

# PUBLICATION

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## Low-Income Community and Energy Community Bonus Tax Credits for Clean Energy Projects

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The following is an overview of guidance regarding the Inflation Reduction Act's (IRA) Low-Income Communities Bonus Credit Allocation Program (LIC Bonus) and the Energy Community Tax Credit Bonus.

This complex and evolving area of tax law requires advanced tax planning. Should you have questions in regard to the process for seeking compliance requirements or maximizing the potential benefits of this Program, please contact a member of our Tax Team.

### 1. The Energy Community Tax Bonus

If a project is in a census tract that is designated as an "energy community," it will qualify for a ten percent increased credit under the Investment Tax Credit (ITC) or Production Tax Credit (PTC). Projects must satisfy prevailing wage and apprenticeship rules to qualify for the full ten percent credit. A map of energy community census tracts provided by the Department of Energy (DOE) updated on June 14, 2023, can be found [here](#), and a complete DOE overview of energy communities can be found [here](#).

### 2. Low-Income Communities Bonus Credit Allocation Program

The LIC Bonus provides an enhanced tax credit for renewable energy projects located in designated low-income communities under Internal Revenue Code (Code) Section 48(e). This bonus is specifically available for small qualifying wind and solar projects, in addition to ITC tax credits. On June 1, the Treasury Department and Internal Revenue Service (IRS) issued a notice of proposed rulemaking [REG-110412-23](#) providing initial guidance for potential applicants seeking allocations for calendar year 2023.

Importantly, to receive the LIC Bonus, a portion of the annual "environmental justice solar and wind capacity limitation," or Capacity Limitation, must be allocated to the applicable project. The available Capacity Limitation for allocation each year in 2023 and 2024 is set at 1.8 gigawatts of direct current capacity, with any unallocated Capacity Limitation for 2023 being carried over to 2024.

In terms of eligibility, a qualified wind or solar facility is defined as a facility that generates electricity solely from wind or solar energy, has a maximum net output of less than five megawatts, and falls within one of the four categories:

**Category 1 "Facilities That Are Located in Low Income Communities":** These facilities can receive a ten percent credit, limited to a 700-megawatt Capacity Limitation. A facility must be in a census tract where any of the following apply:

- Poverty rate is 20 percent or greater
- Median family income does not exceed 80 percent of state median family income (non-metro area)
- Median family income does not exceed 80 percent or greater, of state/metro median family income (metro area)

**Category 2 "Facilities Located on Indian Land":** These facilities can receive a 10 percent credit, limited to a 200-megawatt Capacity Limitation. To qualify, the eligible property must be located on Indian land as defined in section 2601(2) of the Energy Policy Act of 1992.

**Category 3 "Facilities Are Part of a Qualified Low-Income Residential Building Project":** These facilities are entitled to a 20 percent credit, limited to a 200-megawatt Capacity Limitation. A qualifying affordable housing program includes a:

- Residential building which participates in a covered housing program as defined in section 41411(a) of the Violence Against Women's Act of 1994
- Multifamily housing program under the U.S. Department of Agriculture's Rural Housing Service
- Housing program administered by a Tribally designated housing entity (as described in section 4 of the Native American Housing Assistance and Self-Determination Act of 1996)
- Other affordable housing programs as the Secretary of State may provide

**Category 4 "Facilities Are Part of a Qualified Low-Income Economic Benefit Project":** These facilities can receive a 20 percent tax credit, limited to a 700-megawatt Capacity Limitation. To qualify, at least 50 percent of the financial benefits of the electricity produced by the facility must be provided to households with income below 200 percent of the poverty line or below 80 percent of the area's median gross income.

\*For both Category 3 and Category 4 facilities, financial benefits may include electricity acquired at a below-market rate, which is considered a financial benefit under Code Section 48(e).

\*\*Income and poverty data by census tract can be found using the U.S. Census map [here](#).

### **Priority Facilities and Other Considerations:**

The proposed regulations aim to provide clarity in various areas. First, they seek to define terms such as "energy storage" and "financial benefits" for qualified low-income residential building projects and qualified low-income economic benefit projects, to establish guidelines on determining a facility's location. Additionally, the proposed regulations introduce the concept of treating as a single facility those multiple facilities or energy properties of the same type (e.g., solar or wind) that operate as part of a single project and have a maximum net output of less than five megawatts as a single facility. These proposed regulations are designed to bring clarity and consistency to the interpretation and application of the regulations.

The IRS has proposed a new process for awarding allocations for the LIC Bonus program. Initially, all applications received by a certain deadline will be evaluated together. If any capacity remains, a rolling application process follows.

Priority will be given to projects that meet at least one of two new criteria: specific types of ownership, and location in areas identified as disadvantaged. For location, priority will be given to projects in a [Persistent Poverty County \(PPC\)](#) or in a census tract that is designated in 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. If applications exceed capacity, projects meeting both criteria will be prioritized. Allocation decisions cannot be appealed.

Again, should you have questions as to the process for seeking compliance and maximizing the potential benefits of the Low-Income Communities Bonus Credit Allocation Program, please contact a member of our [Tax Team](#).

