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Submitted by: Clean Energy States Alliance

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Re: Comments from Clean Energy States Alliance on the Solar for All Competition of the Greenhouse Gas Reduction Fund

The staff of the [Clean Energy States Alliance](#) (CESA) is pleased to provide this comment to the U.S. Environmental Protection (EPA) regarding the Greenhouse Gas Reduction Fund (GGRF) Implementation Framework issued on April 19, 2023 (the GGRF Framework), authorized under Public Law 117-169, 136 Stat. 1818 dated August 16, 2022 and commonly known as the “*Inflation Reduction Act of 2022*” (IRA). Our comments chiefly pertain to the Solar for All Competition mandated by [42 U.S.C. § 7434\(a\)\(1\)](#) but also relate to some of the requirements set under the GGRF Framework applicable to all three competitions.

These comments reflect the perspective of CESA staff. CESA is a national nonprofit coalition of public agencies and organizations working together to advance clean energy. [CESA members](#) — almost all of which are state agencies — include many of the most innovative, successful, and influential public funders of clean energy initiatives in the country. The comments in this document do not necessarily represent the views of individual CESA member organizations or of CESA funders.¹

Our comments are presented following the sequence of the GGRF Framework. Below, we recommend that EPA provide early guidance regarding the scope of application of the Build America, Buy America Act and the Davis-Bacon Act (**A**). We suggest that deference be given to state definitions of “*low-income and disadvantaged communities*” when layering additional federal requirements would lead to a lack of clarity for state policymakers and negate the goals of the Solar for All competition (**B**). We raise issues with respect to the application process for the Solar for All competition. Particularly, we respectfully request that EPA extend the application window of the Solar for All competition for states and provide further resources to support states in their design work to meet program goals (**C**). Lastly, we offer that EPA consider clarifying that staff and consultant costs incurred by state agencies involved in the design and the deployment of state implementation programs under the Solar for All competition

¹ Sandia National Laboratories (Sandia) is an affiliate member of CESA. Representatives of Sandia have neither contributed to nor reviewed the comments in this document.

are “allowable program services and administration costs,” including, as appropriate and relevant, pre-award costs (D).

A. Complementary Requirements – Section A: Build America, Buy America, and Section B: Labor and Good Job Quality

Early guidance regarding the scope of application of the Build America, Buy America Act (BABA) and the Davis-Bacon Act (DBA) will be critical for states to design successful programs under the Solar for All competition.

The GGRF Framework sets requirements to meet the program’s objectives to reduce emissions, deliver benefits to low-income and disadvantaged communities, and mobilize financing and private capital to stimulate additional deployment of emissions-reducing projects. In addition, the GGRF Framework sets complementary requirements to meet the Biden-Harris’s administration priorities.

For states to successfully engage with the private sector and with communities in designing Solar for All programs aligned with the tight schedule set by federal legislation, knowing specifically which projects are considered “infrastructure” under the Build America, Buy America Act (BABA), and where the Davis-Bacon Act (DBA) may or may not apply will be crucial.

First, we recommend that EPA clarify that neither (1) residential solar, associated storage, and related upgrade projects, nor (2) commercial solar, associated storage, and related upgrade projects that primarily benefit renters and homeowners are considered public infrastructure projects under BABA or subject to BABA’s requirements.

Under [2 CFR 200.1](#), grants to states, such as those that will be awarded by EPA in the Solar for All competition are considered federal financial assistance, and must comply with BABA’s requirements if such funds are used for infrastructure projects. In the [Initial Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure](#) issued by the Office and Management and Budget (OMB) on April 18, 2022, OMB lists examples of projects considered “infrastructure” and clearly includes “structures, facilities and equipment that generate, transport, and distribute energy.”²

However, OMB goes on to state that federal agencies have some latitude to determine whether a project should be considered infrastructure so that “agencies should consider whether the project will serve a public function, including whether the project is publicly owned and operated, privately operated on behalf of the public, or is a place of public accommodation, as opposed to a project that is privately owned and not open to the public.”³ OMB goes on to state that “Projects consisting solely of the purchase, construction, or improvement of a private home for personal use, for example, would not constitute an infrastructure project.”⁴

The OMB guidance seems to imply that BABA requirements are not applicable, but a large gray area remains as (1) energy generation is specifically listed and (2) it could be argued that multifamily housing serves a “public function.” States designing programs and requests for

² See page 4 of the [Initial Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure](#)

³ Id.

⁴ Id.

proposals for the private sector utilizing GGRF funds to deploy solar, storage, or related upgrades on residential homes or on multifamily housing will need clarity on this issue to offer plans to EPA that accurately reflect what the market is in a position to offer.

Second, we recommend that EPA clarify which capital deployment models may be *de facto* excluded from DBA requirements so that states need not wait for a determination by federal agencies to understand whether a particular type of support will trigger DBA requirements. Under previous federal funding programs, for example on page 7 of the [Guidance for State Energy Program Grantees on Financing Programs](#) issued by the Department of Energy (DOE) on December 7, 2009 to implement the American Recovery and Reinvestment Act of 2009 (Recovery Act), DOE clarified that loan loss reserves, revolving loan funds, and interest rate buy-downs were not subject to DBA. Other types of support, for instance a performance-based incentive that would be folded into a state program to support third-party ownership solutions for low-income residential customers were neither clearly included nor excluded.

Given the diversity of states, energy markets, housing markets, and communities, it is likely that states will pursue a diversity of solutions that do not neatly fall within easy categories. However, given the outsize impact that states will have in deploying the Solar for All funds and the control they already have over their state's energy policies, it will be useful to (1) clarify which general categories of funding are exempted from or subject to DBA early on, to (2) clarify the impact of a state providing several types of funding (e.g., a loan to a private sector company to launch a low-income solar program together with incentives per project) on a project or program as a whole, and to (3) clarify how the size of a building, the number of units, or the type of building will impact DBA determination.

B. Complementary Requirements – Section C: Equity and Justice 40 Regarding Definitions of Low-Income and Disadvantaged Communities

Deference should be given to state definitions of “*low-income and disadvantaged communities*” when additional federal requirements would lead to a lack of clarity for state policymakers and increase the administrative burden in a way that could only delay the financing and deployment of clean energy assets necessary to meet climate and equity goals. As per the GGRF Framework, we understand that EPA plans to utilize the Climate and Economic Justice Screening Tool and EPA's EJScreen, as well as provide additional guidance in the Notices of Funding Opportunity (NOFO) regarding geographically dispersed low-income households and affordable housing. We believe that deference should be given to states definitions for the following reasons:

First, numerous states already have their own definitions and criteria for such communities (or similar terms like “*vulnerable communities*” or “*environmental justice communities*”) and state incentive programs for clean energy products and services offered in such communities are often conditioned on following the criteria set by states. This is the case in California, Maine, Maryland, Massachusetts, New York, Oregon, Virginia, and likely elsewhere. Ensuring that the implementation programs of the Solar for All competition are aligned with state programs would facilitate the stacking of existing incentive programs, thus stretching public dollars further, and increase the likelihood that the Solar for All competition will meet its goals.

Second, in some states, such as California and New York, state definitions are the result of extensive stakeholder processes. During these processes, states engaged communities, and in

some cases still do, to develop their environmental and/or energy justice policies and programs. The federal government dictating definitions that negate such local engagement process altogether would go against the intent of the [Justice40 Initiative](#) as it relates to engaging with, listening to, and hearing communities.

Third, due to the competitive nature of the grants, EPA is in a position to require that states explain who the programs will be for and justify their choices. EPA can then set such choices as conditions to the grants that will be awarded to avoid misuse of funds and to meet program goals in compliance with Justice40.

Lastly, and recognizing that EPA is planning on defining which households can benefit from Solar for All programs, including those located outside of the communities referred to above, we urge EPA to offer some flexibility in its household-level definitions to both allow and encourage states to stack low-income incentives with existing state programs and coordinate with other federal assistance programs wherever possible.

As per the GGRF Implementation Framework Solar for All description, EPA expects states to submit “a strategy to leverage existing federal, state, and local programs and subsidies to complement program deployment,”⁵ as part of their application. States already have a multitude of different criteria to contend with to qualify households. Federal definitions with local implementation elements, such as the [Weatherization Assistance Program](#), or requirements set forth in the IRA and pertaining to the [Low-Income Communities Bonus Credit Program](#) are inflexible.⁶ To the extent possible, we recommend that EPA prioritize simplicity by giving deference to state income qualifications definitions and processes and avoid the layering of yet additional criteria for household qualification.

C. Solar for All Competition Description – Application Components, Section B: Program Strategy – Application Process

We applaud the care and thoughtfulness that EPA put into creating the GGRF Framework Solar for All competition description. We wish to raise the following issues with respect to the application process: (1) the application’s timing, (2) state support during the application process, (3) and flexibility in information requirements. As per the tentative timeline released by EPA, states will only have two to three months to prepare their Solar for All application following the NOFO. State energy agencies are facing an unprecedented amount of activity to respond to the opportunities from EPA, DOE, the U.S. Department of Agriculture, and other agencies deploying funds under the IRA and the Infrastructure Investment and Jobs Act of 2021.

States are working hard to prepare for the many current and upcoming applications, but they are not sufficiently supported to take full advantage of these opportunities. Most state agencies cannot hire additional staff on a short-term basis due to administrative constraints and they still have the everyday business of states to attend to. Some states are better equipped than others and will be able to repurpose staff. Other states, particularly smaller states or states with energy agencies that are typically under-resourced, simply will not be able to dedicate staff time to

⁵ See GGRF Framework page 41 – Solar for All Overview

⁶ For examples of IRA definitions relevant to tax credits, see [Internal Revenue Code 26 U.S.C § 48\(e\)\(2\)\(c\)](#) and [Internal Revenue Code 26 U.S.C § 45D\(e\)\(1\)](#).

strategize and design intentional programs or may miss out entirely. For this reason, we hope that EPA may consider the following.

First, we respectfully request that EPA extend the application window of the Solar for All competition. The scale of this opportunity is too great and the occasion too momentous to rush this process. Unlike the other two competitions under the GGRF Framework in which funds will flow through several intermediaries before reaching communities, funding in the Solar for All competition will likely flow straight from the initial awardee – states – to developers and final consumers via state programs. As a result, the awardees of other GGRF competitions – “*eligible recipient*” nonprofits and hub nonprofits – will *de facto* benefit from additional planning time.

Further, while other eligible recipients can hire staff and consultants quickly, state agencies function under strict hiring and procurement constraints that do not allow such flexibility. Many states are just now coming out of their 2023 legislative seasons, ensuring that energy agencies will likely be faced with additional time pressures to implement local legislative priorities. For states to truly have the capacity to design solar programs and to thoughtfully apply to the Solar for All competition, they need as much time as EPA can offer after the NOFO is published to consider all facts and coordinate with other agencies and/or branches of government.

Perhaps there could be two application deadlines. One would use the schedule included by EPA in the Implementation Framework; it would allow states that are ready to apply quickly and enable EPA to begin the application review process. There could then be a second deadline two or three months later for states that need more time.

Second, we hope that EPA will consider creating or supporting the creation of state implementation program resources and models for the Solar for All competition before the end of the application period. With DOE funding under the [Scaling Up Solar for Under-Resourced Communities project](#), CESA is currently working on the creation of a series of building blocks based on Connecticut’s Solar for All program for states to use as an adaptable template. This model of third-party ownership developed by the Connecticut Green Bank and most recently adapted and launched by the [Hawaii](#) Green Infrastructure Authority and the [Rhode Island](#) Commerce Corporation and Office of Energy Resources, is one of several models that EPA could promote and make available to states as a starting point. We hope to make this template available to states nationwide this summer to help as many of them as possible.

By offering a few prepackaged models for states to start from, EPA could both assist states that do not have the resources to dedicate to the design process, as well as ease its own administrative burden in reviewing future applications. For the sake of clarity, we do not suggest that EPA should restrict in any way the flexibility offered to states to build the programs most adapted to them or require that states fit within one of these models. We do, however, believe that by providing adaptable models, EPA could support states that would otherwise not be able to submit workable program applications under tight deadlines, encourage cross-state collaboration, and facilitate economies of scale for private sector partners that will in turn deploy state funding across regions.

Third, we hope that EPA will consider allowing significant flexibility in the application process. In our experience, launching state programs typically requires at minimum six months to a year of intentional program design and deployment work. States will rightfully be requested

to provide a significant number of details about the programs they hope to build as part of their Solar for All competition application. Nevertheless, we hope that EPA leaves some leeway for states to engage with communities and with the private sector in their design phase after the awards are announced, and leaves space for states to be creative to meet their market and policy needs.

For example, as per the GGRF Framework, “*an applicant (...) can receive funding for both program development and program implementation.*”⁷ However, the Program Budget section requires a “*detailed schedule of activities, including a narrative and deployment subsidy model,*”⁸ and the Program Development Plan indicates that “*a detailed subsidy model may demonstrate how the proposed subsidy is structured to maximize both deployment capacity and household impact (...) while leveraging private capital and available federal, state, and local subsidies (...).*”⁹

States may wish to use methods to determine incentive levels that would make it difficult for them to communicate all this information to EPA at the time of application. For instance, Rhode Island used a type of reverse auction method for the Affordable Solar Access Pathways program so that private sector actors were required to compete at the Request for Proposals (RFP) stage by requesting the level of incentive they chose and by justifying how incentives, including dedicated tax incentives, would flow to, or be shared with, the final low-income customer.¹⁰

This method uses the private sector’s knowledge of the local markets, informs states about what will be a sufficient incentive for developers to serve low-income markets, and keeps developers honest as it forces them to compete with one another and disclose more information about their savings and profit models to states. Requiring all details about incentives with the initial application would remove such creative approach and force states to make policy decisions about incentives (amount, structure, payment schedules, etc.) with incomplete information, and with potential negative consequences for solar consumers.

We hope that with sufficient information about a general concept, states can be given additional time and support to source additional data, perform further analyses, hire more staff or consultants, or consult communities, as appropriate and relevant, before deciding on the details of a program design.

D. Solar for All Competition Description – Application Components, Section B: Program Strategy – Administrative Costs

Lastly, we respectfully request that EPA consider clarifying that staff and consultant costs incurred by state agencies involved in the design and the deployment of state implementation programs under the Solar for All competition are “allowable program

⁷ See GGRF Framework page 47 – New Solar for All Deployment Plan

⁸ See GGRF Framework page 50 – Program Budget

⁹ See GGRF Framework page 47 – New Solar for All Deployment Plan

¹⁰ See page 19 of the Rhode Island Solar Access Pathways RFP, [Incentive Amount and Maximum Elevated Incentive per Project Section and ITC Amount and Elevated Incentive Interactions Section here.](#)



services and administration costs,” including, as appropriate and relevant, pre-award costs. We commend EPA for its allowing “*grant funds (...) [to] be used for allowable program services and administration costs.*”¹¹ We understand that additional details on allowable program costs will be released in the NOFO pertaining to the “*allowable and unallowable use of funds, including program administration costs (e.g., funds expended on strategy development, planning, policy development, and program execution to create and execute the proposed Solar for All program).*”¹²

We urge EPA to not let human capacity constrain the effectiveness of the programs that states will implement for the benefit of low-income and disadvantaged communities.

Thank you for the opportunity to share these comments with EPA and for the incredible work EPA’s team is putting into this trailblazing program. We would be happy to answer questions from EPA and DOE staff, as relevant.

Respectfully,

Vero Bourg-Meyer and Warren Leon

¹¹ GGRF Framework page 41 – Overview

¹² GGRF Framework page 50 – Program Budget