September 2024

Inflation Reduction Act 48E(h) Notice of Proposed Rulemaking

Ground Rules: Disclaimers

- This deck provides an overview of certain Inflation Reduction Act tax provisions for general informational purposes only and **is not itself tax guidance**.

- The content in this presentation is based on tax guidance on IRS.gov.

- This deck relies on simplifications and generalizations to convey high-level points about Inflation Reduction Act tax provisions. Please **refer to guidance** issued by the IRS for detailed information on the rules associated with Inflation Reduction Act tax provisions.

- Treasury and the IRS will **carefully consider feedback submitted** during the public comment periods for proposed and temporary regulations before issuing final rules.

Agenda

1. Background on the Low-Income Communities Bonus Credit
2. Key Differences between 48(e) and 48E(h)
3. Overview of 48E(h) NPRM

Background

- The Inflation Reduction Act of 2022 created the 48(e) Low-Income Communities Bonus Credit: a first-of-a-kind bonus credit designed to promote clean energy investments in low-income communities, on Indian Lands, as part of affordable housing developments, and benefitting low-income households.
- 48E(h), the Clean Electricity Low-Income Communities Bonus Credit Amount Program, is an expansion of 48(e) and is the technology-neutral successor of 48(e) beginning in 2025.
- Provides a 10 or 20 percentage point increase to the ITC for qualified facilities with max net output less than 5 MW AC.
- Treasury issued a Notice of Proposed Rulemaking for 48E(h) with a comment period ending on October 3, 2024. The NPRM incorporates lessons learned from the 48(e) regulations and from program years 2023 and 2024.

Key Differences

What's proposed to stay the same

- Use of Dept. of Energy's Applicant Portal
- Applications must be < 5 MW (in AC)
- Maintain use of 4 categories and sub-reservation for residential facilities (e.g. Behind-the-meter solar)
- Maintain 50% or more reservation for Additional Selection Criteria applications

What's proposed to changed

- Transition to broader set of clean electricity facilities
- Includes consideration of higher bill discount rate for low-income subscribers
- Some updates to Ownership Additional Selection Criteria

48E(h) Tech-Neutral Facilities Under Consideration

The statutory definition of an "applicable facility" excludes facilities which produce electricity through combustion or gasification. The following-categories are non-combustion and gasification facilities that have been determined in the NPRM to have a greenhouse gas emissions rate that is not greater than zero:

A. Wind (including small wind properties),
B. Hydropower,
C. Marine and hydrokinetic,
D. Solar (including photovoltaic and concentrating solar power),
E. Geothermal (including flash and binary plants),
F. Nuclear fission,
G. Nuclear fusion, and
H. Specific waste energy recovery property

§ 48E(h): Clean Electricity Low-Income Communities Bonus Credit Amount Program

- § 48E(h) can provide a bonus of **10 or 20 percentage points** to energy facilities (less than 5 MW), depending on the **category of facility**:
    - **<u>Category 1</u>**: Located in a Low-Income Community *(10 percentage points)*
    - **<u>Category 2</u>**: Located on Indian land *(10 percentage points)*
    - **<u>Category 3</u>**: Part of a qualified low-income residential building project *(20 percentage points)*
    - **<u>Category 4</u>**: Part of a qualified low-income economic benefit project *(20 percentage points)*
- To be eligible, property must be **placed in service within four years** after the date the applicant was awarded and notified of the allocation of Capacity Limitation for the facility

Additional Selection Criteria

Ownership Criteria

The ownership criteria is based on characteristics of the applicant that owns the qualified solar or wind facility

- Tribal enterprise
- Alaska Native Corporation
- Renewable energy cooperative
- Qualified tax-exempt entity
- **Proposed: Native Hawaiian entities**

Geographic Criteria

The geographic criteria is based on the county or census tract where the facility is located

- Persistent Poverty County
- Climate and Economic Justice Screening Tool (CEJST) Energy Category

Category 3: Qualified Residential Property

- Category 3 includes eligible projects operated by a Tribal government or Tribally Designated Housing Entities.
- 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 4: 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.
- The NPRM would propose a on bill discount rate of 30%, up from 20% in the section 48(e) final regulations.

Closing

- **48E(h) Notice of Proposed Rulemaking**
  - Tribal Consultation on September 27, 2024 – Treasury is accepting written comments received by October 18, 2024, 11:59 p.m. Alaska Time.
  - Federal Register 30-day comment period ends October 3, 2024
    - Please submit comments here: https://www.federalregister.gov/documents/2024/09/03/2024-19617/guidance-on-clean-electricity-low-income-communities-bonus-credit-amount-program
  - IRS Public hearing on October 17, 2024
  - Final Regulations and 2025 Program Opening: TBD

- **DOE is still accepting applications for the 2024 Program Year of 48(e)**
  - Until 10/10 for Categories 1, 3, and 4
  - Until 11/12 for Category 2
  - https://www.energy.gov/justice/low-income-communities-bonus-credit-program