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Internal Revenue Service
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Ben Franklin Station
Washington, DC 20044

Submitted to Docket IRS N-22-50 via Regulations.gov

**Comments of GRID Alternatives in Response to IRS N-2022-50.01:
Elective Payment of Applicable Credits (Direct Payment for Applicable Entities) (§ 6417)**

GRID Alternatives (GRID) offers these comments on the Treasury Department’s planned guidance regarding the provisions of Section 6417 of the Internal Revenue Code,¹ as added by the Inflation Reduction Act of 2022 (IRA).² GRID is a Section 501(c)(3) tax-exempt nonprofit organization and a national leader in helping economic and environmental justice communities³ nationwide get clean, affordable renewable energy, transportation, and jobs. As America’s largest nonprofit installer of clean energy technologies, we appreciate this opportunity to provide input on how the Treasury Department can implement direct payment of applicable clean energy incentives provided for in the IRA in a manner that is efficient, effective, and most of all, equitable.

Introduction and Background

GRID envisions a rapid, equitable transition to a world powered by renewable energy that benefits everyone. We are working across the United States and internationally to build community-powered solutions to advance economic and environmental justice through renewable energy.⁴ To do so, GRID partners with affordable housing organizations, job training groups, government agencies, environmental

¹ Any references to “Section” refer to sections of the Internal Revenue Code of 1986, as amended, or to Treasury regulations promulgated thereunder.

² P.L. 117-169, 136 Stat. 1818 (Aug. 16, 2022).

³ Deficit framing such as “low income” and “disadvantaged communities” defines individuals, groups of people or communities by the problems and/or issues they are faced with. While deficit terminology is common in legislative and regulatory language and in discussions around equitable access to clean energy, in these comments GRID aims to emphasize where feasible the systems of injustice our communities face, their aspirations to overcome them, and their assets such as leadership on climate solutions. *See, e.g.,* Miriam Axel-Lute, *The Opposite of Deficit-Based Language Isn’t Asset-Based Language. It’s Truth-Telling*, *Shelterforce Weekly* (Nov. 12, 2019), available at <http://shelterforce.org/2019/11/12/the-opposite-of-deficit-based-language-isnt-asset-based-language-its-truth-telling>.

⁴ *See generally* gridalternatives.org.

and social justice organizations, clean energy industry members, utilities, tribes, and local communities to make clean energy a win for everyone. Our increasingly wide-ranging work includes:

- Solar and storage installations at no cost to households qualifying as low-income
- Community/shared solar project development and implementation
- Technical assistance and solar installation for multifamily affordable housing providers
- Hands-on solar training for more than 30,000 individuals to connect people to clean energy jobs
- Outreach, education, and community engagement around clean energy, electrification, environmental justice, and inclusive industry practices
- Equity-first clean energy policy leadership
- Over a decade of state and local energy access program design, administration, and implementation⁵
- Connecting economic and environmental justice communities with electric vehicle programs

The new elective direct payments for applicable entities established under Section 6417 (“direct pay”) are of utmost importance to GRID and our equity goals. As tax-exempt nonprofits, GRID and its eight regional affiliate offices nationwide have not had direct access to the benefits of the solar Investment Tax Credit (ITC) under Section 48, the alternative fuel vehicle refueling property credit under Section 30C, or other credits, prior to the enactment of the IRA. Many of our partners were similarly excluded from directly accessing the federal incentives available to for-profit companies prior to the enactment of the IRA. In addition, many of our homeowner clients also did not (and still will not) readily have access to the full household credit for residential solar under Section 25D for a variety of reasons, including that it is not refundable for households with lower tax liability. These pre-IRA limitations threatened to leave money on the table that should be helping *all* communities access the many benefits of clean energy.

To partly get around this inequitable exclusion, GRID and similarly situated tax-exempt entities have entered into contractual arrangements with for-profit tax equity partners on clean energy projects. These for-profit companies could act as third-party owners (TPOs) of the solar systems in order to receive the federal ITC against their tax liability, while providing operations and maintenance and/or other support as agreed among GRID, the TPO, and the client. In this arrangement, behind-the-meter clients benefit from the electricity produced by the system, e.g., by leasing the system or entering a power purchase agreement. This type of TPO model has assisted GRID in installing nearly 15,000 single-family rooftop solar systems and thousands of other multi-family and community solar systems, providing more than \$630 million in lifetime energy savings⁶ as a step toward energy justice for communities that deserve it.⁷

⁵ In 2009, GRID Alternatives led the implementation of the nation’s first low-income solar incentive program for single-family homeowners under the California Solar Initiative, bringing 16 MW of solar to over 5,200 households in the program’s initial 7-year run. This program’s success inspired subsequent programs around the country, including California’s Disadvantaged Communities - Single-family Solar Homes (DAC-SASH) program which GRID also administers. GRID was also selected by the California Public Utility Commission’s Energy Division in 2018 as part of the nonprofit Program Administration team for the Solar on Multifamily Affordable Housing (SOMAH) program.

⁶ See GRID Alternatives, “Our Impact,” <https://gridalternatives.org/support-us/our-impact>.

⁷ Energy justice refers to the goal of achieving equity in both the social and economic participation in the energy system, while also remediating social, economic, and health burdens on those disproportionately harmed by the energy system. It explicitly centers the concerns of communities at the frontline of pollution and climate change (“frontline communities”), working class people, indigenous communities, and those historically disenfranchised by

At the same time, tax-exempt entities' need to rely on for-profit TPOs for access to federal incentives has limited choices and introduced logistical, financial, transactional, and other costs that fall on organizations working with and in economic and environmental justice communities, and on members of these communities. Properly implemented direct pay can keep more clean energy savings in these communities.

GRID has worked closely with many organizations since early 2021 to advocate for the strongest possible support for equitable access to clean energy benefits and jobs in the legislation that became the IRA, including advocating for refundability and direct pay.⁸ We are also submitting comments on Notices 2022-49 and 2022-51, and incorporate those comments by reference herein.

General and Procedural Recommendations

If implemented well, direct pay—in particular for the Section 48 and 48E energy credits—has the potential to fundamentally reshape the clean energy transition in a more equitable direction, as well as enhancing the pace and breadth of deployment, all of which are key goals of the IRA as a whole and of the Administration. Direct pay can put a broad range of entities that are critical to the success of America's climate efforts on a more level playing field, help keep more energy savings in families' pockets, and expand avenues toward energy justice. It can enable innovation in community-led climate solutions, empower local ownership, and multiply the many benefits of clean, renewable energy for those who stand to benefit from it the most.

For direct pay to be effective toward these vital goals, it will be essential to have clarity and real-world workability for a wide range of project types, ownership arrangements, and beneficiaries in a diversity of state and territorial energy regulatory contexts. GRID has more extensive general and procedural recommendations on promoting equity through IRA implementation in its comments on IRS Notice 2022-49, but all recommendations on the need for intentional pre- and post-guidance outreach, inclusive input, program integration, consideration of different project types' practical realities and timelines, and the like are of particular importance for direct pay.

The Treasury Department must issue clear, detailed, comprehensive, and accessible guidance for all terms and provisions in Section 6417 and their interactions, keeping in mind that the very purpose of direct pay is to make access to federal incentives broader and more equitable by putting certain entities closer to the same level as for-profit companies on eligibility. The various entities eligible for direct pay under the IRA are, on the whole, inexperienced with directly accessing federal incentives through the tax code, more likely to serve economic and environmental justice communities, and less likely to have in-house tax counsel or high institutional capacity for navigating complex procedures. The receipt of federal funding can raise questions for some entities regarding the maintenance of their tax-exempt status. Entities like affordable housing providers are also subject to rules from other agencies like the Department of Housing and Urban Development (HUD) that add further complexity to potential direct pay projects. Nevertheless,

racial and social inequity. Energy justice aims to make energy accessible, affordable, clean, and democratically managed for all communities. *See generally* Institute for Energy Justice, <http://iejusa.org>; American Public Health Ass'n, *Energy Justice and Climate Change: Key Concepts for Public Health*, http://www.apha.org/-/media/Files/PDF/topics/climate/Energy_Justice_Key_Concepts.ashx.

⁸ *See, e.g.*, Solar Access for All Coalition, *Building Back Better: A Roadmap to Expand Solar Access for All* (Apr. 2021), <http://bit.ly/SolarAccess>.

entities like nonprofit organizations, tribes, municipalities, and housing providers are leading sources of community-led climate and energy solutions, which direct pay can enable.

The Treasury Department must ensure that it incorporates input and reality-checking from a wide range of applicable entity types and experience levels prior to finalizing implementation guidance. Moreover, the Treasury Department should put significant emphasis on—and funding toward—ongoing outreach and education, incorporating community-based organizations (CBOs) and other trusted local sources of information as key avenues for sharing the guidance on how to properly utilize the opportunities of direct pay. Across all these efforts, a primary goal should be to enable election of direct pay as a low-burden option for the communities and entities that have faced the highest barriers to clean energy ownership and benefits.

The direct pay phaseout for failure to meet domestic content requirements is a major cause of concern in light of the supply chain constraints that can impact economic and environmental projects most severely. This mandate, together with the lack of a clear mechanism for tax-exempt entities to take advantage of accelerated depreciation and the potential for more onerous procedural and documentation requirements, means the IRA does *not* ultimately put direct pay applicable entities on a truly level playing field with for-profit companies with respect to clean energy access. The Treasury Department should implement the IRA's clean energy incentive provisions with utmost care and in a manner that minimizes the relative disadvantage to direct pay applicable entities, in order to avoid stalling the momentum toward a more equitable energy transition and to promote the Administration's goals of economic and environmental justice.

Definitions and Scope of Applicable Credit

(1) What, if any, guidance is needed to clarify the meaning of certain terms in § 6417, such as applicable credit and excessive payment? Is there any term not defined in § 6417 that should be defined in future guidance? If so, what is the term and how should it be defined?

Comprehensive, detailed guidance is absolutely needed to clarify the operation of Section 6417 across different contexts. As noted in comments submitted by Elevate Energy,⁹ direct pay applicable entities need clarity on how the basis of a qualified project, as well as procedures for applying for direct pay, could be impacted by other grants or incentives. Any such impacts could greatly complicate direct pay projects. Particular interactions that it would be helpful to clarify include how direct pay elections would interact with financing or incentives under the Environmental Protection Agency's Greenhouse Gas Reduction Fund,¹⁰ federal loan guarantees,¹¹ or other new and existing clean energy programs of agencies including the Department of Energy and Department of Agriculture. The Treasury Department should also work with HUD to ensure that there are no negative repercussions to affordable housing providers or residents for direct pay projects, such as the incentive or resulting financial benefits from clean energy being counted as income in a manner that would threaten benefit eligibility. Treasury guidance should

⁹ Elevate Comments on N-2022-49 (Oct. 27, 2022), *available at* [regulations.gov/comments/IRS-2022-0023-0007](https://www.regulations.gov/comments/IRS-2022-0023-0007).

¹⁰ IRA § 60103 (adding § 134 of the Clean Air Act).

¹¹ *E.g.*, IRA §§ 50144, 50145.

specifically address direct pay election in relation to specific technologies including EV charging, storage and microgrids, and specific project cost components such as interconnection.

Another issue deserving clarification is how the “applicable credit” under Sections 48 and 48E includes the capped, application-based bonus credits of up to 20% for certain qualified wind and solar facilities placed in service in connection with low-income and disadvantaged communities in Sections 48(e) and 48E(h). There should be detailed guidance on how procedures for direct pay and for reserving, maintaining, and claiming those low-income bonus credits interact, and those procedures must be compatible with each other and with business realities for all project types.

The Treasury Department should also clarify the ways in which applicable entities, under Section 6417 can partner on projects with for-profit entities, especially minority- and women-owned businesses, and remain eligible for direct pay. Guidance should enable flexible arrangements as much as possible, encouraging creativity and entrepreneurship within clean energy industries. The Treasury Department should consider developing an accessible method for splitting tax credits between nonprofit and for-profit project partners and for enabling joint projects to take advantage of benefits such as accelerated depreciation that are primarily available to businesses.

Time and Manner for Making Election

(2) With respect to the Secretary’s discretion to determine the time and manner for making an election under § 6417(a): (a) What, if any, issues could arise when an applicable entity described in § 6417(d)(1)(A) makes an election under § 6417(a) and what, if any, guidance is needed with respect to such issues? (b) What factors should the Treasury Department and the IRS consider in determining the time and manner for making the election?

The time for making an election under Section 6417(a) can give rise to many issues. Especially for fast-moving residential projects with weeks-long timelines, it would be infeasible to have to choose between delaying project timelines to accommodate windows of opportunity for making an election, or proceeding with projects without the certainty that the election will be granted. Project timelines at all scales can also change dramatically due to circumstances outside an applicable entity’s control, such as local permitting requirements or utility delays on interconnection, necessitating extensions. Project expenses that occur prior to actually receiving direct payment may have to be financed by bridge loans that impose their own costs, risks, and timelines. Applicable entities with little experience dealing with the Treasury Department or federal incentives may make innocent mistakes that could pose major problems if not caught and corrected immediately.

The Treasury Department should provide clear guidance on the election due date and any possible extensions. Guidance should also be clear on the project stage(s) or level(s) of project maturity at which election can be made and on the timing when actual payment can be expected. Overall, the processing time between election and payment should be minimized as much as possible.

Regarding the manner of making an election, documentation requirements should be automated and streamlined as discussed below. All required documents and information should be able to be submitted easily via an online portal. IRS should bring any potential deficiencies or issues with an application to the attention of the applicable entity immediately and give them sufficient opportunity to correct. Applicable entities should be allowed and encouraged to make elections for multiple projects at once, at least for smaller or residential projects. A mechanism for predetermination or pre-approval of projects earlier in development would be extremely helpful in providing planning certainty and enhancing access to financing, both of which are particularly important to projects aimed at equitably increasing access to the benefits of clean energy.

Documentation or Registration

(9) For purposes of preventing duplication, fraud, improper payments, or excessive payments under § 6417, what information, including any documentation created in or out of the ordinary course of business, or registration, should the IRS require as a condition of, and prior to, any amount being treated as a payment made by an applicable entity under § 6417(a)? What factors should the Treasury Department and the IRS consider as to when documentation or registration should be required? Should the IRS require the same documentation or registration for all applicable credits? If not, how should the information or registration differ between applicable credits? What other processes could be implemented by the IRS to prevent duplication, fraud, improper payments, or excessive payments under § 6417?

The Treasury Department and the IRS should craft direct pay election documentation or registration requirements to ensure accuracy while minimizing paperwork and other burdens on applicable entities. It should not be assumed that applicable entities electing direct pay will be “repeat customers” who will recoup a significant initial investment of effort in registration over multiple projects, although there could be a registration option to streamline procedures (and perhaps enable additional documentation or portfolio reporting, if needed) for applicable entities who do plan to elect direct payment for a larger number of projects. It could be helpful to allow batch applications for multiple facilities at the same time, especially for residential projects.

As with the applied bonus credits for clean energy facilities benefiting low-income communities,¹² GRID recommends that information requirements be tailored to different credits, market segments, and project types as appropriate. Small projects especially should not be subject to large documentation burdens. There is no efficiency to be gained by either the Treasury Department or applicable entities by having the same documentation or registration requirements for all applicable credits. It would likely benefit both equity and administrative ease for direct pay documentation requirements to align with the market segmentation suggested by many industry members for those applied low-income bonus credits, including residential facilities (1-4 units); multi-family residential facilities (5+ units); community facilities; and other types of facilities such as commercial facilities, perhaps further distinguished by project size. The Treasury Department could also consider a standard approved \$/W project cost (or several by project

¹² See GRID comments on IRS N-2022-49.

type) where there is minimal documentation required if below that level, but a higher level could trigger additional documentation requirements.

GRID recognizes the importance of preventing duplication, fraud, improper payments, or excessive payments under the direct pay program. While bad actors must not be allowed to undermine program goals, the Treasury Department should not treat applicable entities electing direct pay as inherently less trustworthy than for-profit companies taking the clean energy tax incentives in the traditional way. Documentation burdens must be well-justified since they fall disproportionately on the communities with the lowest capacity and have the potential to compound injustices and barriers in our energy system. Again, whatever documentation or registration requirements are imposed must be accompanied by clear, accessible, step-by-step guidance that leaves no room for misunderstanding what documents will be considered acceptable.

Excessive Payment Provisions

(10) What, if any, guidance is needed to clarify the application of the excessive payment provisions of § 6417? What factors should be taken into account in determining whether reasonable cause exists for purposes of § 6417(d)(6)(B)? What, if any, guidance is needed to calculate the excessive payment amount under § 6417(d)(6)(C)?

As with other aspects of direct pay, clear and highly accessible guidance is needed so the direct pay applicable entities that are least able to handle unexpected post-project expenses don't have the rug pulled out from under them. The Treasury Department and IRS should bear in mind the capacity limitations of many direct pay applicable entities in allowing them to demonstrate that any excessive payments resulted from reasonable cause and to avoid being penalized for good faith mistakes or unforeseen circumstances.

Other: Domestic Content Phaseout for Direct Pay

As noted in our comments on IRS Notice 2022-51.03, GRID is currently unable to source our entire systems from domestic manufacturing. It is our hope that domestic manufacturing for clean energy will be successfully built well before GRID and other potential direct pay applicable entities face potential exclusion from direct access to clean energy tax incentives if we face continued difficulties in sourcing American-made project materials. However, we do not believe it is appropriate to assume this will be entirely the case. We urge the Treasury Department to consider that quite a few hurdles to meeting domestic content requirements for direct pay may remain in coming years especially for economic and environmental justice communities,¹³ and to implement these requirements accordingly, with a primary emphasis on equitable access to clean energy. Extensive and accessible guidance on *all* relevant terms and operative provisions is crucial so organizations with little experience in government contracting or domestic content requirements can understand, at the outset of project development, what will be required. The Treasury Department and IRS should allow exceptions, exemptions, and waivers broadly and with minimal paperwork burdens.

¹³ See, e.g., Elizabeth McCarthy, "Clean energy supply bottlenecks hit overburdened communities the hardest, utilities and advocates say," *Utility Dive* (Oct. 27, 2022), <https://www.utilitydive.com/news/clean-energy-supply-bottlenecks-overburdened-communities-equity-IIJA-IRA/634725/>.