NATIONAL HOUSING TRUST

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

November 4, 2022

**Re: Request for Comments on Certain Energy Generation Incentives, Notice 2022-49**

Dear Secretary Yellen and Commissioner Rettig:

Thank you for the opportunity to provide input on the addition of special programs for clean electricity generation facilities placed in service in connection with low-income communities.

National Housing Trust (NHT) creates and preserves affordable homes to provide opportunity, advance racial equity, reduce economic disparities and strengthen community resilience through practice and policy. We have partnered with affordable housing owners across the country to co-develop, finance, and install13MW of solar projects. NHT's solar projects have generated $26.3M in property and resident savings, impacted over 11,800 low-income households, and reduced emissions by 330,946 metric tons.

There is tremendous potential to reduce carbon emissions and preserve affordable housing through deploying solar in subsidized housing. HUD-assisted properties alone have the potential to generate over 11,548 GWh of solar electricity annually and reduce carbon emissions by more than eight million metric tons, the equivalent of taking 1.8 million cars off the road every year.[1]

But incentives alone are not enough to achieve the full potential of solar energy in affordable housing. Integrating solar into affordable housing can be challenging for several reasons, including:

- Limited property cash flow and access to financing to pay upfront costs,

[1] https://www.sahfnet.org/sites/default/files/uploads/resources/sahf_community_solar_and_hud_subsidized_housing_overview_07.28.22.pdf

- Impediments to offsetting resident energy usage, and
- Administrative costs associated with verifying household income.

We urge Treasury to incorporate flexibility in its regulations for the Environmental Justice Solar and Wind Capacity Limitation to reflect these and other obstacles to affordable housing benefitting from the increased credit, as described in the recommendations below.

***.06 IRA Addition of Special Programs for Certain Facilities Placed in Service in Connection with Low-income Communities (§§ 48(e) and 48E(h))***

> ***Question 1(a):*** *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?*

**Recommendation: Establish a minimum annual allocation of 60% of the total 1.8 GW annual Environmental Justice Solar and Wind Capacity Limitation to qualified residential low-income building projects or qualified low-income economic benefit projects.**

A minimum allocation is necessary to ensure that residential low-income buildings and economic benefits projects can compete with projects in low-income communities. Completing solar projects in multifamily housing can be more complex and time consuming than installing solar in single-family homes or as part of a community-based facility.

- Approval from multiple existing partnership investors may be required before proceeding with a solar project in affordable housing.
- It is a best practice to comprehensively retrofit affordable multifamily housing in conjunction with installing solar. The process from developing the project concept and plan to completing construction can take 2-3 years.
- Projects in low-income communities that receive the 10% allocation do not have to demonstrate financial benefits and could receive an outsized capacity allocation due to the simplicity to qualify.

Designating the recommended minimum allocation would ensure financial benefits are allocated equitably to occupants of covered housing programs and income-eligible households, while allowing for fair competition amongst applicants for allocations between similar projects.

Proposed Allocation of Environmental Justice Credits

| Project Type | Capacity Allocation |
|---|---|
| Residential low-income buildings and economic benefit projects | Minimum annual allocation of 60% of 1.8 GW |
| Low-income community projects | No more than 40% of 1.8 GW |

**Recommendation: Clarify that non-profit third-party owners of solar facilities on low-income buildings qualify for direct pay.**

An affordable housing owner may prefer engaging a third-party non-profit organization to own the solar facility. Affordable housing providers often don't have access to upfront funding to pay for solar installation costs due to limited cash flow and lack of bridge financing. Housing owners may also not have the staff capacity to undertake the technical and administratively challenging task of developing, then managing a solar asset. Clarifying guidance from Treasury would ensure that affordable housing owners can engage third-party non-profit organizations to overcome some of these barriers.

**Recommendation: Approve applications for an allocation of the Environmental Justice Solar and Wind Capacity Limitation on a rolling basis to expedite construction.**

Delaying application approvals will jeopardize projects and could increase construction costs.

- Applicants will require certainty that they qualify for the credit increase early in project development to attract financing sources.
- Approving applications all at once could create a bottleneck in the industry by creating a glut of demand for project installers. An increase in labor demand would likely result in higher project costs.

**Recommendation: Clarify whether the 10% tax credits for low-income community projects may or may not 'stack' on top of the 20% qualified low-income residential building project and qualified low-income economic benefit projects credit.**

There remains some confusion within the solar industry as to whether a project that qualifies geographically for the low-income community project credit increase may *also* qualify and receive the credit increase if it meets the guidelines for the qualified low-income residential building project or qualified low-income economic benefit project credit; i.e., whether a total 30% additional credit may be achieved, or whether it is only possible to receive an additional 10% or 20%, but not both in this category of low-income tax credits.

> ***Question 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?*

**Recommendation: Existing affordability covenants should be sufficient to demonstrate the eligibility of a low-income residential building project.**

The Act identities the covered housing programs that qualify as a low-income residential building project. Proof of participation in one of the covered housing programs should be sufficient to confirm project eligibility. There's no language in the Act requiring additional documentation of resident incomes to qualify as a low-income residential building project.

In some cases, a building could be partially covered by an affordability covenant, i.e., less than 100% of the units in the building are subject to affordability restrictions. In such cases, the project should qualify as a low-income residential building project if most of the units are covered by an affordability covenant. A more restrictive threshold, i.e., requiring 100% of units to be covered by the affordability covenant, will disqualify buildings with a substantial number of low-income households.

**Recommendation: Allow a streamlined income documentation process to qualify low-income economic benefit projects.**

For low-income economic benefit projects, verifying household eligibility will be required. Treasury should provide guidelines for demonstrating eligibility in a manner that supports the comprehensive and inclusive participation of low-income households. The more streamlined and flexible the process is for documenting resident income eligibility, the less of a barrier to participation. Building owners may determine that participation in the program is not worth the administrative and cost burden of applying if they are required to verify the income of each household, thereby denying residents the benefits of participation. Treasury can address this barrier by offering multiple methods for documenting tenant eligibility, including:

- Allowing individuals who participate in other means-tested programs to use existing documentation to prove their eligibility, assuming the income eligibility and verification processes align with program requirements.

- Accepting documentation of rent rolls to demonstrate rent affordability. This option is particularly important to ensure that residents of non-subsidized multifamily buildings, aka "naturally-occurring affordable housing (NOAH)," can benefit. NOAH owners do not have experience collecting tenant income documentation and may be unwilling to do so. Building owners that can demonstrate eligibility by certifying that rents are affordable to households at the income standard set by the program, e.g., 80% AMI, will be more likely to participate in the program.

*Question 4: What mechanisms exist for a taxpayer to demonstrate that the financial benefits of the electricity produced by an applicable facility are allocated equitably among the occupants of a low-income residential building project and*

*do not impact the occupants' eligibility for their housing? Similarly, what mechanisms exist for a taxpayer to demonstrate that at least 50% of the financial benefits of electricity produced by an applicable facility which is part of a low-income economic benefit project are provided to households within certain income thresholds?*

**Recommendation: Allow for less than 100% of the value of electricity to be allocated to a property to meet the standard of "allocated equitably".**

Requiring that 100% of the value of electricity produced by the solar facility be allocated to offset property or resident energy usage will not be tenable in many cases due to project economics. There are many cases where a solar owner can only partially discount solar power to an affordable property. For example:

- A third-party solar developer provides funds for a partial or full roof repair prior to solar install,
- Owners are required to take on high-cost debt to finance the facility due to limited SREC proceeds or soft financing sources, or
- High utility interconnection costs, insurance & O&M costs, or other project costs.

Treasury should provide flexibility in its requirements for demonstrating an equitable allocation of financial benefits to accommodate project economic constraints.

*Question 5: Is guidance needed to clarify the meaning of the term "financial benefit"?*

**Recommendation: In affordable housing properties with long-term affordability covenants, Treasury should consider the offsetting of property energy usage as a support to affordable housing preservation that qualifies as a "financial benefit" to tenants.**

A broad definition of financial benefits will reduce barriers to participation due to difficulty directly offsetting tenant energy usage and help to preserve affordable housing.

There are several obstacles to multifamily building owners directly offsetting tenant energy usage.

- It can be costly to directly offset energy usage in tenant units in individually metered properties. An owner would have to install a separate solar system with its own inverter and interconnection for every meter on the property. Costs include interconnection fees and staff expenses from coordinating metering installation with utility companies.

- **Metering alternatives are not widely available.** Alternative metering arrangements, such as community solar and virtual net metering, can make it easier to directly offset tenant energy usage, but are not available in every state. As of 2020, less than half of states had developed community solar programs designed to benefit LMI households.[2] Most community solar output is concentrated in four states: Florida, Minnesota, New York, and Massachusetts.[3]

- **Drawbacks exist for alternative metering such as community renewable energy facilities (CREFs):** Even in states that offer community solar, interconnection is not guaranteed due to administrative and cost constraints.
    - Unlike with Net Energy Metering (NEM), a utility must assume that a CREF solar project will be feeding 100% of the power to the grid and that the utility's feeders can accept this power. This requires an interconnection study, and often results in additional transformer and related costs. These costs can be unpredictable and are unknown until after an initial interconnection application is made.
    - A CREF interconnection often lengthens a project timeline, as the utility must complete some of their own interconnection and metering work that is not needed under a simpler NEM interconnection.
    - A CREF interconnection requires substantial administrative work to track down tenant meters, market to and enroll subscribers, allocate solar power to each subscriber through a utility portal, and collect any payments.

- **HUD policies prevent sharing energy savings with tenants.** Tenants receiving energy bill savings from solar in HUD-assisted housing could see their rent increase due to the dynamic of utility allowance policies.[4] HUD has begun to issue guidance clarifying that rents do not have to increase in limited circumstances. However, guidance issued to-date does not apply to all solar programs.[5] Requiring financial benefits in the form of reduced energy bills will disqualify most HUD-assisted housing due to utility allowance policies unless HUD provides more comprehensive guidance exempting energy bill savings from utility allowance calculations.

**Preserving affordable housing by stabilizing property finances provides benefits to residents.** Using solar to offset operating expenses can help stabilize property finances and ensure that housing remains in good operating condition. Subsidized affordable housing is tightly underwritten to keep rents low. Most properties do not generate any net cash distributions to put towards the cost of building upgrades

[2] NREL, Equitable Access to Community Solar: Program Design and Subscription Services

[3] https://www.energy.gov/communitysolar/community-solar-market-trends

[4] https://www.sahfnet.org/sites/default/files/uploads/resources/sahf_community_solar_and_hud_subsidized_housing_overview_07.28.22.pdf

[5] https://www.hud.gov/sites/dfiles/Housing/documents/MF_Memo_Community_Solar_Credits_signed.pdf

beyond for standard reserve accounts. Property revenue is typically only sufficient to pay for operating expenses, debt payments, and fees due to investment partners.

This dynamic can put properties in a precarious financial situation that can be exacerbated during tough economic times. The pandemic increased expenses and reduced rental incomes in affordable housing.[6] The rise in inflation is hitting housing providers hard, increasing housing development and operating expenses. Affordable housing developments have seen unexpected cost increases averaging 30% in recent years.[7]

The cost of utilities is one of the highest controllable operating expenses in affordable housing. Reducing utility costs to lower operating expenses improves property cash flow to sustain operations and resident services.[8]

**There is precedence for determining that clean energy in affordable housing benefits residents when used to offset property energy use.** During a property development or re-development, LIHTC owners can include the solar costs in eligible basis to the extent that the solar benefits residents. Treasury has concluded that a solar facility owned by the housing partnership and offsets a property's energy use qualifies as benefiting residents.[9] In other words, the solar facility does not need to offset resident electric bills to be considered benefitting residents.

In the Weatherization Assistance Program (WAP), DOE has determined that tenants benefit from energy efficiency upgrades even if they don't directly pay for utilities when the WAP funding contributes to the "long-term preservation of the property as affordable housing."[10]

**Recommendation: Expand the definition of "financial benefit" to also include solar installed with battery storage systems that benefit tenants.**

Solar combined with storage may provide non-energy community and equity benefits during emergency events that are caused by or coincide with grid outages. In every corner of the nation, power outages or blackouts are becoming more commonplace as climate change exacerbates extreme weather and tests America's aging power grids. According to the U.S. Energy Information Administration, power failures have increased by 60% since 2015. Power outage events disproportionately affect low-income households, deepening existing social, economic, and public health disparities. Households of color experience prolonged blackouts four times as frequently than predominately white areas and show the most significant increase in emergency department visits from heat-related illnesses. The loss of power and

[6] https://www.enterprisecommunity.org/blog/survey-reveals-covid-19-impact-las-affordable-housing
[7] https://www.novoco.com/sites/default/files/atoms/files/ncsha-filling-funding-gaps-report-09202022.pdf
[8] Ibid
[9] https://www.novoco.com/periodicals/articles/current-ten-things-know-when-combining-renewable-energy-and-low-income-housing-tax-credits
[10] https://www.energy.gov/sites/default/files/2022-09/WPN%2022-12%20Multifamily%20Weatherization_0.pdf

access to electricity exacerbates health conditions common to residents of affordable housing, particularly those who rely on plug-in medical devices or refrigerated medications. Thus, 'financial benefit' in low-income qualified projects should include solar that feeds a battery storage system that provides tenant benefits.

**Recommendation: Limit the definition of "financial benefit" to the value of the subsidized electricity provided to occupants of low-income building projects, or recipients of financial benefits under a low-income economic benefit project.**

The 'financial benefit of electricity' could be broadly construed to include SREC value, grant income, roof lease payments to a property, federal/state/local tax credit benefits, etc. We recommend a narrow definition of financial benefit limited to the value of subsidized electricity. A broader definition would undermine solar project economics, threatening project viability.

*If you have questions or want to discuss anything in this document further, please reach out to Todd Nedwick at tnedwick@nhtinc.org.*