Alert | Energy Project Finance & Development

February 2023

IRS Releases Guidance on the Low-Income Communities Bonus Credit Program for Solar and Wind Facilities

The Internal Revenue Service issued Notice 2023-17 providing guidance on the Low-Income Communities Bonus Credit Program established under Internal Revenue Code Section 48(e) including environmental justice solar and wind capacity limitations for qualified solar and wind facilities eligible for the Investment Tax Credit (ITC). Notice 2023-17 provides initial guidance on the overall program design, the application process, and criteria that will be considered in determining which applicants will receive an allocation. Additional guidance will be issued in the future.

Qualified solar and wind facilities must have a maximum net output of less than five megawatts (measured in alternating current) and the facility must be: (1) located in a low-income community; (2) located on Indian land; (3) part of a qualified low-income residential building project; or (4) part of a qualified low-income economic benefit project.

Projects that are described in categories 1 and 2 above may qualify for an ITC increase of 10% for the eligible property that is part of the facility. Projects that that are described in categories 3 and 4 above may qualify for a 20% ITC increase. To be eligible for an increase, the projects must be placed in service within four years after the date the applicant was notified of the allocation to the facility. Facilities placed in service before being awarded an allocation will not receive an allocation, even if the project would otherwise qualify.

For the 2023 calendar year, the program's total capacity limitation is 1.8 gigawatts of direct current capacity divided among the four categories as follows:

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

When determining how to allocate the capacity limitations reserved for each category, additional criteria that will be considered includes a focus on facilities that are: (1) owned or developed by community-based organizations and mission-driven entities; (2) have an impact on encouraging new market participants; (3) provide substantial benefits to low-income communities and individuals marginalized from economic opportunities; and (4) have a higher degree of commercial readiness. Future guidance will describe the additional criteria in more detail.

The government anticipates issuing future guidance related to the Low-Income Communities Bonus Credit Program including descriptions of the additional criteria considered in awarding allocations.

Authors

This GT Alert was prepared by:

- John Eliason | +1 202.331.3188 | John.Eliason@gtlaw.com
- Margaret J. Weil | +1 612.259.9739 | weilm@gtlaw.com
- Braxton T. Roam | +1 202.530.8516 | roamb@gtlaw.com