The Low-Income Communities Bonus Energy Investment Credit Program:
Answers to Frequently Asked Questions (FAQs)

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June 2023

On June 1, 2023, the IRS issued a Notice of Proposed Rulemaking (NOPR) regarding the low-income communities bonus energy investment credit program (the LMI Adder) under the Inflation Reduction Act (IRA).[1] This notice followed an initial guidance document published by the Internal Revenue Service (IRS) in February 2023.[2]

It is important for states that are building programs for low-income communities to understand the ins and outs of the proposed LMI Adder program administration so that they can build impactful programs that take advantage of this source of funding for the benefit of their communities. This FAQ document can help communities, nonprofits, and developers better understand what Treasury is proposing and aid them in participating in the policymaking process. Public comments will be received by Treasury until June 30, 2023.

This document first provides a high-level summary of what the NOPR covers, followed by a more in-depth review of the NOPR in the form of an FAQ. This document is not meant to be comprehensive, but we have gathered relevant links, definitions, and maps that we think are useful to understand what the Treasury and the IRS (together referred to as "Treasury" in this document) are proposing in the NOPR.

The goal of this review is to translate the NOPR into more accessible, user-friendly language. Nevertheless, because it discusses tax credits, some jargon is inevitable.

Summary

The IRA created an LMI Adder to provide 10 to 20 percentage points of additional tax credits on top of the Investment Tax Credit (ITC) for solar and wind projects below 5MW that are either meeting environmental justice criteria at the community scale or meeting income criteria at the customer household scale. As per the IRA, owners of projects located in low-income communities and Indian Land can receive an additional 10 percentage point in tax credits and owners of projects that serve customers who are residents of affordable housing or customers of projects partly dedicated to serving low-income customers can receive an additional 20 percentage point.

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[1] See 88 FR 35791, available here: https://www.federalregister.gov/documents/2023/06/01/2023-11718/additional-guidance-on-low-income-communities-bonus-credit-program

[2] See Treasury Notice 2023-17, available here: https://www.irs.gov/pub/irs-drop/n-23-17.pdf

As per the IRA, Treasury may allocate the LMI Adders for up to 1.8 GW_{DC} of wind, solar, and connected storage capacity per calendar year.

The previous guidance allocated megawatt capacity maximums for each of the four categories set by the statute:

Category	**Cap**
Category 1: Located in a Low-Income Community	700MW
Category 2: Located on Indian Land	200MW
Category 3: Qualified Low-Income Residential Building Project	200MW
Category 4: Qualified Low-Income Economic Benefit Project	700MW

In the NOPR, Treasury proposes to either reserve or prioritize the allocations.

First, within each category, Treasury proposes to reserve at least 50 percent of the capacity for projects that meet at least one of two new additional selection criteria, based on ownership and on location.

- A facility owner will meet the ownership criterion if it is "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." Note that a "qualified renewable energy company" is defined as "an entity that serves low-income communities and provides pathways for the adoption of clean energy by low-income households" and would need to meet multiple requirements related to equity ownership, number of employees and size, experience with development, and experience with serving low-income communities.
- A facility owner will meet the geographic criterion if it is located in a Persistent Poverty County or in a census tract that is designated in the Climate and Economic Justice Screening Tool (CEJST) as disadvantaged based on energy burden and particulate matter (PM) 2.5 indicators.

Based on whether a project meets one or both of these criteria, and the stage of the application process, a project will be prioritized over those that meet no criterion.

Second, Treasury proposes to reserve some capacity for the following:

- For Category 1 facilities, located in low-income communities, the 700MW capacity limitation above will be split into two blocks:
  - 560MW will be reserved for residential behind-the-meter facilities
  - 140MW would be available for front-of-the-meter facilities and non-residential behind-the-meter facilities
- For Category 3 qualified low-income residential building projects (i.e., projects serving affordable housing customers), Treasury proposes to reserve allocations under this category exclusively for applicants that would distribute either:
  - equal shares among the low-income units in the program or
  - proportional shares based on each dwelling unit's electricity usage.

Treasury will retain discretion to reallocate capacity limitations across categories and sub-categories in order to maximize allocation if a category or sub-category is oversubscribed. Unused allocation will be carried forward but not beyond 2024 (see additional information in the FAQs below).

Projects will be evaluated in a two-stage process, first during an application window and then, if there is leftover capacity, on a rolling basis. Projects may not be placed in service prior to the application, which will make it difficult for residential developers to avail themselves of the LMI Adder, despite the sub-reservation.

Allocation decisions may not be challenged.

Further, the NOPR proposes:

(1) A definition of facility size that is meant to limit abuse of the 5MW limit set in the IRA;
(2) Rules related to when storage would be eligible for the LMI Adder; notably a few rules would preclude the retrofit of storage onto existing solar;
(3) Definitions relating to terms that set eligibility rules for community solar (e.g., least 50 percent of the facility's total output will have to be distributed to qualifying households. In addition, Treasury will reserve allocations for project owners that will provide at least a 20-percent “bill credit discount rate”) and facilities serving affordable housing;
(4) More information about the application material that will have to be submitted to Treasury during application and when facilities are placed in services, including some indicating that self-attestation will not be accepted as a means of income verification; and
(5) Rules relating to recapture.

Read on for additional information.

Contents

Is this tax advice?

No. I am not a tax lawyer. This is not tax advice.

This is general information. Reading official Treasury guidance can feel overwhelming so this is meant as a translation into more understandable language. On these tax topics, you should place your trust in government sources such as U.S. Treasury and in reputable tax attorneys. The U.S. Department of Energy (DOE) also offers a good primer on general tax credits for businesses that you should read before getting into this FAQ if you do not feel like you have a good grasp on the basics.

What is the LMI Adder?

The LMI Adder is an additional tax credit available on top of the Investment Tax Credit (ITC) for projects serving low-income communities that meet certain requirements. The statutory requirements for the LMI Adder can be found in Section 48(e) of the Internal Revenue Code.

What types of projects is the LMI Adder for?

The IRA created the LMI Adder through a new Section of the Internal Revenue Code under Section 48. Generally speaking, Section 48 is the section of the Internal Revenue Code that sets the rules applicable to "commercial tax credits," i.e., those tax credits available to commercial projects but *not* to projects owned by individuals. This means that the LMI Adder, in a new Section 48(e), is only available for *commercial* projects. There are technological, size, and other requirements as well before a project can be eligible (see immediately below).

Are all clean energy technologies eligible for the LMI Adder?

No. Only "qualified solar and wind" facilities are eligible. That means wind, solar, or "small wind," all of which must meet the maximum size and other criteria (see below in *What is a qualified solar or wind facility?*, *Is there a maximum size my project can be?*, and *How is the 5MW AC facility limit calculated?*).[3]

What is a qualified solar or wind facility?

A qualified solar or wind facility in this context is a project that is eligible for the LMI Adder. To start with, to be considered "qualified solar and wind facilities," solar and wind must be used to generate electricity. In addition:

- A qualified solar facility cannot be used to generate energy for the purposes of heating a swimming pool.[4]
- For wind, this means any facility owned by the taxpayer and that is originally placed in service after December 31, 1993, and the construction of which begins before January 1, 2025.[5]

[3] See Section 48(e)(2) of the Internal Revenue Code
[4] Section 48(a)(3)(A)(i) of the Internal Revenue Code
[5] Section 45(d)(1) of the Internal Revenue Code

- "Qualified small wind energy property" is one that uses a wind turbine with nameplate capacity of up to 100kW and excludes any project that does not begin construction before January 1, 2025.[6]

Is there a maximum size my project can be?

Yes. 5MW AC nameplate capacity.

As a reminder, if your project has a nameplate capacity over $1MW_{AC}$, you will need to comply with wage and apprenticeship requirements to receive the 30 percent ITC rate on top of which the LMI Adder would be added.

What makes the LMI Adder LMI then?

A project owner can apply for the LMI Adder if a project is either located in certain places or serving specific populations in a certain way.

You can find more information about this in the FAQs below, but broadly speaking, a project has to fall in at least one of these categories:

- "Category 1 facilities" are located **in a low-income community** defined in something called the "New Markets Tax Credits" part of the Internal Revenue Code.[7]
- "Category 2 facilities" are located **on Indian land**.[8]
- "Category 3 facilities" are those that are part of a "qualified low-income **residential building** project."[9]
- "Category 4 facilities" are those that are part of a "qualified low-income **economic benefit** project."[10]

If a project is located in both category 1 and 2 and also qualifies as category 3 or category 4, then the category 3 or 4 overrides the category 1 or 2.

Treasury is proposing that a solar or wind project can be considered in an area if 50 percent or more of the facility's nameplate capacity[11] is in the qualifying area, excluding any connected storage.

What is the LMI Adder added to?

For now, the LMI Adder is available on top of the investment tax credit (ITC). Once the ITC expires and is replaced with the technology-neutral credits in the IRA in a few years, the LMI Adder will be applicable to these new credits as well. Beware that the process by which the LMI Adder will be administered may change as the transition is made to the new tax credits.

The LMI Adder is not available for projects that receive Section 45 Production Tax Credits (PTC).

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[6] Section 48(a)(3)(A)(vi) of the Internal Revenue Code
[7] Section 48(e)(1)(A)(i) of the Internal Revenue Code
[8] Indian land is defined in section 2601(2) of the Energy Policy Act of 1992 (25 U.S.C. 3501(2)).
[9] Section 48(e)(1)(A)(ii) of the Internal Revenue Code
[10] Section 48(e)(1)(A)(ii) of the Internal Revenue Code
[11] See a definition of the term "nameplate capacity" in 40 CFR § 96.202

The other available adders that can potentially be stacked together with the commercial ITC and the LMI Adder, namely the domestic content adder[12] and the energy community adder,[13] do not influence a project's eligibility for the LMI Adder.

How much does the LMI Adder add on top of commercial tax credits?

The LMI Adder increases the rate of the credits available to a project owner by 10 to 20 percentage points. What a project is eligible for depends on its location and on who receives the benefits of the project (See general categories above in *What makes the LMI Adder LMI then?*).

In addition, don't forget that this adder is stackable on top of other tax credit adders as mentioned above in *What is the LMI Adder added to?*.

Below is a nifty table from SEIA. Source: SEIA

Commercial ITC Under IRA

												100%	75%	50%	0%
	2022†	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033*	2034*	2035*	2036*
Projects Under 1 MWac															
Base ITC*	30%	30%	30%	30%	30%	30%	30%	30%	30%	30%	30%	30%	22.5%	15%	0%
Bonus for Meeting Domestic Content Minimums**		10%	10%	10%	10%	10%	10%	10%	10%	10%	10%	10%	10%	10%	10%
Bonus for Siting in "Energy Community"		10%	10%	10%	10%	10%	10%	10%	10%	10%	10%	10%	10%	10%	10%
Allocated Low-Income Bonus***															
Low-Income Community as Defined by the New Markets Tax Credit or on Indian Land		10%	10%	10%	10%	10%	10%	10%	10%	10%	10%	10%	7.5%	5%	0%
Qualified Low-Income Residential Building Project or Qualified Low-Income Economic Benefit Project		20%	20%	20%	20%	20%	20%	20%	20%	20%	20%	20%	15%	10%	0%
Projects Over 1 MWac that Begin Construction Less than 60 Days After Dept. of Treasury Issues Guidance															
Base ITC*	30%	30%	30%												
Bonus for Meeting Domestic Content Minimums**		10%	10%												
Bonus for Siting in "Energy Community"		10%	10%												
Allocated Low-Income Bonus for Projects Under 5 MWac***															
Low-Income Community as Defined by the New Markets Tax Credit or on Indian Land		10%	10%												
Qualified Low-Income Residential Building Project or Qualified Low-Income Economic Benefit Project		20%	20%												
Projects Over 1 MWac that Begin Construction 60 Days After Dept. of Treasury Issues Guidance															
Base for All Projects															
Base ITC*	6%	6%	6%	6%	6%	6%	6%	6%	6%	6%	6%	6%	4.5%	3%	0%
Bonus for Meeting Domestic Content Minimums**		2%	2%	2%	2%	2%	2%	2%	2%	2%	2%	2%	1.5%	1%	0%
Bonus for Siting in "Energy Community"		2%	2%	2%	2%	2%	2%	2%	2%	2%	2%	2%	1.5%	1%	0%
Adders for Projects that Meet Labor Requirements															
Base ITC*	24%	24%	24%	24%	24%	24%	24%	24%	24%	24%	24%	24%	18%	12%	0%
Bonus for Meeting Domestic Content Minimums**		8%	8%	8%	8%	8%	8%	8%	8%	8%	8%	8%	6%	4%	0%
Bonus for Siting in "Energy Community"		8%	8%	8%	8%	8%	8%	8%	8%	8%	8%	8%	6%	4%	0%
Allocated Low-Income Bonus for Projects Under 5 MWac***															
Low-Income Community as Defined by the New Markets Tax Credit or on Indian Land		10%	10%	10%	10%	10%	10%	10%	10%	10%	10%	10%	7.5%	5%	0%
Qualified Low-Income Residential Building Project or Qualified Low-Income Economic Benefit Project		20%	20%	20%	20%	20%	20%	20%	20%	20%	20%	20%	15%	10%	0%

Source: SEIA Summary of Inflation Reduction Act (H.R. 5376)

* Actual phased down is based on the later of the dates shown or the year after electric sector CO2 emissions drop 75% below 2022 levels.
** Must include 100% domestic iron/steel and an increasing percent of manufactured goods over time.
*** Allocated credits will be based on an application and award process that will have to be developed by the Secretary. Maximum of 1.8 GWac/year.
†Bonus credits available for projects placed in service after December 31, 2022.

[12] See Treasury guidance here: https://www.irs.gov/pub/irs-drop/n-23-38.pdf
[13] See Treasury guidance here: https://www.irs.gov/pub/irs-drop/n-23-29.pdf

What is that rate (percentage) applied to?

The usual things, i.e., the tax basis for the eligible (qualifying) property. If you need a refresher on tax basis, you should consult this DOE primer.

Are the LMI Adders capped?

Yes. There is a maximum amount of capacity of 1.8 GW_{DC} that can receive an LMI adder in every calendar year country wide. Other adders and the ITC itself are not capped.

How will these 1.8 GW_{DC} be distributed among applicants?

In addition to the general 1.8 GW_{DC} annual capacity limitation, Treasury proposed, both in the February notice and in the most recent NOPR to split these projects into four categories as follows.

Category	Cap
Category 1: Located in a Low-Income Community	700MW
Category 2: Located on Indian Land	200MW
Category 3: Qualified Low-Income Residential Building Project	200MW
Category 4: Qualified Low-Income Economic Benefit Project	700MW

Read more on each category below.

Within each category, Treasury will reserve at least 50 percent of the capacity for projects that meet at least one of the two additional selection criteria they are creating, based on ownership and on location (see below for additional information).

For Category 1 facilities, located in low-income communities, the 700MW capacity limitation above will be split into two blocks:

- 560MW will be reserved for residential behind-the-meter facilities.
- 140MW would be available for front-of-the-meter facilities and non-residential behind-the-meter facilities.

Treasury will retain discretion to reallocate capacity limitations across categories and sub-categories in order to maximize allocation if a category or sub-category is oversubscribed.

Unused allocation will be carried forward but not beyond 2024.

What happens in 2024?

The ITC and the PTC go away and are replaced with a technology neutral tax credit. The LMI Adder survives this transition, and is available beyond 2024, but the rules for the new Section 48E(h) could be different. Either way, that LMI Adder is very similar and also has a 1.8 GW_{DC} cap per calendar year that can be carried forward.

So, is the LMI Adder just a regular tax credit?

No. Unlike an old school ITC where you would place your project in service, fill out the paperwork, and receive your tax credit, this one requires that you (commercial project owner) apply to Treasury to be awarded an "an allocation of environmental justice solar and wind capacity limitation." You may or may not receive an allocation. Only after you have received it can you place the project in service.

What is a category 1 facility? Where are those "low-income communities"?

"Category 1 facilities" are located in a low-income community as defined by the "New Markets Tax Credits", i.e., Section 45D(e)(1) of the Internal Revenue Code. This means a census tract:

A. Where the poverty rate is at least 20 percent, or
B. Where the median family income does not exceed 80 percent of *statewide* median family income, or
C. If within a metropolitan area, where the median family income for such tract does not exceed 80 percent of the *greater* of *statewide* median family income or the *metropolitan area* median family income.

How do I know where those are?

Using this nifty map from an awesome product engineer at Esri named Lisa Berry, who deserves a medal (#IheartLisaBerry): https://www.arcgis.com/apps/instant/sidebar/index.html?appid=0e980a986c6545a9b4eeb8fc35cebf5d

Note that this is **not** an official map. We can assume that some official maps will be forthcoming. For now, this is the best one I know of.

You can find other visual representations of this data from Lisa here: https://www.esri.com/arcgis-blog/products/arcgis-living-atlas/decision-support/mapping-low-income-communities-in-the-us/

What is considered "Indian land" under Category 2?

For purposes of these tax credits, Indian land is defined in section 2601(2) of the Energy Policy Act of 1992 (25 U.S.C. 3501(2))), which reads as follows:

A. any land located within the boundaries of an Indian reservation, pueblo, or rancheria;
B. any land not located within the boundaries of an Indian reservation, pueblo, or rancheria, the title to which is held—
  i. in trust by the United States for the benefit of an Indian tribe or an individual Indian;
  ii. by an Indian tribe or an individual Indian, subject to restriction against alienation under laws of the United States; or
  iii. by a dependent Indian community;

C. land that is owned by an Indian tribe and was conveyed by the United States to a Native Corporation pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.), or that was conveyed by the United States to a Native Corporation in exchange for such land;

D. any land located in a census tract in which the majority of residents are Natives (as defined in section 3(b) of the Alaska Native Claims Settlement Act (43 U.S.C. 1602(b))); and

E. any land located in a census tract in which the majority of residents are persons who are enrolled members of a federally recognized Tribe or village.

Are there other geographic criteria that I should pay attention to?

Yes. The criteria above allow your project, if located in these areas, to qualify for the LMI Adder in categories 1 and 2. These are statutory requirements set by the IRA.

In addition, whether you will receive an allocation from Treasury requires that you (a) apply and (b) be awarded the capacity allocation as your project competes with others applying at the same time. Treasury is planning on prioritizing some projects within all categories based on additional geographic criteria that they are defining. Read more on this below.

Lastly, you should consider whether other federal or state funding may require that you pay attention to other geographic criteria, such as, for example, the energy community tax credit adder or funds from the EPA's Greenhouse Gas Reduction Fund, which will apply different geographic criteria.

What is a residential building project in category 3?

Category 3 is likely to be the category that hosts owner-owned or third party-owned solar and solar+storage units for affordable housing rental properties.

Section 48(e)(2)(B) of the Internal Revenue Code provides that a facility will be treated as part of a qualified low-income residential building project if such facility is installed on:

- a residential rental building which participates in a covered housing program listed in 34 U.S.C. 12491(a)(3), or
- a housing assistance program administered by the Department of Agriculture under Title V of the Housing Act of 1949,
- a housing program administered by a tribally designated housing entity as defined in 25 U.S.C. 4103(22), or
- such other affordable housing programs as the Secretary may provide.

In addition, the financial benefits of the electricity produced by such facility have to be "allocated equitably among the occupants of the dwelling units of such building" for the project to be considered a "qualified low-income residential building project."

What is an economic benefit project in category 4?

This is likely to be the category that hosts community solar.

Section 48(e)(2)(C) provides that a facility will be treated as part of a qualified low-income economic benefit project if at least 50 percent of the financial benefits of the electricity produced by such facility are provided to households with income of less than 200 percent of the poverty line applicable to a family of the size involved,[14] or less than 80 percent of area median gross income.[15]

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[14] as defined in Section 2110(c)(5) of the Social Security Act (42 U.S.C. 1397jj(c)(5)).

[15] as determined under section 142(d)(2)(B) of the Internal Revenue Code

What are financial benefits?

For a project to qualify under Category 3 (affordable housing) or Category 4 (economic benefit project), "financial benefits" from the solar or wind have to be "allocated equitably" (Category 3) or shared above a certain threshold (50 percent) with households that meet income requirements (for Category 4).

Electricity acquired at a below-market rate will be considered a financial benefit. However, Treasury proposes to define financial benefits differently depending on whether they are applied to Category 3 or Category 4 projects.

What are financial benefits for a Category 3 project (affordable housing)

Under this category, financial benefits have to be equitably allocated. Treasury proposes that the equitable allocation of financial benefits in Category 3 be demonstrated through "net energy savings," such that "at least 50 percent of the financial value of net energy savings would be required to be equitably passed on to building occupants."

Treasury proposes to reserve allocations under this category exclusively for applicants that would distribute net energy savings in either:

- equal shares among the low-income units in the program or
- proportional shares based on each dwelling unit's electricity usage.

What are "net energy savings" for a project on affordable housing?

It depends on whether the building owner owns the renewable energy asset or whether it is third-party owned (meaning that the affordable housing provider/owner signed a PPA or a lease with a third-party developer/owner).

If the building owner also owns the solar system (or wind and storage as relevant), then net energy savings are defined as the greater of (1) 25 percent of the *gross* financial value of the annual energy produced or (2) the gross financial value of the annual energy produced minus the annual costs to operate the facility.

Gross financial value is essentially defined as the sum of the value of self-consumed electricity and the value of exported electricity,[16] whereas operating costs are defined as the sum of annual debt service, maintenance, replacement reserve, and other costs associated with maintaining and operating the facility.

[16] "Gross financial value of the annual energy produced is calculated as the sum of (a) the total self-consumed kilowatt-hours produced by the qualified solar and wind facility multiplied by the applicable building's metered price of electricity and (b) the total exported kilowatt-hours produced by the qualified solar and wind facility multiplied by the applicable building's volumetric export compensation rate for solar and wind kilowatt-hours."

If the building owner does not own the solar system (or wind and storage as relevant), then net energy savings are defined as the greater of (1) 50 percent of the financial value of the annual energy that go to the building owner in the form of utility bill credit and/or cash payments or (2) the financial value of the annual energy produced going to the building owner in the form of utility bill credit and/or cash payments *minus* any payments made by the building owner to the facility owner for energy services associated with the facility in a given year.

How do we know that the benefits go to affordable housing residents?

If the building owner also owns the solar (or wind or storage) system, Treasury will require a signed benefits-sharing agreement between the building owner and the tenants. If the building owner does not own the energy facility, Treasury will require an agreement between the building owner and the facility owner to distribute the savings to residents.

What are financial benefits for a Category 4 economic benefit project?

As per the IRA, 50 percent of the financial benefits for a Category 4 project must go to households eligible under Category 4 (see above in *What is an economic benefit project in category 4?*). The project will be required to serve multiple households and at least 50 percent of the facility's total output will have to be distributed to qualifying households. In addition, Treasury will reserve allocations for project owners that will provide at least a 20-percent "bill credit discount rate" for those households (not to all households).[17]

What's a bill credit discount rate?

The bill credit discount rate focuses on the costs and benefits to the low-income households.

$$\frac{Value\ of\ financial\ benefits\ like\ bill\ credits\ and\ such - \ Costs\ like\ subscription\ and\ fees}{Value\ of\ financial\ benefits\ like\ bill\ credits\ and\ such}$$

What income verification methods will be accepted?

Applicants will be required to submit income verification documentation when the facility is placed in service. Self-attestations will not be accepted.

[17] A bill credit discount rate is financial benefit distributed to the low-income household minus the cost of participating in the program expressed as a percentage of the financial benefit distributed to the low-income household. The bill credit discount rate can be calculated by starting with the financial benefit distributed to the low-income household, subtracting all payments made by the low-income customer to the facility owner and any related third parties as a condition of receiving that financial benefit, then dividing that difference by the financial benefit distributed to the low-income household.

Can my project receive a capacity allocation after it is placed in service?

No. Your project cannot be placed in service before the application. Note however, that your customer contract has to be signed at the time of application for all behind-the-meter system (both purchase and third-party owned systems). See *What paperwork will I have to provide to Treasury?* for more.

It is unclear how developers will be able to sign contracts with customers taking the value of the LMI Adder into account before they know whether they will receive an allocation.

> *"Further, section 48(e)(4)(E)(i) provides that a facility must be placed in service within four years of receiving an allocation of Capacity Limitation, supporting allocations to new facilities that have not yet been placed in service. Accordingly, the Treasury Department and the IRS continue to propose that facilities placed in service prior to being awarded an allocation of Capacity Limitation would not be eligible to receive an allocation."*

What does the application process look like?

Treasury proposes an initial application window followed by a rolling application process if the capacity allocation has not been met. We assume that this system would be recurring on an annual basis, although it is unclear at this stage based on existing guidance. It is also unclear whether this system will continue beyond 2024.

Treasury will use additional selection criteria following (i) ownership and (ii) geography. Projects that meet one of the two additional selection criteria will receive priority during the initial application window and Treasury will reserve at least 50 percent of the capacity in each category for projects that meet at least one criterion.

- If the facilities meeting one or more criteria exceed the category capacity limit, then facilities that meet both criteria would be prioritized, and Treasury may then use a lottery system among "similarly situated applications" (in terms of the number of criteria they meet).
- If the facilities meeting one or more criteria total less than 50 percent of the category capacity limit, then additional capacity limit would be reserved during the rolling application period that follows the initial application window so that 50 percent of the category capacity limit would be reserved for these facilities.

Treasury will retain discretion to reallocate capacity limitations across categories and sub-categories in order to maximize allocation if one category or sub-category is oversubscribed and another has excess capacity.

What are the additional selection criteria being proposed by Treasury?

There are two: an ownership criterion, and a geographic criterion. One of the ways that Treasury will decide which projects to prioritize within each application category during the application process is based on additional selection criteria. Depending on whether a project meets one, both, or none will dictate (a) whether there is capacity reserved for them, and (b) whether a project may be prioritized. See above in *What does the application process look like?* for impacts on the application process and immediately below for more details on the criteria.

What is an ownership criterion and what does it do to my application?

One of the additional application criteria that will be used by Treasury to prioritize projects within each category is an ownership criterion. A facility owner will meet the ownership criterion if it is "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."

Note that for purposes of this criterion, a "renewable energy cooperative" is an entity that owns at least 51 percent of a solar/wind facility and is either:

(1) A consumer or purchasing cooperative controlled by its members who are low-income households as defined in Section 48(e)(2)(C) of the Internal Revenue Code meaning households with income of:
    a. Less than 200 percent of the poverty line,[18] or
    b. Less than 80 percent of area median gross income[19]

    with each member having an equal voting right, OR
(2) A worker cooperative controlled by its worker-members with each member having an equal voting right.

In addition, a "qualified renewable energy company" is defined as "an entity that serves low-income communities and provides pathways for the adoption of clean energy by low-income households" and would need to meet multiple requirements related to the following:

(1) At least 51 percent of the entity's equity interests are owned and controlled by individuals or a Community Development Corporation, an agricultural or horticultural cooperative, an Indian Tribal government, an Alaska Native corporation, or a Native Hawaiian organization
(2) Has less than 10 full-time-equivalent employees and less than $5 million in annual gross receipts in the previous calendar year
(3) First installed or operated a qualified solar and wind facility as defined in section two or more years prior to the date of application and
(4) Has installed and/or operated qualified solar and wind facilities in areas and for the benefit of people served by the LMI Adder with at least 100 kW of cumulative nameplate capacity located in one or more Low-Income Communities is located in a low-income community (New Markets Tax Credits) or on Indian land.

What is the geographic criterion?

The geographic criterion is based on where the facility will be placed in service. To meet it, a facility would need to be located in a Persistent Poverty County (PPC) or in a census tract that is designated in

[18] as defined in Section 2110(c)(5) of the Social Security Act (42 U.S.C. 1397jj(c)(5)).
[19] as determined under section 142(d)(2)(B) of the Internal Revenue Code

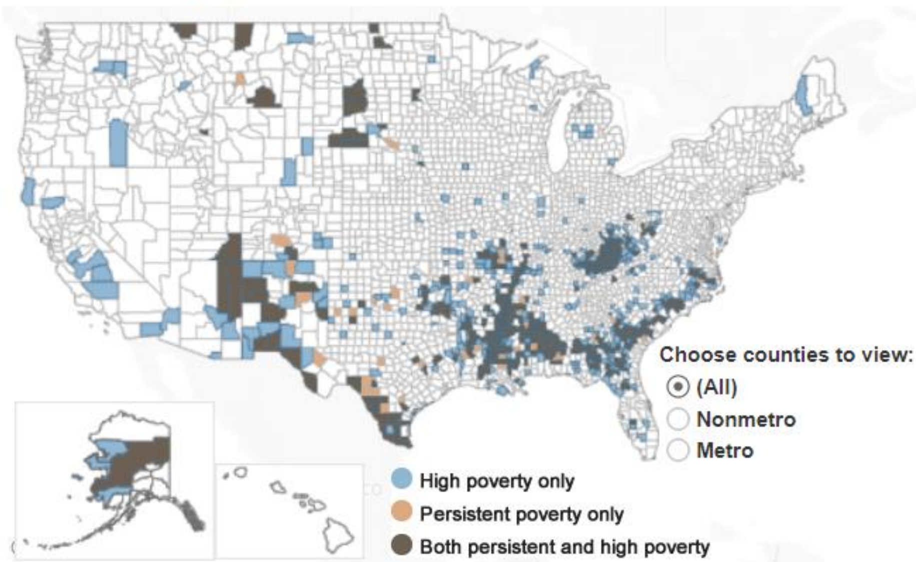
the Climate and Economic Justice Screening Tool (CEJST) as disadvantaged based on whether the tract is either:

(a) greater than or equal to the 90th percentile for energy burden and is greater than or equal to the 65th percentile for low income, or
(b) greater than or equal to the 90th percentile for PM2.5 exposure and is greater than or equal to the 65th percentile for low income.

(Together, these two factors are "CEJST Additional Criteria")

A PPC is generally defined as any county where 20 percent or more of residents have experienced high rates of poverty over the past 30 years. A Persistent Poverty County map is available here. Interactive Tableau maps of both poverty rates by county country wide and persistent poverty by county country wide are available on this page. A static version of the persistent poverty map for up to 2019 is below. Note that these maps, unlike those that will be used by Treasury, do not include 2023 data.[20]

Persistent poverty (2015 ERS county type) and high poverty (2015-19 ACS average) U.S. counties



Note: In the Economic Research Service (ERS) County Typology Codes (2015 edition), counties were defined as a persistent poverty county if 20 percent or more of their populations were living in poverty based on the 1980, 1990, and 2000 decennial censuses and 2007-11 American Community Survey (ACS) 5-year estimates. High poverty counties are defined here as counties with 20 percent or more of their populations living in poverty based on the latest (2015-19) ACS. Sources: USDA, Economic Research Service using ERS County Typology Codes, 2015 edition; U.S. Department of Commerce, Bureau of the Census, American Community Survey 5-year average county-level data for 2015-19; and 2013 Office of Management and Budget nonmetro/metro county designations.

Source: U.S. Department of Agriculture

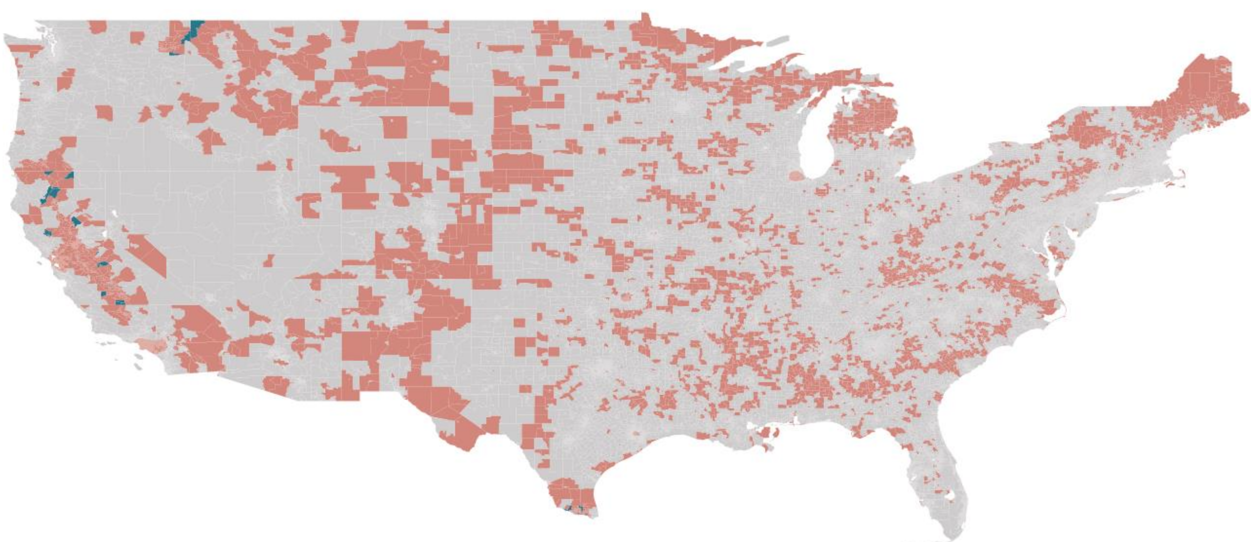
[20] "For the purposes of the Low-Income Communities Bonus Credit Program, the Treasury Department and the IRS propose the PPC measure adopted by the U.S. Department of Agriculture to make this determination. The most recent measure, which would apply for the 2023 program year, incorporates poverty estimates from the 1980, 1990, 2000 censuses, and 2007–11 American Community Survey 5- year average."

While CEJST does not allow you to filter by criteria, the .csv list of communities, which you can filter by criterion, is available for download here. The Downloads page of CEJST, including shapefiles to use in GIS tools such as ArcGIS is available here. If you do not have a mapping software such as ArcGIS and are not able to purchase access to it, we recommend the free and open source QGIS tool available for download here.

In addition, and for quick reference, we have created the following maps with data from CEJST with QGIS using data downloaded in June 2023. The maps highlight in pink the census tracts that meet one of the CEJST Additional Criteria, and in blue, those that meet both CEJST Additional Criteria. The census tracts in grey do not meet any of the CEJST Additional Criteria. **Note that these are not official maps**. You should check CEJST for the most up to date data.

Also remember that these maps only show the CEJST Additional Criteria. They do not include the main eligibility criteria (see above in *What is a category 1 facility? Where are those "low-income communities"?* and *What is considered "Indian land" under Category 2?*). Further, there are other geographic elements you should consider in designing a program (See *Are there other geographic criteria that I should pay attention to?* Above).

Map of the census tracts that meet one or both CEJST Additional Criteria in the continental U.S.

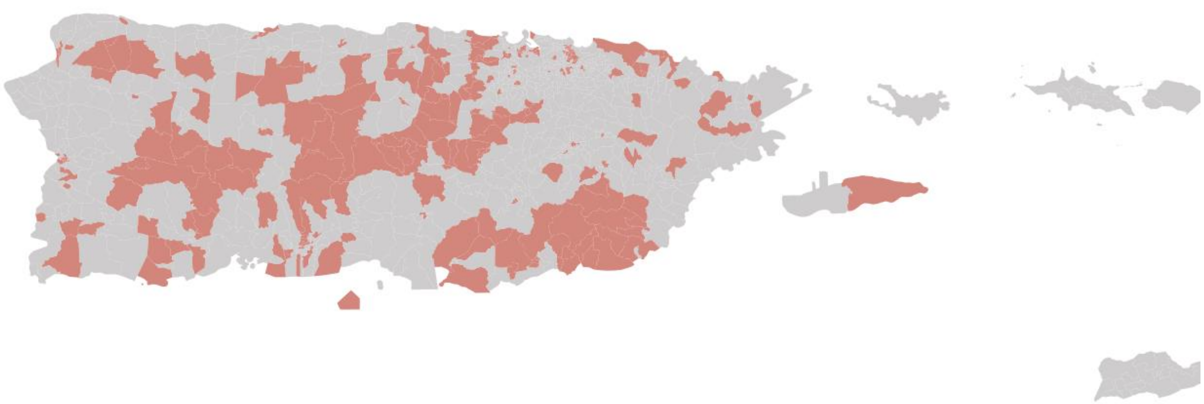


Source: Christian Meyer with CEJST data and Q-GIS

Map of the census tracts that meet one or both CEJST Additional Criteria in Hawaii

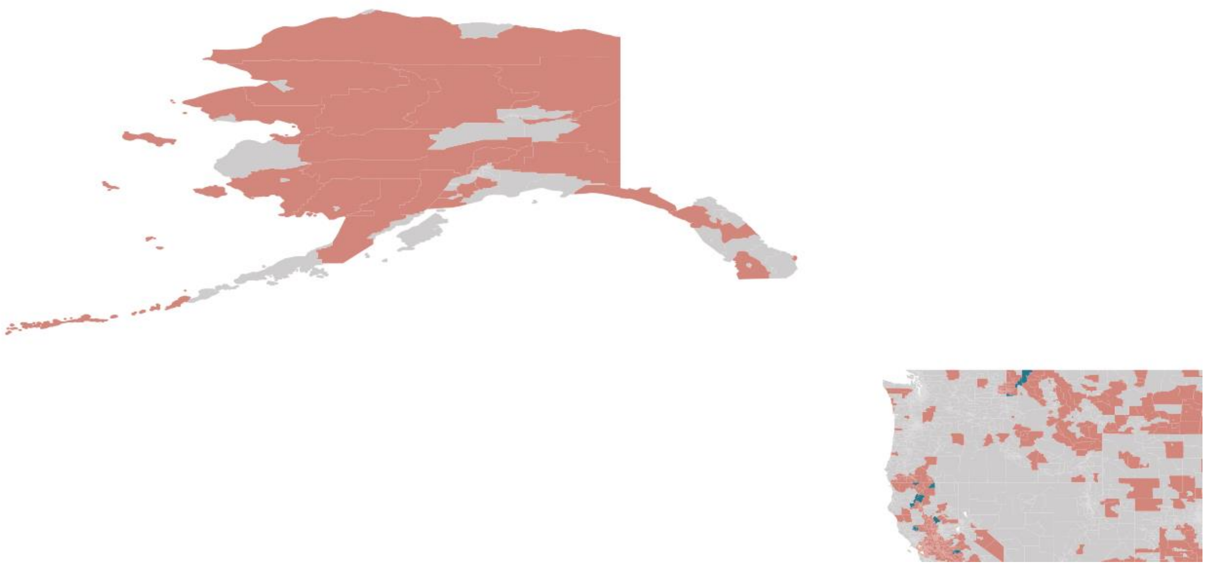
Source: Christian Meyer with CEJST data and Q-GIS

Map of the census tracts that meet one or both CEJST Additional Criteria in Puerto Rico



Source: Christian Meyer with CEJST data and Q-GIS

Map of the census tracts that meet one or both CEJST Additional Criteria in Alaska



Source: Christian Meyer with CEJST data and Q-GIS

What if circumstances at that location change?

There will be no recapture risk unless the project moves, even if the location for the geographic criterion stops being met after the LMI Adder is allocated.

What is a residential behind-the-meter (BTM) facility?

Treasury proposes that a residential BTM facility could be fit the following definition:

- Single-family or multi-family residential;
- Solar and wind facility that does not meet the requirements for Category 3 (qualified low-income residential buildings);
- Is BTM, i.e.,
    - Connected where the facility is located; and
    - To be connected on the customer side of a utility service meter before it connects to the grid (unless the system is not grid-tied); and
    - Its primary purpose is to provide electricity to the utility customer on-site.

How is the 5MW AC facility limit calculated?

Treasury is proposing to aggregate into a single facility facilities of the same type (solar or wind) that are "operated as part of a single project consistent with the single-project factors provided in section 7.01(2)(a) of Notice 2018–59, 2018–28 I.R.B. 196 or section 4.04(2) of Notice 2013–29, 2013–20 I.R.B. 1085, as applicable."

Notice 2018-59 relates to the beginning of construction for Section 48 (ITC) tax credits. Section 7.01(2)(a) of Notice 2018-59 provides:

> *Whether multiple energy properties are operated as part of a single project will depend on the relevant facts and circumstances.*
>
> *(a) Factors of Single Project Determination.*
>
> *Factors indicating that multiple energy properties are operated as part of a single project may include:*
>
> *(i) the energy properties are owned by a single legal entity;*
>
> *(ii) the energy properties are constructed on contiguous pieces of land;*
>
> *(iii) the energy properties are described in a common power purchase agreement or agreements;*
>
> *(iv) the energy properties have a common intertie;*
>
> *(v) the energy properties share a common substation;*
>
> *(vi) the energy properties are described in one or more common environmental or other regulatory permits;*
>
> *(vii) the energy properties were constructed pursuant to a single master construction contract; or*
>
> *(viii) the construction of the energy properties was financed pursuant to the same loan agreement.*

This rule is usually used to determine whether a project has met the Safe Harbor rule that allows the owner of the project to claim that a project had started construction before a certain date and was eligible to receive the ITC at a more advantageous rate. Notice 2013-29 provided a similar rule for projects that had started earlier (before January 2014).[21]

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[21] Section 4.04(2) of Notice 2013-29 provides: "*Solely for purposes of determining whether construction of a facility has begun for purposes of sections 45 and 48, multiple facilities that are operated as part of a single project (along with any property, such as a computer control system, that serves some or all such facilities) will be treated as a single facility. Whether multiple facilities are operated as part of a single project will depend on the relevant facts and circumstances. Factors indicating that multiple facilities are operated as part of a single project include, but are not limited to: (a) The facilities are owned by a single legal entity; (b) The facilities are constructed on contiguous pieces of land; (c) The facilities are described in a common power purchase agreement or agreements; (d) The facilities have a common intertie; (e) The facilities share a common substation; (f) The facilities are described in one or more common environmental or other regulatory permits; (g) The facilities were constructed pursuant to a single master construction contract; and (h) The construction of the facilities was financed pursuant to the same loan agreement.*"

When is storage considered "installed in connection with" eligible wind or solar?

Storage can count as part of the property eligible for the LMI Adder if it is considered "installed in connection with" other eligible wind and solar. Treasury is proposing for this to mean that storage:

1) Is:
   (a) Owned by a single legal entity, and
   (b) Located on the same or contiguous pieces of land, and
   (c) Have a common interconnection point, and
   (d) Described in one or more common environmental or other regulatory permits together with the wind or solar it is connected with; and
2) Is charged no less than 50 percent by the connected wind or solar.

The Treasury Department and the IRS also propose to add a safe harbor, which would "deem the energy storage technology to be charged at least 50 percent by the facility if the power rating of the energy storage technology is less than 2 times the capacity rating of the connected wind facility (in kW alternating current) or solar facility (in kW direct current)." So if a solar unit is about 7kW DC, then the power rating of attached storage would have to be at most 13.999kW DC for it to count as being charge at least 50 percent by the solar, and thus to potentially qualify for the LMI Adder as well.

What paperwork will I have to provide to Treasury?

Lots. See the guidance. Most importantly to note:

- The owner must provide an "executed contract to purchase the facility, an executed contract to lease the facility, or an executed power purchase agreement for the facility" for all behind the meter facilities. Front of the meter facilities do not have to provide a signed contract. This means that Treasury is anticipating that TPO providers would be able to sign contracts with customers before knowing whether they qualify for a capacity allocation. This structure is unlikely to result in the LMI Adder being priced for the consumer unless the plan is to have consumers sign contracts that are contingent on receiving the tax credits in the future and to have them wait to place the solar systems in service.
- The applicant will have to provide evidence that the system has been appropriately sized to meet no more than 110 percent of historical customer load for behind the meter systems.
- The applicant will have to show the facility location is eligible under categories 1 or 2 (lat long coordinates where possible).
- More documentation will be required after the facility is placed in service, namely:
  - Confirmation of material ownership and no change since application
  - Confirmation that the facility has been placed in service
  - Third party verified nameplate capacity
  - For qualified residential building projects, a benefits sharing agreement between owners and tenants (or facility owner and tenant if TPO)
  - For qualified economic benefit projects:
    - List of households, names, income status, and the income verification method used
    - Spreadsheet demonstrating the 20 percent bill credit discount rate for the benefit of low-income subscribers