facility's total output is distributed to qualifying low-income households under section 48(e)(2)(C)(i) or (ii).

Comments

We respectfully request Treasury to add eligibility under Category 4 for projects that benefit one single-family residence where 100 percent of the facility's total output is distributed to the qualifying low-income household residing at that residence, provided that the project meets all other Category 4 criteria and the facility provides at least a 20-percent utility bill savings for such low-income household. Congress' use of the term "households" in section 48(e)(2)(C) is more properly read as a programmatic term applying to all of the low-income households that can benefit from the program rather than a narrower reading suggested in the Notice. Such a narrow reading may result in barring bonus credit eligibility for solar installations that provide 100% of the economic benefit to qualified low-income households but would be excluded only because the household resides in a single-family home rather than a multi-family property.

Explanation of Proposed Rules
II. Proposed Program Requirements and Structure
C. Additional Selection Criteria
1. Ownership Criteria

The Ownership Criteria category is based on characteristics of the applicant that owns the qualified solar and wind facility. A qualified solar and wind facility would meet the Ownership Criteria if it were owned by a Tribal Enterprise, an Alaska Native Corporation, a renewable energy cooperative, a qualified renewable energy company meeting certain characteristics, or a qualified tax-exempt entity. If an applicant wholly owns an entity that is the owner of a qualified solar and wind 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 qualified solar and wind facility for purposes of the Ownership Criteria.

Comments
We respectfully request Treasury to reconsider the definition of ownership by a qualifying entity. Generally, renewable energy tax credit transactions or affordable housing developments qualifying for low-income housing tax credits (LIHTC) are structured as partnerships for federal income tax purposes to facilitate the allocation of tax credits to tax credit equity investors. For example, tax-exempt entities would generally have a controlling interest in the partnership through a general partner, sponsor, or managing member interest. In almost every case, the general partner or sponsor would not have a majority ownership due to the participation of a tax credit equity investor. Although facilities wholly-owned by certain entities may be able to utilize the transferability, refundable or direct pay options under the IRA, it may not always be economically beneficial or feasible, particularly for affordable housing developments that also qualify for low-income housing tax credits. We recommend the ownership criteria to be revised to be defined as a controlling interest rather than an ownership interest.

Explanation of Proposed Rules
II. Proposed Program Requirements and Structure
E. Application Materials
1. Documentation and Attestations to be Submitted for All Facilities

The applicant has appropriately sized the facility (to meet no more than 110% of historical customer load) – Behind-the-Meter facilities

Comments
We respectfully request Treasury to reconsider the limitation to size the facility to no more than 110% of historical customer load. Although the purpose of a limitation may be to prevent abuse or waste in connection with the ability to claim energy investment tax credits, we anticipate there would also be renewable energy projects that could feasibly produce and benefit from more than 110% of historical customer load. We expect this limitation would be a constraint for projects that can potentially participate in net-metering arrangements or for buildings that may see increases in customer usage in excess of 110% over a period of time.

We understand such load limits have historically been proposed by utility distribution companies and opponents of renewable energy to reduce the size of onsite solar facilities, limit financial benefits, and hinder overall distributed generation. For example, a potential Category 3 facility may only be allowed to interconnect to the local utility grid through a BTM configuration behind the common area meter. Limiting the facility size to 110% of historic customer load would provide only 10% of that common area load or net-metering benefits to be transferred to sub-metered residential accounts.

We recommend eliminating the limitation to size the facility based on historical customer load.