The Commonwealth Fund Inflation Reduction Act (IRA) Activation

Sustainability Tax Incentives

The following content was developed based on guidance available as of January 2024
A Note from the Authors

This document is part of a series of related resources for health care leadership released by the Commonwealth Fund. This document is an introductory guide for organizations to understand the strategies for decarbonizing the health care system using tax incentives in the Inflation Reduction Act of 2022 to strengthen organizational resiliency and reduce financial risks all while cutting down on greenhouse gas emissions.

Decarbonizing the Health Care System

IRA Activation – Sustainability Tax Incentives

FOCUS OF THIS DOCUMENT

The creation of this action guide was a collaborative effort from Deloitte and the Commonwealth Fund. For more information on the authors, please refer to the Appendix.
How to Use this Document

If you have 10 minutes
Skim sections 1, 2, and 3 to understand how the health care sector can decarbonize and which tax incentives can help support that goal.

If you have 30 minutes
Review all sections, focusing on areas of opportunities in section 3 and how specific tax incentives can inform decarbonization strategy.

If you have 60 minutes
Read the end-to-end action guide to understand the details and logistics on using tax incentives to decarbonize and key players and their responsibilities.

Key Terms*

- **Direct Emissions**: Emissions from owned or controlled sources. This includes emissions from combustion in owned or controlled boilers, furnaces, vehicles, etc.

- **Indirect Emissions**: Emissions from the generation of purchased energy consumed by the company. This includes emissions from electricity, steam, heating, and cooling consumed by the company; all other indirect emissions that occur in a company’s value chain. This includes both upstream and downstream emissions, such as emissions from transport-related activities in vehicles not owned or controlled by the company, electricity-related activities, outsourced activities, waste disposal, etc.

- **Direct Pay Provisions**: A method of payment in which tax credits are refunded for cash, allowing tax-exempt entities to benefit from tax incentives that may otherwise not be applicable.
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This document will explore the following ways for the health care sector to decarbonize, previously explored in the Decarbonization Action Guide. This guide will focus on three short-term areas of opportunity incentivized by the Inflation Reduction Act, further explained to the right, to offset some of the added cost.

### Areas of Opportunities for Decarbonizing the Health Care Sector

This document will outline 5 key provisions in the IRA most relevant to the decarbonization of the health care sector.

#### Short-term areas of opportunity

- **Energy Efficiency**
- **Renewable Energy**
- **Transportation Efficiency**
- **Clinical Innovation**
- **Low-Carbon Medicines**
- **Supply Chain Optimization**

The Inflation Reduction Act of 2022 provides incentives to accelerate decarbonization across the economy, including the health care system, and help offset the cost of sustainable investments.

With $369 billion in climate and clean energy investments, the IRA is among the most significant climate legislation ever passed by Congress.

While previous tax incentives left out tax-exempt entities, the IRA offers a cash payment equal to the full value of certain tax credits in the form of Direct Pay.

This document will outline 5 key provisions in the IRA most relevant to the decarbonization of the health care sector.

This document acts as a beginner’s guide for understanding the incentives available under the IRA, giving an overview of the incentives, requirements, eligibility, and other key considerations.

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(1) Decarbonizing the U.S. Health Sector — A Call to Action; (2) Pollution and health: a progress update; (3) In some cases, health care organizations may be able to apply for IRA benefits across certain aspects of their supply and delivery chains; (4) Treasury Announces Guidance on Inflation Reduction Act's Strong Labor Protections; (5) Elective Pay and Transferability
As the health care sector continues to contribute to GHG emissions, its role in providing care and community support is even more important to address the health inequities of climate change, build organizational resilience, and reduce financial risks.

In the aftermath of Hurricane Maria, Puerto Rico is driving towards becoming more resilient by providing communities with the resources, skills, and tools to enact change themselves. (1)

Sources: (1) Building Resilience in Puerto Rico
The U.S. health care sector is a material contributor to GHG emissions

The U.S. health care sector contributes ~8.5% of total U.S.-based GHG emissions\(^1\) and approximately 25% of global health care sector emissions,\(^2\) driven by a few underlying factors within an interconnected ecosystem.

Sources: (1) Decarbonizing the U.S. Health Sector — A Call to Action; (2) Health Care Pollution And Public Health Damage In The United States: An Update. This slide was previously published in the Decarbonization Action Guide.
Provider and health systems GHG emissions are categorized across three key scopes

**Example Provider and Health Systems Emissions Sources**

- **Scope 1:** Direct emissions from owned or controlled sources. This includes emissions from combustion in owned or controlled boilers, furnaces, vehicles, etc. (2)
  - On-Site Fuel Combustion
  - Fleet Vehicles
  - Point of Use Medical Gases

- **Scope 2:** Indirect emissions from the generation of purchased energy consumed by the company. This includes emissions from electricity, steam, heating, and cooling consumed by the company (3)
  - Purchased Electricity

- **Scope 3:** All other indirect emissions that occur in a company's value chain. This includes both upstream and downstream emissions not covered in Scope 2 (4)
  - Supplies and Services
  - Waste
  - Investment Portfolio
  - Agriculture

Source: (1) Health Care's Climate Footprint; (2) & (3) Scope 1 and Scope 2 Inventory Guidance; (4) Scope 3 Inventory Guidance; Note: Emissions sources for health ecosystem informed by EPA and WHO. For a full list of Scope 1, 2, and 3 emissions categories, refer to the GHG Protocol.
Health care organizations can reduce their emissions footprint through these common decarbonization strategies

**ENERGY EFFICIENCY**
Design infrastructure and facility footprint to optimize for resource efficiency and introduce green, energy-efficient tech into operations
- e.g., green building technology, all-electric building construction, HVAC system and lighting modifications

**RENEWABLE ENERGY**
Power operations through renewable energy sources through on-site energy generation
- e.g., on-site electric microgrids or solar panels

**TRANSPORTATION EFFICIENCY**
Limit transportation-related emissions via zero-emission fleets, active travel and public transport, and hybrid health care strategies
- e.g., EV charging stations, zero-emission shuttle fleets, efficient mobile health centers

**CLINICAL INNOVATION**
Improve overall system effectiveness, eliminate unnecessary care, support preventative care, and introduce new processes that limit the volume and toxicity of waste
- e.g., reduced single-use items, on-site waste treatment, prevention efforts, expansion of telehealth and virtual services

**LOW-CARBON MEDICINES**
Substitute high-emission products with more climate friendly alternatives, and incentivize the production of climate-smart medication
- e.g., low fresh gas flows, regional anesthesia techniques, alternative medicine delivery mechanisms, green R&D and chemistry

**SUPPLY CHAIN OPTIMIZATION**
Reduce reliance on disposable and single-use supplies and incorporate local, sustainable, and circular principles in procurement
- e.g., supplier sustainability scorecards, procurement from community-based agriculture, food waste reduction strategies

Source: (1) In some cases, health care organizations may be able to apply for IRA benefits across certain aspects of their supply and delivery chains. This slide was previously published in the Decarbonization Action Guide.
To propel decarbonization efforts, there are different opportunities, including the IRA, to incentivize and advance priority topics

**Inflation Reduction Act (IRA)**

The IRA is U.S. federal legislation, signed into law in August 2022, that invests $369 billion into sustainability to reduce pollution, expand clean energy production, and address health inequities with bonus credits for special census tracts, among other investments. The IRA creates opportunities for health care organizations to work towards a zero emissions future. While previous incentives were inaccessible to tax-exempt entities, the IRA opens the door for nonprofits through direct pay provisions.

**New Markets Tax Credit (NMTC) Program**

The NMTC Program incentivizes community development and economic growth through the use of tax credits that attract private investment to distressed communities. Although not specific to the health care sector, this program can incentivize health systems to address health inequities by building up the resiliency of under-resourced communities that are already disproportionately impacted by climate-related risks.

**CHIPS and Science Act**

The Creating Helpful Incentives to Produce Semiconductors (CHIPS) and Science Act is a federal statute enacted in August 2022 that appropriates $53 billion to spur the US semiconductor industry. The legislation incentivizes semiconductor manufacturing and research, which can improve the supply chain through green technologies like smart upgrades and renewable energy systems with relatively less applicability to health systems.

Source: (1) Congress's Climate Triple Whammy: Innovation, Investment, and Industrial Policy – RMI; (2) Treasury Announces Guidance on Inflation Reduction Act's Strong Labor Protections; (3) New Markets Tax Credit Program
Areas of Opportunity

While there are many incentives in the market to encourage a shift towards decarbonization\(^1\), this document will focus on the incentives provided in the Inflation Reduction Act (IRA). The Commonwealth Fund has called the Inflation Reduction Act (IRA), passed in 2022, one of the most significant congressional actions to address climate change in our lifetimes and could potentially help the U.S. reduce emissions by 40 percent or more by 2030 (as compared to 2005 levels).\(^2\)

Sources: (1) Congress’s Climate Triple Whammy: Innovation, Investment, and Industrial Policy – RMI; (2) How the Inflation Reduction Act Can Help the Health Care Sector Reduce Greenhouse Gas Emissions
Organizations advancing their decarbonization ambition through efficiency and renewables can benefit from IRA incentives and achieve greater resilience, savings, and community value.

**ENERGY EFFICIENCY**
Design infrastructure and facility footprint to optimize for resource efficiency and introduce green, energy-efficient tech into operations.
- e.g., green building technology, all-electric building construction, HVAC system and lighting modifications

**RENEWABLE ENERGY**
Power operations through renewable energy sources through on-site energy generation.
- e.g., on-site electric microgrids or solar panels

**TRANSPORTATION EFFICIENCY**
Limit transportation-related emissions via zero-emission fleets, active travel and public transport, and hybrid health care strategies.
- e.g., EV charging stations, zero-emission shuttle fleets, efficient mobile health centers

**IRA INCENTIVES**
- Energy Efficient Commercial Buildings Deduction
- Investment Tax Credit (ITC)
- Renewable Energy Production Tax Credit (PTC)
- Qualified Commercial Clean Vehicle Credit
- Alternative Fuel Vehicle Refueling Property Credit

**VALUE DRIVERS**
- Resiliency
- Cost Savings
- Community Impact
The IRA incentives can be organized in the order of relative complexity based on the level of effort required, helping applicants identify ways to get started.

<table>
<thead>
<tr>
<th>Level of Complexity</th>
<th>Incentive Type</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Simple</td>
<td>45W: Qualified Commercial Clean Vehicle Credit</td>
<td>Provides a tax credit for up to $40,000(^{vii}) per vehicle for new purchases of commercial clean vehicles, depending on vehicle weight and hybrid vs. battery electric vehicles (BEV)</td>
</tr>
<tr>
<td></td>
<td>30C: Alternative Fuel Vehicle Refueling Property Credit</td>
<td>Provides a tax credit for 6(^{vi}) or 30(^{viii}) of the cost (credit capped at $100,000 per property)(^{ix}) of refueling and charging stations in eligible locations for alternative fuels such as electricity, hydrogen, and biodiesel</td>
</tr>
<tr>
<td></td>
<td>179D: Energy Efficient Commercial Buildings Deduction</td>
<td>Provides tax deduction for energy efficiency improvements to qualifying commercial buildings; must be part of (i) interior lighting systems, (ii) heating, cooling, ventilation, and/or hot water property, or (iii) the building envelope(^{x})</td>
</tr>
<tr>
<td>Complex</td>
<td>48/48E: Investment Tax Credit (ITC)</td>
<td>Provides a tax credit ranging from 6(^{xi}) to 70(^{xii}) of the upfront cost of a “qualifying energy property”(^{xiii}) such as solar and wind electricity generation and standalone battery storage projects</td>
</tr>
<tr>
<td></td>
<td>45/45Y: Renewable Energy Production Tax Credit (PTC)</td>
<td>Provides a 10-year tax credit ranging from 0.3 cents to 1.5 cents(^{xiv}) per kwh for electricity generated by renewable energy resources and sold to unrelated party(^{ xv}) after facility is placed in service</td>
</tr>
</tbody>
</table>

Note: The criteria for determining the relative level of effort is further expanded in the following slides.
Transportation Efficiency – Qualified Commercial Clean Vehicle Credit

The §45W Qualified Commercial Clean Vehicle Credit incentivizes fleet decarbonization and can be utilized by the vehicle owners and users, lowering the total cost of ownership.

**INCENTIVE OVERVIEW**

Provides a tax credit for up to $40,000 per vehicle for new purchases of commercial clean vehicles, depending on vehicle weight and hybrid vs. BEV.\(^\text{xvi}\)

- **Period of Availability:** Vehicles acquired and placed in service between 1/1/23 and before 1/1/33\(^\text{xvii}\)

**KEY CONSIDERATIONS**

- Relative to other credits, the clean vehicle credit is easier to claim given it has **less requirements to meet in order to redeem the full credit amount.** See Key Considerations section for more detailed information.
- This credit is extremely beneficial to organizations that own or operate a substantial fleet, which may include shuttles, mobile care units, home health care services, etc.

For more information, see §45W Qualified Commercial Clean Vehicle Credit.

**ELIGIBILITY**

**Organization Types and Usage:**\(^\text{xviii}\)

- Businesses and tax-exempt entities that acquire and own motor vehicles or mobile machinery for use in the US
- Must be for use in business, not for resale

**Vehicle Types:**\(^\text{xix}\)

- Covers pure battery electric vehicles (BEVs), hybrids (PHEVs), and fuel cell (hydrogen) powered vehicles (FCEV)
- Minimum of 7 and 15 kWh battery capacity for hybrids and BEVs under and over 14,000 lbs, respectively

**WHY THIS MATTERS TO HEALTH CARE**

Health care organizations that rely on vehicle fleets (e.g., for patient transportation, delivery of medical supplies, or home health care services) can lower the total cost of ownership for such, allowing for greater investment into patient care and other critical operating areas. Additionally, reduced tailpipe emissions within the local communities these organizations serve can improve health factors that rely on air quality.
Case Study – Transportation Efficiency Example

A large hospital system would like to replace its fleet of patient and medical support transport vehicles with a new fleet of electric vehicles (EV). It plans on bringing in a fully electric mixture of shuttle buses and cars.

Situation

The hospital system can take advantage of the §45W Qualified Commercial Clean Vehicle Credit to receive a credit of the lessor of:

(a) 15% (30% for fully electric vehicles) of the basis of the qualified commercial clean vehicle

or

(a) the incremental cost* of such vehicle

<table>
<thead>
<tr>
<th>Car (6,000 lbs.)</th>
<th>Credit:</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Lessor of:</strong></td>
<td></td>
</tr>
<tr>
<td>(a) 30% of total cost of EV: $55,000</td>
<td>(a) $16,500</td>
</tr>
<tr>
<td>(b) Incremental cost* relative to a comparable vehicle of $40,000</td>
<td>(b) $15,000</td>
</tr>
</tbody>
</table>

**Capped at $7,500 per vehicle that has a gross vehicle weight of less than 14,000 lbs.**

Final refundable credit after weight limitation: $7,500

<table>
<thead>
<tr>
<th>Shuttle Bus (15,000 lbs.)</th>
<th>Credit:</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Lessor of:</strong></td>
<td></td>
</tr>
<tr>
<td>(a) 30% of total cost of EV: $150,000</td>
<td>(a) $50,000</td>
</tr>
<tr>
<td>(b) Incremental cost* relative to a comparable vehicle of $105,000</td>
<td>(b) $45,000</td>
</tr>
</tbody>
</table>

**Capped at $40,000 for vehicles over 14,000 lbs.**

Final refundable credit after weight limitation: $40,000

*The incremental cost is the excess of the purchase price over the price of a comparable vehicle (i.e., a fully gas or diesel vehicle similar in size and use).

The hospital system is able to receive a $7,500 credit per car and $40,000 per shuttle bus, which reduces the cost of fleet electrification, enabling the organization to decrease their GHG emissions and contribute to cleaner streets for the local community

(1) & (2) See Key Considerations details
Transportation Efficiency – Alternative Fuel Vehicle Refueling Property Credit

The §30C Alternative Fuel Vehicle Refueling Property Credit enables the fleet electrification of vehicles owned and/or operated by health care organizations, transitioning into clean transportation and reducing dependency on fossil fuels.

**Incentive Overview**

Provides a tax credit for 6% or 30%(1) of the cost (credit capped at $100,000 per item of property) of refueling and charging stations for alternative fuels such as electricity, hydrogen, and biodiesel. **xx**

- **Period of Availability**: Infrastructure placed in service between 1/1/23 and 12/31/32 **xi**

**Key Considerations**

- The location and type of refueling station of the refueling property is crucial as it may affect eligibility and the permit application process, which may vary depending on locality. Solar or energy storage properties that fall outside of an eligible census tract could potentially qualify for the ITC. **(2)**
- See the CDFI Fund Mapping Tool to find information on a specific census tract.

**Eligibility**

**Organization Types and Usage:**
- Businesses and tax-exempt entities **xxi** that install a qualified refueling property placed in service in the eligibility timeframe and location. Station owners who install qualified equipment at multiple sites are allowed to use the credit towards each refueling station in each location. **xxii**

**Geographic Location:**

Property must be placed in an eligible census tract, being either:

- a) Low-Income Community with certain poverty rate and median income requirements; or
- b) Non-urban area as defined by the Census Bureau

**Why This Matters to Health Care**

Alternative fuel vehicle refueling properties can help health care organizations cut costs by reducing the amount spent on traditional gasoline or diesel fuels. The shift towards alternative fuels and the accessibility of refueling stations for community members can further lower greenhouse gas emissions, which may result in long-term cost savings and contribute to a cleaner environment for its local community.

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(1) 6% base credit multiplied by 5x (to 30%) if PW&A requirements are met.
(2) See Investment Tax Credit (ITC) for more information.
Case Study – Transportation Efficiency Example

A community health center would like to install electric vehicle (EV) charging stations in 10 different locations, 5 stations per location, for its new EV fleet for supplies delivery and home health care services with a cost of $10,000 per charging station.

Situation

The health center is able to claim the §30C Alternative Fuel Vehicle Refueling Property Credit(2) and is planning to implement the project at 10 centers, each located in a low-income community.

Base Credit

- 6% of each station = $600 per station
- Refundable credit per location: $3,000

Meeting PW&A requirements for installation and maintenance(1)

- 30% of each station = $3,000 per station
- Refundable credit per location: $15,000

Total refundable credit: $30,000

Total refundable credit: $150,000

Note: The credit is limited to $100,000 per charging station.

The community health center can receive a maximum of $15,000 tax credits per location for a total of $150,000 back. This can significantly reduce the financial burden of the center, freeing up resources that could better support other strategic goals.

(1) See Key Considerations details
(2) Please also note that the basis of the property for which a credit is allowable shall be reduced by the amount of such credit.
Energy Efficiency

The §179D Energy Efficient Commercial Buildings Deduction can help organizations improve the energy efficiency of existing commercial buildings, such as retrofitted health care facilities, and new construction projects.

**INCENTIVE OVERVIEW**

Provides $0.50–$1.00/sq ft tax ($2.50–$5.00/sq ft if PW&A requirements are met) deduction for energy efficiency improvements to qualifying commercial buildings; must be part of (i) interior lighting systems, (ii) HVAC and/or hot water property, or (iii) the building envelope.

- **Period of Availability:** Permanent; new rules begin in 2023

**KEY CONSIDERATIONS**

- **Energy Efficiency Requirement:** Minimum 25% reduction in building energy usage when compared to governmental standards for new construction and prior annual energy use intensity for retrofits.

- Because this incentive is not eligible for Direct Pay, it is important to discuss with contractors about meeting the requirements of the credit at the onset of the project to negotiate construction costs.

**ELIGIBILITY**

**Eligible Organizations:**
- Owners (including nonprofit entities) of energy efficient commercial building (or retrofit) property installed in buildings located in the US
- Nonprofit entities can allocate the credit to the contractor/designers (architects, engineers) of energy efficient buildings and receive a reduced price in return.

**Eligible Property:**
- Interior lighting systems
- Heating, cooling, ventilation, and hot water systems
- Building envelope

**WHY THIS MATTERS TO HEALTH CARE**

Health care organizations spend over $6.5 billion on energy each year, and that amount is rising to meet patients’ needs. Hospitals can allocate more resources to better serve patients by being more energy efficient. Every $1 a non-profit health care organization saves on energy is equivalent to generating $20 in new revenues for hospitals or $10 for medical offices.
## Case Study – Energy Efficiency Example

A tax-exempt community health center would like to improve the energy efficiency of their 30,000 sq. ft. facility by renovating the HVAC water heater system and the interior lighting system with a goal of reducing energy usage by 25% minimum and 50% maximum.

### Situation

The health center’s third-party engineering contractors for the HVAC water heater system and designer of the interior lighting system are able to apply for the 179D Energy Efficient Commercial Buildings Deduction(1) to subsidize the renovation.

### Scenarios

<table>
<thead>
<tr>
<th>Scenario</th>
<th>Energy Usage Reduction</th>
<th>Not meeting PW&amp;A requirements (2)</th>
<th>Meeting PW&amp;A requirements</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>1:</strong> Reduced energy usage by 25%</td>
<td>• $0.50/SF → $15,000 deduction</td>
<td>Total tax savings for contractor/designer(3): $3,150</td>
<td>Total tax savings for contractor/designer: $15,750</td>
</tr>
<tr>
<td><strong>2:</strong> Reduced energy usage by 50%</td>
<td>• $1.00/SF → $30,000 deduction</td>
<td>Total tax savings for contractor/designer: $6,300</td>
<td>Total tax savings for contractor/designer: $31,500</td>
</tr>
</tbody>
</table>

*Note: tax savings is calculated by multiplying the deduction by corporate income tax rate of 21%.

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### As a result, the health center can receive a reduced price from the contractors/designers, which will generate cost savings, freeing up resources to be redirected to patient care, as well as reduce its environmental footprint.

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(1) Please note that if a §179D deduction is allowed for any energy-efficient commercial building property, the basis of that property must be reduced by the amount of the deduction.

(2) See Prevailing Wage & Apprenticeship details.

(3) Tax rates represent approximate rate of 21% after December 31, 2017. Retroactive studies would be calculated using the applicable deduction amounts and tax rates current at the time the improvements were placed in service.
Renewable Energy – Investment Tax Credit

The §48 Investment Tax Credit (ITC) can enable health care organizations to reduce their energy procurement costs, reduce indirect emissions, and improve operational resiliency to mitigate climate-related risks.

INCENTIVE OVERVIEW

Provides a tax credit of 6% of the cost of qualifying “energy property”; credit may be increased up to 70% if applicable requirements for adders are met (i.e., PW&A, domestic content, energy communities)(1)

- **Period of Availability:** Projects beginning construction before 1/1/25
  
  Note: the §48E Clean Electricity Investment Credit, which is intended to replace the §48 ITC upon its expiration, is available for projects placed in service after 12/31/2024. Projects qualifying for both can take only one.

Organization Types and Usage:

- Businesses that own renewable energy projects
- Tax-exempt entities that own renewable energy projects

Project Types:

- Fuel cell, solar, small wind, standalone energy storage, biogas, microgrid controllers, combined heat and power properties (3)

Example project types (non-exhaustive):

- Fuel Cell
- Solar
- Energy Storage
- Geothermal
- Combined Heat and Power

KEY CONSIDERATIONS

- The type of renewable energy will depend on each organization's needs (i.e., urban facilities might not be able to install solar or wind-generated energy due to a lack of land but may install geothermal or cogeneration). Consult with local facility managers to understand specific needs.

For more information, see §48 Investment Tax Credit (ITC) and §48E Clean Electricity Investment Tax Credit (ITC)

(1) See Contracting for more information on how the bonus credits are applied
(2) See page on Production Tax Credit (PTC) for more detail
(3) For a full list of qualifying project types, see Summary of Inflation Reduction Act provisions related to renewable energy
(4) Source: Following a Devastating Tornado, Town and Hospital Rebuild to Harness Wind Energy

WHY THIS MATTERS TO HEALTH CARE

Renewable energy can reduce dependency on traditional power sources, dramatically increasing the resilience of health-care facilities in the face of climate-related risks while lowering costs during peak usage times and cutting GHG emissions. For example, after a 2007 tornado destroyed 90 percent of the buildings in Greensburg, Kansas, a local hospital was able to rebuild its facilities with on-site wind turbines that provide the majority of the hospital's total electrical load.(4)
Case Study – Renewable Energy Example

A tax-exempt community hospital is looking to implement a renewable energy project totaling $6 million in costs that will begin construction in 2024.

### Situation

The hospital is able to apply for the §48 Investment Tax Credit (ITC)(1) for specifically implementing battery storage, which accounts for $6 million of the total costs.

### Base Credit

- 6% of costs related to energy storage

Refundable credit: **$360,000**

### Meeting PW&A requirements (2)

- 30% of costs related to energy storage

Refundable credit: **$1,620,000** *

### Meeting PW&A and domestic content requirements(2)

- 40% of costs related to energy storage

Refundable credit: **$2,400,000**

For properties that begin construction after 2024, there will be a transition to technology neutral credits, which means that the generator must have zero greenhouse gas emissions to receive the full credit.

*Because construction started in 2024, any direct pay amounts are reduced by a 10% haircut (i.e., $1,800,000 (30% of costs) less $180,000 (10%)) if domestic content requirements are not met.

The hospital can receive a total of $2,400,000(3) tax credits back for a generator that costs $6 million, reducing its energy procurement costs, which can help mitigate reliance on the energy grid and lighten the burden on an already stressed electricity system.

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(1) Please note that the basis of clean electricity property utilized in connection with the §48 ITC is reduced by 50% of the credit amount.

(2) See Key Considerations details.

(3) This case study does not contemplate the effects of meeting all requirements for bonus adders, which can lead to a maximum of 70% bonus credits if all conditions are met.
Renewable Energy – Renewable Energy Production Tax Credit

The §45 Renewable Energy Production Tax Credit (PTC) is beneficial for health care organizations that generate a portion of their electricity through renewable sources to offset the costs of energy procurement.

**Incentive Overview**

Provides a 10-year tax credit ranging from $5.50 to $33.00(1) per MWh for electricity generated by renewable energy resources and sold to unrelated party after facility is placed in service(2)

- **Period of Availability:** Projects beginning construction before 1/1/25

  *Note:* the §45Y Clean Electricity Production Credit, which is intended to replace the §45 PTC upon its expiration, is available for projects placed in service after 12/31/2024. Projects qualifying for both credits can take only one. Also note that for §45Y, unlike in the case of §45, there is no requirement that generated electricity be sold to a third party.

**Eligibility**

- **Organization Types and Usage:**
  - Businesses that own renewable energy projects
  - Tax-exempt entities that own renewable energy projects

- **Project Types:**
  - Electricity generation from wind, solar, biomass, geothermal, small irrigation, landfill and trash, hydropower, etc.

  *Example project types (non-exhaustive):*

  - Solar
  - Wind
  - Hydropower

**Key Considerations**

- The production of renewable energy may not apply to all health care organizations. Health care facilities that rely on energy procurement from third-parties should see if the energy provider is able to claim such credits and reduce the energy sales price.

For more information, see §45 Production Tax Credit and §45Y Clean Electricity Production Tax Credit.

(1) Base rate is $5.50/MWh, $27.50/MWh if PW&A requirements met (lower for “partial credit facilities,” as defined in I.R.C. § 45(b)(4)(A); additional increases possible if domestic content, energy community requirements met (+10% each).

(2) Note that projects eligible for the 45 PTC may elect to utilize the 48 ITC instead; in that case, the requirement that generated electricity be sold to a third party is removed.


**Why This Matters to Health Care**

Renewable energy production can not only reduce GHG emissions, cut costs, and improve resiliency, it can also enable health care facilities to return energy to the community. A health system in Wisconsin produces more renewable energy than it uses, making it the first net energy health system in the country. It has also invested in landfill biogas development and a community wind farm that gives back to the local community.
The IRA provisions most relevant to health care can be ranked in order of level of complexity as explained by the justifications below:

**Level of Complexity**

**Simple**

- **45W: Qualified Commercial Clean Vehicle Credit**
  - Vendor can claim credit/deduction and provide reduced sale price for tax-exempt entities
  - PW&A requirements not applicable
  - Do not need to segregate project costs for eligibility
  - Easy to calculate for amount eligible
  - Minimal documentation needed

- **30C: Alternative Fuel Vehicle Refueling Property Credit**
  - Must be in a qualified census tract; otherwise, if it includes solar or energy storage, it could potentially qualify for the ITC

- **179D: Energy Efficient Commercial Buildings Deduction**
  - Many organizations are already installing eligible components

**Complex**

- **48/48E: Business Energy Investment Tax Credit (ITC)**
  - Requires third party engineering review of systems/property for eligibility
  - Requires substantial documentation related to eligibility, placed in service date, beginning of construction date, and credit bonus adders

- **45/45Y: Renewable Energy Production Tax Credit (PTC)**
  - If beginning construction after 12/31/2024, some of the eligible energy properties are no longer available if they do not generate electricity or are not net neutral GHG emissions

**Legend**

- Contracting
- Timing
- Funding
- Structuring

---

(1) See the CDFI Fund Mapping Tool to find information on a specific census tract (change reference to actual appendices)

(2) and then must only be measured or monitored by a third party
The IRA includes many specific requirements and moving parts based on the logistics and applicability of the project. This section will briefly explain some of the major considerations that organizations should be aware of to understand the appropriate approach.

Resilience, sustainability, and decarbonization go hand in hand, and progress in any or all can help ensure adequate preparedness for a future where continued and growing climate change is a reality. (1)

Sources: (1) How Health Care Organizations Can Use the Inflation Reduction Act to Reduce Costs, Enhance Resilience, and Lower Their Environmental Footprint
Key Considerations

Healthcare organizations should be aware of the different requirements and rules surrounding the contract, timing of the project, how the project is funded, and the structure of the project. Click into each card below for more detailed information.

**Contracting**
Requirements within the contracting phase to determine amount eligible
Points of Consideration
• Prevailing Wage & Apprenticeship (PW&A)
• Domestic Content Requirements
• Energy Community Requirements
• Low Income Community Requirements
• Beginning of Construction
• Third-Party Contractors

**Timing**
Considerations such as construction timeline, direct pay timing, phase out timelines for specific provisions, and filing requirements that impact the tax credit value
Points of Consideration
• Beginning of Construction
• Credit Phase Out
• Technology Eligibility
• Filing Requirements
• Direct Pay
• Placed in Service

**Funding**
How the organization chooses to fund IRA projects will affect the credit amount and/or application process
Points of Consideration
• Tax-exempt Bonds
• Tax-exempt Grants
• Examples of financing structure

**Structuring**
Definitions of applicable entities and rules and restrictions on appropriate partnerships, which may affect eligibility
Points of Consideration
• Taxpayer Requirements
• Applicable Entity
• Electing Taxpayer
• Single Energy Project
Key Considerations

Tax-exempt entities should require that third-party contractors/subcontractors document the requirements below. This should be established during in the procurement phase in order to provide tax-exempt entities support for claiming a higher credit.

If Prevailing Wage & Apprenticeship (PW&A)(1) requirements are met(2)

- the organization can reap 5x more credits than the base amount for most of the clean energy credits

If the project uses a certain percentage of domestically produced steel, iron, or other manufactured products, the credit rate is increased by (3)

- 10% (applies to §45 xxxvii and §45Y)(4)
  - or
- 10 percentage points if PW&A requirements are met and 2 percentage points if PW&A requirements are NOT met (applies to §48xxxviii and §48Exxxix)

If the location of the project is in any of the following categories (3)

- Brownfield sites
- Qualified statistical areas
- Coal mine or generator closures

the organization can receive an additional 10% credit rate increase (for §45/45Y)(5) or an additional 2% or 10% credit rate increase (for §48/48E)(6)

If certain small-scale wind or solar projects are in low-income communities

- the credit amount can be increased by 10-20% under 48/48E (ITC)(7) after successful application to the IRS

If the project partners with third-party designers for a building energy efficiency project

- the third-party design or engineering may claim the 179D Energy Efficient Commercial Buildings Deduction(8)
Key Considerations

Depending on when the construction of the project begins, the amount of credits available may vary

If construction begins before January 29, 2023,
• prevailing wage and apprenticeship requirements are deemed to be met\textsuperscript{lv}

If construction begins after calendar year 2024,
• credit becomes technology neutral (project must generate (or store) electricity with net zero greenhouse gas emissions)\textsuperscript{xlvi}

If the entity is making a Direct Pay election under section 6417 and begins construction on the project
• in calendar year 2024, the credit is phased down to 90%\textsuperscript{xlvii} if domestic content requirements are not met
• in calendar year 2025, the credit is phased down to 85%\textsuperscript{xlviii} if domestic content requirements are not met
• after 2025, the credit is phased down to 0% if the domestic content requirements are not met\textsuperscript{xlix}

To make a direct payment and transferability election,
• entities must pre-file on an IRS-administered electronic portal (this is mandatory) in the year the work will be completed and is ready to claim the credit.\textsuperscript{li} Failure to successfully pre-register and obtain the registration number renders an election ineffectiveli

If a direct payment election is made by the applicable entity no later than the due date of the tax return for the taxable year for which the election is made (including extensions)
• the payment is generally treated as made on the later of:
  o (1) the due date (determined without regard to extensions) of the tax return, or
  o (2) the date that the tax return is filed\textsuperscript{lii}

If the entity is making a Direct Pay election,
• it is only eligible for projects placed in service during tax years beginning after 12/31/2022\textsuperscript{liii}
Key Considerations

The type of funding of a project can affect the amount of credits available. See below for a few scenarios as examples:

**If the project is financed by tax-exempt bonds,**
- then the amount allowed is reduced under certain credits by the lesser of the ratio of tax-exempt bond proceeds used over total project costs, and of 15%\(^{iv}\)

**If the project is financed by tax-exempt grants/incentives,**
- there may be a reduction in the allowed credit amount
- project-specific tax-exempt funds limit the allowable credit amount to the excess of total project costs over tax-exempt funds used. General purpose tax-exempt funds may be used on projects without limiting credit use. Tax exempt funds are included in the property’s basis for computing the credit, regardless of whether the basis must be reduced under other provisions.\(^{iv}\)

**Example 1:** Taxpayer A intends to construct a solar parking facility for $1,000,000 in qualifying costs, and to claim the §48 ITC. Separately, Taxpayer A has received an $800,000 general purpose federal grant for facility improvements and decides to utilize the entire $800,000 of that grant funding toward the construction of the solar parking facility. Assuming Taxpayer A qualifies for the full 30% of the §48 ITC, they would be able to claim a credit in the amount of $300,000.

**Example 2:** Same facts as Example 1, except that the $800,000 federal grant received was awarded specifically for Taxpayer A’s solar parking facility. Despite otherwise qualifying for the full 30% of the credit, Taxpayer A would only be eligible to claim a credit in the amount of $200,000 (i.e., after applying the $800,000 tax-exempt financing, the eligible credit amount is limited to the remaining $200,000).

**Example 3:** Same facts as Example 2, except that Taxpayer A received $1,000,000 in federal grant funding specifically for the solar parking facility. Taxpayer A would not be eligible to claim any credit.

*Note that direct pay funds would be received on the normal timeline for entities receiving tax refunds, which can be months or even years after placing the asset in service—consider the effect on funding timeline requirements.\(^{iv}\)*
Key Considerations

The legal structuring of the organization applying for and receiving IRA credits will affect eligibility

If making a direct pay election, it must be made by an applicable entity or electing taxpayer:\textsuperscript{lvii}  
- An applicable entity is generally a non-profit entity or governmental organization  
  - An applicable entity must directly own the underlying property or conduct activities giving rise to the underlying applicable credit or the election cannot be made\textsuperscript{viii}  
- A Partnership and/or S corporation may be an electing taxpayer (any taxpayer that is not an applicable entity but only available for 45X, 45V, and 45Q), but it CANNOT be an “applicable entity” even if some or all of its owners are applicable entities\textsuperscript{lix}

An applicable entity is any one of the following:\textsuperscript{lx}
- Section 501(a) tax-exempt organization
- Government of any U.S. territory or state, the District of Columbia, Indian tribal government, or any political subdivision, agency or instrumentality thereof
- Rural electric cooperative
- Alaska Native Corporation
- The Tennessee Value Authority

An electing taxpayer is any taxpayer other than an applicable entity that elects to receive direct payments during the applicable 5-year periods (for 45V, 45Q, or 45X credits only)\textsuperscript{lx}

If the project contains multiple components,
- For ITC purposes, the credit amount is determined on the eligible basis of the "single energy project". The determination of multiple projects being single energy property can be beneficial when needing to group property into a single beginning of construction date, however, it may cause a project to also not meet the 1MW exception and thus need to qualify for the prevailing wage and apprenticeship requirements separately\textsuperscript{lxii}
The decarbonization process involves many players and moving parts in navigating and utilizing the incentives in the IRA. This section explores how each player interacts with each other and their unique position to empowering a sustainable future.

On June 28, 2022, more than 900 community members came together to create a community-wide network of 85-100 resilience hubs across Louisiana. In the face of climate-related natural disasters, collective effort may be more important now than ever before.(1)

Sources: (1) Together New Orleans launches community lighthouse project
Overview of Health Care Leadership Personas for IRA Activation

Multiple players, both internal and external to the health care ecosystem, drive activation of the IRA; seven personas in particular play an essential role1

**Board & Board Chair**
*Motivator*

The Board provides strategic direction and oversight in conjunction with the Board Chair, who should ensure alignment of the Board with the CEO and the organization’s vision on utilizing the IRA.

**Chief Financial Officer**
*Resource Coordinator*

For IRA-eligible projects, the CFO should understand the ROI impact, determine resource allocation, and manage financial risks and recordkeeping.

Alternative titles: VP Finance, Controller

**Chief Executive Officer**
*Leader*

The CEO should understand the implications of the IRA, sign off on IRA-related strategies and projects, and drive coordination with the Board.

Alternative titles: President, Director

**Chief Tax Officer**
*Policy Expert*

The Chief Tax Officer should determine the amount of incentives available to inform the organization’s investment strategy and its sustainability goals.

Alternative titles: Tax Director, Tax Compliance Officer

**Board & Board Chair**
*Motivator*

The Board provides strategic direction and oversight in conjunction with the Board Chair, who should ensure alignment of the Board with the CEO and the organization’s vision on utilizing the IRA.

**Chief Financial Officer**
*Resource Coordinator*

For IRA-eligible projects, the CFO should understand the ROI impact, determine resource allocation, and manage financial risks and recordkeeping.

Alternative titles: VP Finance, Controller

**Chief Executive Officer**
*Leader*

The CEO should understand the implications of the IRA, sign off on IRA-related strategies and projects, and drive coordination with the Board.

Alternative titles: President, Director

**Chief Strategist**
*Innovator*

The Strategist should identify opportunities within the IRA, ensure stakeholder alignment and support, prioritize projects, and foster innovative solutions.

Alternative titles: Director of Business Development, Director of Innovation

**Facilities Operations Lead**
*Implementor*

The Operations Lead should identify and implement facility-level IRA-related projects, engage physicians & staff, maintain compliance, and monitor progress.

Alternative titles: Chief Operating Officer, GM, Facilities Manager, Service Manager, Contract Manager

**Chief Sustainability Officer**
*Driver of change*

The Chief Sustainability Officer should shape the overall decarbonization strategy and communicate progress internally and externally. The IRA may also impact the Chief Sustainability Officer’s budget, requiring greater project oversight.2

Note: 1) Roles, titles, and responsibilities are not mutually exclusive and often differ based on the profile of an organization, 2) Some organizations name specific sustainability leaders who might also wear multiple other hats, but often the role of a Chief Sustainability Officer is assumed by other parts of the organization.
Health Care Ecosystem Relationships for IRA Activation

Ecosystem relationships are critical for successful ideation, implementation, and support of IRA-related projects.

- **Buy-in and oversight**
- **Alignment on resources**
- **Alignment on implementation**

- **CEO**
  - Buy-in from the C-Suite is crucial to the feasibility of IRA-related projects
- **CFO**
  - Implementation of many decarbonization strategies relies on third-party contractors to stay up-to-date with new legislative requirements, which is a major concern for IRA-related projects
- **CTO**
  - Legal application of the IRA
- **Facilities Operations Lead**
  - Alignment on implementation
- **Chief Strategist**
  - Buy-in from the C-Suite is crucial to the feasibility of IRA-related projects
- **Board & Board Chair**
  - Awareness of legislation
- **Federal, State, & Local Government**
  - Alignment on legislation
- **Legal**
  - Many health care organizations lack the capacity to deploy legal resources to lighten administrative burdens of the IRA
- **Third-party Contractors**
  - There is an emerging group of champions who are passionate about driving change for decarbonization, including physicians. They can apply internal pressure up the ladder and provide organizational insights
- **Staff & Admin**
  - There is an emerging group of champions who are passionate about driving change for decarbonization, including physicians. They can apply internal pressure up the ladder and provide organizational insights
- **Chief Sustainability Officer**
  - There is an emerging group of champions who are passionate about driving change for decarbonization, including physicians. They can apply internal pressure up the ladder and provide organizational insights
# Key Roles and Responsibilities to Activate the IRA

## How the IRA can empower you

### Board & Board Chair
- Promote long-term organizational resilience and mitigate climate-related risks, embedding them into quality oversight
- Strengthen relationships with donors and partners through community engagement
- Position the organization strategically among peers

## How you can help activate the IRA

### Board & Board Chair
- Review and oversee the strategic planning and consider long-term implications and risks

### Chief Executive Officer
- Provide resources to achieve sustainability goals and other enhancement projects for organizational development
- Enable workforce upskilling on sustainability topics
- Fulfill organizational mission and mandate to promote human health through greater climate resiliency

### Chief Tax Officer
- Support broader organizational resiliency, cost reduction, and sustainability goals by taking advantage of available credits
- Demonstrate industry leadership on tax policy and incentives

### Chief Financial Officer
- Transform high investment costs and uncertain ROI into financially viable investments
- Establish proof points to build the business case for investment in sustainability and equity efforts

### Chief Strategist
- Promote long-term organizational resilience
- Accelerate existing strategic priorities
- Facilitate strategic planning of business model to spark innovation
- Build brand differentiation among health care peers

### Facilities Operations Lead
- Accelerate facility sustainability and cost savings goals
- Capitalize on IRA incentives to free up resources, which can provide financial and operational flexibility

### Chief Sustainability Officer
- Promote long-term organizational resilience
- Accelerate progress against enterprise sustainability goals (e.g., net zero, energy usage intensity goals)
- Enhance the organization’s reputation by demonstrating commitment to sustainability

### Chief Tax Officer
- Ensure cross-functional alignment and support and outline sustainability goals to be achieved with the IRA
- Collaborate with community leaders and fellow health care organizations to maximize collective effort in creating a positive impact on the community

### Chief Financial Officer
- Account for the credit amount into the financial planning and showing how the tax incentives affect the bottom line through cost savings

### Chief Strategist
- Champion the exploration and adoption of innovative practices that can be incentivized by the IRA

### Facilities Operations Lead
- Identify opportunities under the IRA that can be integrated into the operations of the organization
- Oversee the construction process and manage supplier and contractual relationships

### Chief Sustainability Officer
- Build a business case to achieve organizational buy-in and support from the C-Suite and Operations Lead
- Deep understanding of the current landscape towards decarbonization and identifying areas of opportunities
Key Considerations Across All Personas

Based on interviews with health care leaders across all personas, several common challenges and opportunity areas emerged:

1. **How do we build tax literacy to address gaps in understanding?**

   Health care leaders have stratified information based on levels of expertise and resources. Existing inequities are exacerbated when under-resourced communities and safety net hospitals do not have the capacity to digest the IRA and to take advantage of what would help them the most.

2. **How do we dispel uncertainties and instill confidence in leadership?**

   Before approaching a project that has never been done before, health care leaders need to feel confident in the return on investment made possible by the IRA. Even established health systems favor small-scale pilot programs as a proof of concept.

3. **What turnkey solutions exist to help interested leaders jumpstart progress?**

   Health care leaders express interest in understanding easily accessible benefits/incentives to take advantage in the immediate future. Success stories and implementation plans would help ease the discomfort leaders feel about approaching this topic.

4. **How can health care organizations plan well in advance to obtain benefits?**

   Delaying the alignment of projects with the IRA could result in lost value. By proactively ensuring projects are IRA-compliant, organizations can leverage these benefits, supporting their financial and sustainability goals.
Health care organizations can act now to benefit from IRA incentives, many of which took effect in January 2023

How can I get started?

1. Identify relevant provisions
   - Learn more about the credits, grants, and loans applicable to your organization
   - Check eligibility criteria such as location and labor requirements
   - Talk to external specialists to validate research and fill in knowledge gaps

2. Engage stakeholders
   - Connect with Finance, Procurement, Tax, and Government Relations to gain buy-in and build the business case
   - Discuss with internal management to better understand organizational needs and how to qualify for the benefits of the IRA

3. Move quickly
   - Lock in domestic, low-emission suppliers to access IRA credit adders tied to geography, wages, apprenticeship, and more
   - Start preparing now to be able to meet incentive caps for grant programs and capitalize on first mover advantages

Overview of Timeline for Sample IRA Provisions

<table>
<thead>
<tr>
<th>Credit</th>
<th>2022</th>
<th>2023</th>
<th>2024</th>
<th>2025</th>
<th>2026</th>
<th>2027</th>
<th>2028</th>
<th>2029</th>
<th>2030</th>
<th>2031</th>
<th>2032</th>
<th>2033</th>
<th>Description &amp; Highlights</th>
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</thead>
<tbody>
<tr>
<td>§45, §48: Production &amp; Investment Credits</td>
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<td>The existing PTC/ITC regime will be replaced by technology neutral, emissions-based credits in 2025. The new credits phase out in 2032 or when emissions targets are reached</td>
</tr>
<tr>
<td>§45Y/§48E: Clean Electricity Production &amp; Investment Tax Credits</td>
<td>IRA provision in effect</td>
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</tr>
<tr>
<td>§45W, §30C: Commercial Clean Vehicle &amp; Alt. Charging Credits</td>
<td>IRA provision in effect</td>
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<td></td>
<td>Credit covers electric/fuel cell vehicles (e.g., EV, fuel cell, etc.)</td>
</tr>
</tbody>
</table>

Sources: Deloitte Analysis, H.R.5376 - Inflation Reduction Act of 2022
For additional support activating the IRA’s climate provisions in health care, check out the following resources

### Health Care IRA Resources

- **How Health Care Organizations Can Use the Inflation Reduction Act to Reduce Costs, Enhance Resilience, and Lower Their Environmental Footprint** - National Academy of Medicine (nam.edu)
- **The Office of Climate Change and Health Equity (OCCHE) Quickfinder for Leveraging the Inflation Reduction Act for the Health Sector** - HHS.gov
- **Inflation Reduction Act of 2022** - U.S. Department of Energy
- **Catalytic Program on Utilizing the IRA** - OCCHE

### General IRA Resources

- **WH IRA Guidebook**
  Includes overview, description, and funding details for each IRA funded incentive
- **BGA IRA User Guide**
  Provides overview of IRA incentives by sector and explains funding mechanisms
- **IRS Credits and Deductions under the IRA**
  Resources, forms and descriptions of IRA tax credits and deductions
Appendix

See this section for a more detailed breakdown of specific requirements.
Provides a tax credit equal to the lesser of: (a) 15% (30% for vehicles not powered by gasoline or internal combustion engine) of the basis of the qualified commercial clean vehicle, or (b) the incremental cost* of such vehicle, capped at either $7,500 per vehicle that has a gross vehicle weight of less than 14,000 lbs.) or $40,000 for other vehicles.

A Qualified Commercial Clean Vehicle is:
1. made by a qualified manufacturer and acquired for use or lease by the taxpayer and not for resale;
2. either (a) manufactured for use on public streets, roads, and highways (i.e., not trains); or (b) is mobile machinery (i.e., construction vehicles or forklifts);
3. Either propelled (a) by an electrically charged motor (min. 15kWh capacity or 7kWh for vehicles less than 14,000 lbs.) or (b) EPA –certified hydrogen fuel cell; and
4. Depreciable.

Example Vehicles:
- Under 14,000 lbs.: Cargo van, box trucks, city delivery trucks, step van, full-size pick-up truck, minivan, sedan, etc.
- At or Over 14,000 lbs.: School bus, refuse truck, sleeper cab, beverage truck, large walk-in trucks, etc.

*The incremental cost is the excess of the purchase price over the price of a comparable vehicle (i.e., a fully gas or diesel vehicle similar in size and use).

This slide builds on the information previously covered in Transportation Efficiency - Qualified Commercial Clean Vehicle Credit.
§30C Alternative Fuel Vehicle Refueling Property Credit

INCENTIVE OVERVIEW

Provides a tax credit of 6% (or 30% if meets wage and apprenticeship requirements) of costs for qualified alternative fuel vehicle (“QAFV”) refueling property, up to $100,000 credit with respect to any single item of QAFV property (removing the location restriction).

A QAFV Refueling Property is property which is:
1. For the storage or dispensing of a clean-burning fuel into the fuel tank of a motor vehicle propelled by such fuel, or
2. For the recharging of motor vehicles propelled by electricity.

Clean-burning fuels are:
1. Any fuel where at least 85% of the volume consists of one or more of the following: ethanol, natural gas, compressed natural gas, liquified natural gas, liquified petroleum gas or hydrogen.
2. Any mixture which consists of two or more of the following: biodiesel, diesel fuel, or kerosene and at least 20% of the volume consists of biodiesel without regard to any kerosene.
3. Electricity.
4. Certain transportation fuel with an emissions rate of not greater than 50 kg of CO2e per mmBTU.

ADDITIONAL CONSIDERATIONS

• Prevailing Wage and Apprenticeship Requirements.
• Property required to be located in eligible census tract (any NMTC eligible zone) or in a non-urban area.
• Definition of “single item” which replaced “with respect to all” QAFV “at a location”.
• Direct pay option under 6417 for applicable entities and transferability under 6418 for non-applicable entities.
• Special rules for electric charging stations for certain vehicles with 2 or 3 wheels.

Effective for property placed in service January 1, 2023, through December 31, 2032.
§179D Energy Efficient Commercial Buildings Deduction

INCENTIVE OVERVIEW

Provides $0.50–$1.00/sq ft tax ($2.50–$5.00/sq ft if PW&A requirements are met) deduction for energy efficiency improvements to qualifying commercial buildings; must be part of (i) interior lighting systems, (ii) HVAC and/or hot water property, or (iii) the building envelope.

Qualifying buildings include:

• **Energy efficient commercial building property (EECBP)** must be installed on or in a building located in the U.S. and within the scope of a specified Reference Standard 90.1 of the American Society of Heating, Refrigerating, and Air Conditioning Engineers and the Illuminating Engineering Society of North America. It must be property for which depreciation or amortization is allowable, and installed as part of the interior lighting systems, the heating, cooling, ventilation, and hot water systems, or the building envelope. It must be certified as being installed as part of a plan to reduce the total annual energy and power costs for the above systems by 25% or more in comparison to a reference building meeting the minimum requirements of Reference Standard 90.1.

• **Energy efficient building retrofit property (EEBRP)** must be installed on or in a qualified building as part of the interior lighting systems, the heating, cooling, ventilation, and hot water systems, or the building envelope. A qualified building is a building located in the U.S. and originally placed in service not less than 5 years before the establishment of a qualified retrofit plan for the building. EEBRP must be property for which depreciation or amortization is allowable, and it must be certified as meeting certain energy saving requirements.

Beginning in 2023, if local prevailing wages are paid and apprenticeship requirements are met, an increased maximum deduction applies. The maximum amount increases to five times the savings per square foot amount.

The deduction is available to:

• Owners of qualified commercial buildings
• Designers of EECBP/EEBRP installed in buildings owned by specified tax-exempt entities, including certain: government entities, Indian tribal governments, Alaska Native Corporations, and other tax-exempt organizations

The deduction was previously available only to owners of qualified commercial buildings and designers of EECBP installed in buildings owned by certain government entities.

Beginning January 1, 2023.

This slide builds on the information previously covered in Energy Efficiency.

Source: Energy Efficient Commercial Buildings Deduction.

(1) For more information, see AHRAE.
Provides a tax credit based on capital investment in a variety of renewable (e.g. solar, wind) and conventional energy technologies to incentivize investment in new energy resources. In general, the credit is 6% (or 30% if wage and apprenticeship requirements are met) of the basis of eligible property placed in service during the taxable year. Additional credit amounts (“adder”) are available if the project meets certain requirements.

Examples of qualified energy property:

- Solar property
- Fiber-optic solar property
- Fuel cell property
- Microturbine property
- Geothermal property
- Combined heat and power system property
- Small wind energy property
- Waste energy recovering property
- Energy storage technology
- Biogas
- Microgrid controllers
- Dynamic Glass

Direct payment option under Sec. 6417 for applicable entities and transferability under Sec. 6418 for non-applicable entities are available.

**ADDITIONAL CONSIDERATIONS**

- Cannot be property which is part of facility used for production credit under Sec. 45.
- Extended begun construction deadline to before Jan 1, 2025 (before Jan 1, 2035 for geothermal heat pumps).
- Includes wage and apprenticeship requirements for the 5X multiplier to the base credit for facility placed in service after 2022.
- Includes a 2% domestic content “adder” applied to the base credit (or 10% bonus credit) if certain domestic content requirements are satisfied.
- Includes a 2% energy communities “adder” applied to the base credit (or 10% bonus credit) if facility is located in an “energy community”.
- New rules establish different begun construction deadlines important to ITC facilities.

Effective for projects beginning construction before 1/1/25.
Section 48E provides a technology-neutral Investment Tax Credit for qualified capital investments in an electric generating facility or energy storage property for which GHG emissions rate is not greater than zero. The credit is 6% (or 30% if wage and apprenticeship requirements are met) of the qualified investment, subject to increased credit percentage if eligible for adders.

Section 48E is not available for any facility for which a credit is allowed under sections 45, 45J, 45Q, 45U, 45Y, 48, or 48A for the taxable year or any prior taxable year.

The 48E credit begins to phase out for facilities or energy storage technology the construction of which begins during the second calendar year following the Applicable year, which is the later of:

1. The calendar year in which the annual GHG emissions from the production of electricity in the US are not greater than 25% of 2022 emissions from electricity production

   or

2. Calendar year 2032.

The credit is fully phased out for facilities or energy storage technology the construction of which begins after 3rd calendar year following the Applicable year.

• Includes wage and apprenticeship requirements for the 5X multiplier to the base credit for facility placed after 2024.

• Includes a 2% domestic content “adder” applied to the base credit (or 10% bonus credit) if certain domestic content requirements are satisfied.

• Includes a 2% energy communities “adder” applied to the base credit (or 10% bonus credit) if facility is located in “energy community.”

• New rules establish different begun construction deadlines important to ITC facilities.

• Direct payment option under 6417 for applicable entities and transferability under 6418 for non-applicable entities are available.

Effective for facilities placed in service after 2024.
Provides a tax credit amount of 0.3 cents (or 1.5 cents if meets wage and apprenticeship requirements) per kWh of electricity produced using certain energy resources at a qualified facility and sold to an unrelated party.

The credit is available for a 10-year period starting from the date the facility is placed in service.

A **Qualified Energy Resource** includes:

- Wind
- Closed-loop biomass/Open-loop biomass* - (material or solid waste from plant which is planted exclusively for purposes of being used at facility to produce electricity)
- Geothermal energy
- Municipal solid waste*
- Qualified hydropower production
- Marine and hydrokinetic renewable energy
- Solar

*The credit rate for open-loop biomass, trash, and landfill facilities are reduced by one-half.

### ADDITIONAL CONSIDERATIONS

- Credit reduced for Tax-Exempt Bonds.
- Extended begin construction deadline to Dec. 31, 2024.
- Includes wage and apprenticeship requirements for the 5X multiplier to the base credit for facility placed in service after 2021.
- Includes a 10% domestic content “adder” applied to the base or bonus credit if certain domestic content requirements are satisfied.
- Includes a 10% energy communities “adder” applied to the base or bonus credit if facility is located in “energy community.”
- Direct payment option under 6417 for applicable entities and transferability under 6418 for non-applicable entities are available.

Effective for facilities beginning construction before 1/1/25.
IRC section 45Y provides a credit of 0.3 cents per kWh of electricity produced by taxpayer at a qualified facility for which the GHG (Greenhouse Gas) emissions rate is not greater than zero and such electricity is sold, consumed or stored. The credit is increased to 1.5 cents per kWh if wage and apprenticeship requirements are met.

The credit is available for a 10-year period beginning on the date that the facility was originally placed in service after 2024. The credit is not available for any facility for which a credit is allowed under sections 45, 45J, 45Q, 45U, 48, 48A, or 48E for the taxable year or any prior taxable year.

The 45Y credit begins to phase out for facilities the construction of which begins during the second calendar year following the Applicable year, which is the later of:

1. The calendar year in which the annual GHG emissions from the production of electricity in the US are not greater than 25% of 2022 emissions from electricity production

   or

2. Calendar year 2032.

The credit is fully phased out for facilities the construction of which begins after 3rd calendar year following the Applicable year.

**ADDITIONAL CONSIDERATIONS**

- Includes a 10% domestic content “adder” applied to the credit if certain domestic content requirements are satisfied.
- Includes a 10% energy communities “adder” applied to the credit if facility is located in “energy community.”
- Direct pay election for applicable entities and credit transferability election for non-applicable entities.
- New rules establish different begun construction deadlines important to the facilities.
- Not later than January 1, 2025, Treasury shall issue guidance regarding implementation of section 45Y, including calculation of GHG emission rates for qualified facilities and determination of the credit.

**Effective for facilities beginning construction before 1/1/25.**
Prevailing wage and apprenticeship requirements (“PWA”)

Satisfying certain labor requirements may increase the amount of the base credit by up to five (5) times the base statutory credit amount.
Federal Credits and Incentives Updates

Prevailing wage and apprenticeship requirements

<table>
<thead>
<tr>
<th>Code Section</th>
<th>Credit Description</th>
<th>Construction (through placed-in-service)</th>
<th>Alteration or repair (after placed-in-service, during recapture/credit period)</th>
<th>Beginning of Construction before 1/29/23*</th>
</tr>
</thead>
<tbody>
<tr>
<td>30C</td>
<td>Alternative Fuel Refueling Property Credit</td>
<td>✓</td>
<td>x</td>
<td>✓</td>
</tr>
<tr>
<td>45</td>
<td>Electricity produced from certain renewable resources</td>
<td>✓</td>
<td>x</td>
<td>✓</td>
</tr>
<tr>
<td>45L</td>
<td>New energy efficient home credit</td>
<td>✓</td>
<td>x</td>
<td>✓</td>
</tr>
<tr>
<td>45Q</td>
<td>Credit for carbon oxide sequestration</td>
<td>✓</td>
<td>x</td>
<td>✓</td>
</tr>
<tr>
<td>45U</td>
<td>Nuclear power production credit</td>
<td>x</td>
<td>x</td>
<td>✓</td>
</tr>
<tr>
<td>45V</td>
<td>Credit for production of clean hydrogen</td>
<td>✓</td>
<td>x</td>
<td>✓**</td>
</tr>
<tr>
<td>45Y</td>
<td>Clean electricity production credit</td>
<td>✓</td>
<td>x</td>
<td>✓</td>
</tr>
<tr>
<td>45Z</td>
<td>Clean fuel production credit</td>
<td>✓</td>
<td>***</td>
<td>✓</td>
</tr>
<tr>
<td>48</td>
<td>Energy Credit</td>
<td>✓</td>
<td>x</td>
<td>✓</td>
</tr>
<tr>
<td>48C</td>
<td>Qualifying advanced energy project credit</td>
<td>✓</td>
<td>x</td>
<td>✓</td>
</tr>
<tr>
<td>48E</td>
<td>Clean electricity investment credit</td>
<td>✓</td>
<td>x</td>
<td>✓</td>
</tr>
<tr>
<td>179D</td>
<td>Energy efficient commercial buildings deduction</td>
<td>✓</td>
<td>x</td>
<td>✓</td>
</tr>
</tbody>
</table>

*See I.R.S. Notice 2013-29. PWA deemed met if placed in service before 1/29/2023; the last date for a taxpayer to qualify for the increased credit/deduction amounts without having to meet the PWA requirements.

**PW applies for alteration/repair regardless if 60 day period met; 60 day requirement applies to exempt from meeting PWA during Construction phase ONLY; not applicable after Construction phase of the facility

***If facility was placed in service prior to 1/1/2025, then the prevailing wage requirements do not apply during Construction. Clarification is needed with regards to apprenticeship requirement for facilities placed in service prior to 1/1/2025.
Federal Credits and Incentives Updates

Prevailing wage and apprenticeship requirements

**In General**

With respect to most of the clean energy credits in the IRA, taxpayers must satisfy prevailing wage and apprenticeship requirements to qualify for the increased credit amount.

- Satisfying these labor requirements increases the amount of the base credit to an increased credit amount generally equal to five (5) times the base statutory credit amount (30% ITC and 0.55 cent PTC per kWh for 2023 inflation adjusted).

- The prevailing wage requirements and apprenticeship requirements are adopted for: sections 30C, 45, 45L, 45Q, 45U (wage only), 45Y, 45V, 45Z, 48, 48C, 48E, and 179D.

<table>
<thead>
<tr>
<th>Incentive</th>
<th>Base</th>
<th>Bonus</th>
</tr>
</thead>
<tbody>
<tr>
<td>Section 45: Production Tax Credit</td>
<td>0.3 cent/kWh</td>
<td>1.5 cent/kWh</td>
</tr>
<tr>
<td>Section 48: Investment Tax Credit</td>
<td>6%</td>
<td>30%</td>
</tr>
<tr>
<td>Section 48C: Qualified Advanced Energy Project</td>
<td>6%</td>
<td>30%</td>
</tr>
<tr>
<td>Section 45Q Carbon Sequestration Credit: not direct air capture facility</td>
<td>$12/metric ton</td>
<td>$60/metric ton</td>
</tr>
<tr>
<td>Section 45Q Carbon Sequestration Credit: direct air capture facility</td>
<td>$17/metric ton</td>
<td>$85/metric ton</td>
</tr>
<tr>
<td>Section 45Q Carbon Sequestration Credit: direct air capture facility</td>
<td>$26/metric ton</td>
<td>$130/metric ton</td>
</tr>
<tr>
<td>Section 45Q Carbon Sequestration Credit: direct air capture facility</td>
<td>$36/metric ton</td>
<td>$180/metric ton</td>
</tr>
<tr>
<td>Section 45V: Clean Hydrogen Production Credit</td>
<td>$0.60/kg</td>
<td>$3.00/kg</td>
</tr>
<tr>
<td>Section 179D: Energy Efficient Commercial Buildings Deduction</td>
<td>$0.50 - 1.00/sq ft</td>
<td>$2.50 - 5.00/sq ft</td>
</tr>
</tbody>
</table>

Note: Above amounts may be subject to inflation adjustments.
Federal Credits and Incentives Updates

**Prevailing wage and apprenticeship requirements**

**Beginning of construction exception:** a qualified facility or an energy project is deemed to meet the prevailing wage and apprenticeship requirements if construction begins prior to January 29, 2023. Otherwise, taxpayers must meet the prevailing wage and apprenticeship requirements summarized below for increased credit amounts.

**Small project exception:** facility with a maximum net output of less than 1 megawatt (AC). Sections 45, 45Y, 48 and 48E only

**Prevailing wage and apprenticeship requirements:**

**Prevailing wage requirement:** Laborers and mechanics employed by the taxpayer, or any contractor and subcontractor must be paid prevailing wage rates of a similar character in the locality in which the facility or project is located for construction, alteration or repair during construction and alteration or repair during the recapture or credit period.

**Apprenticeship requirements:**

1. **Labor Hours:** The applicable percentage of total labor hours performed by qualified apprentices for construction, alteration or repair work (including work performed by any contractor or subcontractor) must be performed by qualified apprentices:
   - 10% for facilities which begin construction before 2023; 12.5% if during 2023; 15% if after 2023.
   - Subject to the applicable apprentice-to-journeyworker ratio

2. **Participation:** Each taxpayer, contractor, or subcontractor that employs four or more laborer/mechanics must employ one or more qualified apprentices to perform such work.
Federal Credits and Incentives Updates

Prevailing wage and apprenticeship requirements

**Prevailing wage:**

(1) Paying a penalty in the amount of $5,000 ($10,000 if intentional disregard) per laborer and mechanic who were paid wages below the prevailing wages for any period during the year to the IRS; **and**

(2) making payments to such laborer or mechanic in an amount (*3 if intentional disregard) equal to the difference between the amount required to be paid and the amount actually paid, plus interest

**Apprenticeship:**

(1) Paying a penalty to the IRS in an amount equal to $50 ($500 if intentional disregard) multiplied by the number of total labor hours for which did not satisfy requirements; **or**

(2) “Good Faith Effort” - a taxpayer shall be deemed to have satisfied the requirements (no penalty payment necessary) if such taxpayer has requested qualified apprentices from a registered apprenticeship program and such request has been denied or a response has not been received within 5 business days. The Good Faith Effort is valid for 120 days from the date of the request.
Prevailing Wage Recordkeeping:

Records sufficient to demonstrate compliance with the Prevailing Wage requirements may include the following information for each laborer and mechanic (including each qualified apprentice) employed by the taxpayer, contractor, or subcontractor with respect to each facility:

- Identifying information, including the names, social security or tax identification number, address, telephone number, and email address,
- The location and type of qualified facility,
- The labor classification the taxpayer applied to the laborer or mechanic, including the applicable wage determination,
- The hourly rates of wages paid (including rates of contributions or costs for bona fide fringe benefits or cash equivalents thereof) for each applicable labor classification,
- Records to support any contribution irrevocably made on behalf of a laborer or mechanic to a trustee or other third person pursuant to a bona fide fringe benefit program, and the rate of costs that were reasonably anticipated in providing bona fide fringe benefits to laborers and mechanics pursuant to an enforceable commitment to carry out a plan or program described in 40 U.S.C. 3141(2)(B), including records demonstrating that the enforceable commitment was provided in writing to the laborers and mechanics affected,
- The total number of labor hours worked per pay period,
- The total wages paid for each pay period (including identifying any deductions from wages),
- Records to support wages paid to any apprentices at less than the applicable prevailing wage rates, including records reflecting the registration of the apprentices with a registered apprenticeship program and the applicable wage rates and apprentice to journeyworker ratios prescribed by the apprenticeship program, and

⚠️ In the case of transfer of credits, all PWA Requirements, including recordkeeping requirements, apply to the eligible taxpayer entity who determined the credit (i.e., the transferor).
Federal Credits and Incentives Updates

Prevailing wage and apprenticeship requirements: Proposed regulations for recordkeeping

Apprenticeship Recordkeeping Requirement:

Records sufficient to demonstrate compliance with the apprenticeship requirements may include the following information for each apprentice employed by the taxpayer, contractor, or subcontractor with respect to each facility:

- Any written requests for the employment of apprentices from registered apprenticeship programs, including any contacts with the U.S. Department of Labor’s Office of Apprenticeship or a State apprenticeship agency regarding requests for apprentices from registered apprenticeship programs,
- Any agreements entered into with registered apprenticeship programs with respect to the construction, alteration, or repair of the facility,
- Documents reflecting the standards and requirements of any registered apprenticeship program, including the applicable ratio requirement prescribed by each registered apprenticeship program from which taxpayers, contractors, or subcontractors employ apprentices,
- The total number of labor hours worked by apprentices, and
- Records reflecting the daily ratio of apprentices to journeyworkers

In the case of transfer of credits, all PWA Requirements, including recordkeeping requirements, apply to the eligible taxpayer entity who determined the credit (i.e., the transferor).
Taxpayer, Contractor, and Subcontractor Responsibilities

Ensure contractors and Subcontractors are responsible for understanding and adhering to PWA requirements.

1. Incorporate PWA requirements in contracts and subcontracts

Ensure that the required contract clauses and applicable wage determinations are incorporated into any prime or lower-tier subcontracts.

2. Pay at Least the DOL Prevailing Wages

Pay at least the DOL prevailing wages, listed in the applicable wage determination(s), to laborers and mechanics who work on the site of work on a weekly basis.

Contractors can meet this obligation by paying each laborer and mechanic the applicable prevailing wage for the classification of work they perform entirely as cash wages or by a combination of cash wages and employer-provided bona fide fringe benefits.

3. Maintain Accurate Records of Hours Worked and Wages Paid

Maintain an accurate record of hours worked and wages paid, including fringe benefit contributions.

In addition to the employee information listed on certified payroll records, contractors must also retain information on the full social security number, address, and if applicable apprenticeship/trainee program information for all covered workers.
Federal Credits and Incentives Updates

Helpful Websites:

- www.sam.gov

- https://www.dol.gov/agencies/whd/IRA


- https://www.apprenticeship.gov/about-us/apprenticeship-system; A map showing which state agencies have been recognized by DOL as State Apprenticeship Agencies, along with state agency contact information

- Inflation Reduction Act of 2022 | Internal Revenue Service (irs.gov)
Domestic Content bonus credit

Applicable to the following sections:

- Section 45 (production tax credit)
- Section 45Y (clean electricity production credit)
- Section 48 (investment tax credit)
- Section 48E (clean electricity investment credit)
Federal Credits and Incentives Updates

Requirements & Timing:

**Domestic Content** includes any **steel**, **iron**, or **manufactured product** (MP) which is a component of a facility or project (upon completion of construction) and is produced in the United States (US)

The domestic content requirements for steel and iron will be applied in a manner consistent with 49 C.F.R. 661.5

MP is deemed to have been produced in the US if not less than the **adjusted percentage** of the total costs of all such MPs of such facility or project are attributable to MPs (including components) which are mined, produced, or manufactured in the US.

<table>
<thead>
<tr>
<th>Year Construction Begins</th>
<th>Applicable Project*</th>
<th>Offshore Wind*</th>
</tr>
</thead>
<tbody>
<tr>
<td>Before 2025</td>
<td>40%</td>
<td>20%</td>
</tr>
<tr>
<td>During 2025</td>
<td>45%</td>
<td>27.5%</td>
</tr>
<tr>
<td>During 2026</td>
<td>50%</td>
<td>35%</td>
</tr>
<tr>
<td>During 2027</td>
<td>55%</td>
<td>45%</td>
</tr>
<tr>
<td>After 2027</td>
<td>55%</td>
<td>55%</td>
</tr>
</tbody>
</table>

*The adjusted percentages do not increase for section 48E (clean electricity ITC)
Federal Credits and Incentives Updates

Domestic Content bonus credit

Requirements & Timing:

The bonus credit applies to facilities or energy projects originally placed in service after December 31, 2022.

An Applicable Project may qualify as originally placed in service even though it contains some used property, provided the fair market value of the used property is not more than 20% of the Applicable Project’s total value calculated by adding the cost of the new property to the value of the used property (“80/20 Rule”).

If a section 6417 (direct pay) election is made and the project/facility does not meet the Domestic Content requirements, the applicable percentage of the direct payment is reduced:

<table>
<thead>
<tr>
<th>Beginning of Construction</th>
<th>Applicable Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Before January 1, 2024</td>
<td>100</td>
</tr>
<tr>
<td>In calendar year 2024</td>
<td>90</td>
</tr>
<tr>
<td>In calendar year 2025</td>
<td>85</td>
</tr>
<tr>
<td>After December 31, 2025</td>
<td>0</td>
</tr>
</tbody>
</table>
Federal Credits and Incentives Updates
Domestic Content bonus credit – Notice 2023-38

Bucket 1: Steel or Iron
- Requirement: all manufacturing processes with respect to any steel or iron items that are Applicable Project Components take place in the United States, except metallurgical processes involving refinement of steel additives.
- The requirement applies to Applicable Project Components that are construction materials made primarily of steel or iron and are structural in function.
- The requirement does not apply to steel or iron used in Manufactured Products or subcomponents of Manufactured Product Components.
  - For example: items such as nuts, bolts, screws, washes, cabinets, covers, shelves, clamps, fittings, sleeves, adapters, tie wire, spacers, door hinges, and similar items that are made primarily of steel or iron but are not structural in function.

Bucket 2: Manufactured Products
- Manufactured Products Requirement is met if all Applicable Project Components that are Manufactured Products are produced in the United States or are deemed to be produced in the United States.
- A Manufactured Product is considered to be produced in the United States if:
  1. All of the manufacturing processes for the Manufactured Product take place in the United States, and
  2. All of the Manufactured Product Components of the Manufactured Product are of U.S. origin.
- A Manufactured Product Component is considered to be of U.S. origin if it is manufactured in the United States, regardless of the origin of its subcomponents.
- A Manufactured Product Component that is not manufactured is a U.S. Component if it is mined in the United States.
**Federal Credits and Incentives Updates**

**Domestic Content bonus credit – Notice 2023-38**

### Definitions

**Applicable Project**: (i) qualified facility under sections 45 and 45Y; (ii) an energy project under section 48; (iii) a qualified investment with respect to a qualified facility or energy storage technology under section 48E

**Applicable Project Component**: any article, material, or supply, whether manufactured or unmanufactured, that is directly incorporated into an Applicable Project; an Applicable Project Component may qualify as steel, iron, or a Manufactured Product

**Manufactured Product**: an item produced as a result of the manufacturing process

**Manufactured Product Component**: any article, material, or supply, whether manufactured or unmanufactured, that is directly incorporated into an Applicable Project Component that is a Manufactured Product

**Produced**: (with respect to a Manufactured Component): produced as a result of the manufacturing process

**Mined**: derived from the extraction or ores or minerals from the ground or from the waste or residue of prior mining

**Manufacturing Process**: the application of processes to alter the form or function of materials or of elements of a product in a manner adding value and transforming those materials or elements so that they represent a new item functionally different from that which would result from mere assembly of the elements or materials

**Steel & Iron**: The Steel & Iron requirement applies to Applicable Project Components that are construction materials made primarily of steel or iron and are structural in function. Applied in a manner consistent with 49 CFR §661.5(b) and (c). The Steel or Iron Requirement does not apply to steel or iron used in Manufactured Product Components. For example, items such as nuts, bolts, screws, washers, cabinets, covers, shelves, clamps, fittings, sleeves, adapters, tie wire, spacers, door hinges, and similar items that are made primarily of steel or iron but are not structural in function are not subject to the Steel or Iron Requirement.

**United States**: the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the U.S. Virgin Islands, and the Commonwealth of the Northern Mariana Islands
Federal Credits and Incentives Updates

Domestic Content bonus credit

Domestic Cost Percentage:

\[
\text{Domestic cost percentage} = \frac{\text{Cost of U.S. Manufactured Products} + \text{U.S. Manufactured Product Components of non U.S. Manufactured Products}}{\text{Cost of all U.S. and non U.S. Manufactured Products}}
\]

Components cost: Manufactured Product Components of Non-U.S. Manufactured Products that are Applicable Project Components if the Manufactured Product Components are mined, produced, or manufactured in the United States

The cost of a U.S. Manufactured Product or U.S. Component includes only direct costs as defined in Treas. Reg. § 1.263A-1(e)(2)(i), that is direct materials and direct labor costs, that are paid or incurred within the meaning of section 461 by the U.S. Manufactured Product’s manufacturer to produce the U.S. Manufactured Product or by the Non-U.S. Manufactured Product’s manufacturer to produce or acquire the U.S. Component.

Direct costs, including direct labor costs, of incorporating the Applicable Project Components into the Applicable Project are not counted in the Domestic Manufactured Products and Component Cost.

The manufacturer of a U.S. Manufactured Product or a Non-U.S. Manufactured Product is the person that performed the manufacturing process that produced the U.S. Manufactured Product or the Non-U.S. Manufactured Product.

The Total Manufactured Products Cost for an Applicable Project is the sum of the costs of each Applicable Project Component that is a Manufactured Product.
Federal Credits and Incentives Updates

Domestic Content bonus credit

Decision Tree:

Applicable Project Component

Manufactured Product (MP)

Primarily steel or iron and structural in function

Manufactured in the US?

Yes

All manufactured product components (MPCs) made in the US?

Yes

Add direct costs of MP to numerator and denominator for Domestic Cost Percentage (DCP)

No

No

Add direct costs of US MPCs in numerator and direct costs of MP in denominator for DCP

Does the DCP numerator/denominator equal or exceed the Adjusted Percentage?

Yes

Yes

The project satisfies the DC requirement

No

No

The project does not satisfy the DC requirement

No

Yes to both?

Yes

No

100% produced in the US (except for metallurgical processes)?
Manufactured Product 1 is not manufactured in the U.S. and has 2 components (1A & 1B). 1A is manufactured in the U.S. and 1B is manufactured outside of the US.

Manufactured Product 2 is manufactured in the U.S. and has 3 components. All 3 components are manufactured in the U.S.

<table>
<thead>
<tr>
<th>Asset</th>
<th>Cost</th>
<th>Asset</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>1A</td>
<td>$30</td>
<td>2A</td>
<td>$30</td>
</tr>
<tr>
<td>1B</td>
<td>$45</td>
<td>2B</td>
<td>$50</td>
</tr>
<tr>
<td>2C</td>
<td></td>
<td></td>
<td>$100</td>
</tr>
<tr>
<td>1</td>
<td>$100</td>
<td>2</td>
<td>$200</td>
</tr>
</tbody>
</table>

Manufactured Product 1 is a non-U.S. Manufactured Product
Manufactured Product 2 is a U.S. Manufactured Product

Domestic Cost Percentage

\[
\frac{30 + 100 + 30 + 50}{100 + 200} = 70\%
\]

\[(30 + 100 + 30 + 50) = 210\]

\[(100 + 200) = 300\]

\[\frac{210}{300} = 70\%\]

The Project satisfies the domestic content requirements and therefore receives the increase in the credit rate
Bonus credits for Energy Communities

- Applicable to the following sections:
  - Section 45 (production tax credit);
  - Section 45Y (clean electricity production credit);
  - Section 48 (investment tax credit); and
  - Section 48E (clean electricity investment credit)
Federal Credits and Incentives Updates

Bonus credits for Energy Communities

Energy Community:

- Brownfield site; or

A metropolitan statistical area (“MSA”) or non-metropolitan statistical area (“non-MSA”) which has (or had since 2009) (1) 0.17% or greater direct employment or (2) 25% or greater local tax revenues related to the extraction, processing, transport or storage of coal, oil or natural gas, and has an unemployment rate at or above the national average unemployment rate for the previous year; or

A census tract (or directly adjoining tract) where a coal mine closed after 1999, or a coal-fired electric generating unit was retired after 2009

Notice 2023-29 as updated by Notice 2023-45 (both published on July 17, 2023) establishes rules and requirements pertaining to the three categories of energy communities.
Federal Credits and Incentives Updates

Bonus credits for Energy Communities

The energy community rules and requirements are applicable to the following sections for qualified facilities and energy projects located in an energy community and placed in service after 2022:

<table>
<thead>
<tr>
<th>Section</th>
<th>Bonus</th>
</tr>
</thead>
</table>
| Sections 48 & 48E | • 2 percentage points energy community adder applied to the base credit amount, or  
|                | • 10 percentage points energy community adder if the project is located in an “energy community” and meets prevailing wage & apprenticeship requirements |
| Sections 45 & 45Y | 10% increase in credit amount for any qualified facility located in an energy community and meets the prevailing wage & apprenticeship requirements |
Brownfield:

**Definition:** a brownfield site, as defined in 42 U.S.C. section 9601(39)(A), is real property, the expansion, redevelopment or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant (as defined under 42 U.S.C. section 9601) and certain mine-scarred land (as defined in 42 U.S.C. section 9601(3)(D)(ii)(III)); a brownfield site does not include the categories of property described in 42 U.S.C. section 9601(39)(B)

**Requirement:** The site was previously assessed through federal, state, territory, or federally recognized Indian tribal brownfield resources as meeting the definition of a brownfield site under 42 U.S.C section 9601(39)(A)

**Brownfield Safe Harbor:**
- An ASTM E 1903 Phase II Environmental Site Assessment confirms the presence on the site of a hazardous substance as defined under 42 U.S.C. section 9601(14), or a pollutant or contaminant as defined under 42 U.S.C. section 9601(33)
- For sites under 5 megawatts (AC), an ASTM E 1527 Phase I Environmental Site Assessment has been completed; the presence on the site of a hazardous substance as defined under 42 U.S.C. section 9601(14), or a pollutant or contaminant as defined under 42 U.S.C. section 9601(33)
Federal Credits and Incentives Updates
Bonus credits for Energy Communities

Fossil Fuel Employment & Tax Revenue

Requirement:

- A MSA or non-MSA which has (or had since 2009) (1) 0.17% or greater direct employment or (2) 25% or greater local tax revenues related to the extraction, processing, transport or storage of coal, oil or natural gas,
- And has an unemployment rate at or above the national average unemployment rate for the previous year

Tax revenue data is not readily available via a public source. The IRS and Treasury Department requested public comment on possible data sources and revenue categories.

<table>
<thead>
<tr>
<th>NAICS Code</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>211</td>
<td>Oil and Gas Extraction</td>
</tr>
<tr>
<td>2121</td>
<td>Coal Mining</td>
</tr>
<tr>
<td>213111</td>
<td>Drilling Oil and Gas Wells</td>
</tr>
<tr>
<td>213112</td>
<td>Support Activities for Oil and Gas Operations</td>
</tr>
<tr>
<td>213113</td>
<td>Support Activities for Coal Mining</td>
</tr>
<tr>
<td>32411</td>
<td>Petroleum Refineries</td>
</tr>
<tr>
<td>4861</td>
<td>Pipeline Transportation of Crude Oil</td>
</tr>
<tr>
<td>4862</td>
<td>Pipeline Transportation of Natural Gas</td>
</tr>
</tbody>
</table>

Notice 2023-29 Resources:

- List of Treasury/IRS defined MSAs and non-MSAs (N-2023-29 Appendix A)
- List of MSAs and non-MSAs (by county) that meet the Fossil Fuel Employment threshold
  - N-2023-29 Appendix B
  - N-2023-47 Appendix 1 addition to N-2023-29 Appendix B
- List of MSAs and non-MSAs that meet the Fossil Fuel Employment threshold and Unemployment Rate threshold (based on calendar year 2022 data)
  - N-2023-47 Appendix 2

Appendix B will be updated annually in May for the prior year data.
Federal Credits and Incentives Updates
Bonus credits for Energy Communities

Coal Closures

Requirement: A census tract (or directly adjoining tract) where a coal mine closed after 1999, or a coal-fired electric generating unit was retired after 2009

Coal Mine Status: “Abandoned” or “Abandoned & Sealed”

Coal-Fired Electric Generating Unit Type:
- 2014-2022: “Conventional Steam Coal” or “Coal Integrated Gasification Combined Cycle”
- 2010-2013: “primary fuel source code of anthracite coal, bituminous coal, lignite coal, refined coal, coal-derived synthesis gas, subbituminous coal, and waste/other coal”

NOTICE 2023-29
List of census tracts in the coal closures category
N-2023-29, Appendix C

NOTICE 2023-47
Additional census tracts to the Notice 2023-29 Appendix C that meet the Coal Closures requirement
N 2023-47 Appendix 3

DATA SOURCE
Census tracts are determined using the 2020 Decennial Census
Coal closures are monitored and reported by the U.S. Department of Labor’s Mine Safety & Health Administration
Federal Credits and Incentives Updates
Bonus credits for Energy Communities

Nameplate Capacity Test & Footprint Test:
- A project will be considered located in an EC if 50% or more of the project’s nameplate capacity is in an area that qualifies as an energy community. Offshore energy generation units will apply the nameplate capacity test to the “land-based power conditioning equipment that conditions energy generated by the project for transmission, distribution, or use and that is closest to the point of interconnection”
- If no nameplate capacity, footprint test should be applied. Project will be considered as located/placed in service within an EC, if 50% or > of its squared footage is an area that qualifies as an EC.

Timing to Test if a Project is in an Energy Community:

<table>
<thead>
<tr>
<th>Section</th>
<th>Testing Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sections 48 &amp; 48E</td>
<td>Date the project is placed in service</td>
</tr>
<tr>
<td>Sections 45 &amp; 45Y</td>
<td>Each year during the qualified facility’s 10-year credit period</td>
</tr>
<tr>
<td>Safe Harbor</td>
<td>Begun construction date for projects which begin construction on or after January 1, 2023</td>
</tr>
</tbody>
</table>

Substantiation:
- General recordkeeping requirements under section 6001 must be met in order to substantiate that a qualified project is in an energy community
- This guidance applies for taxable years ending after April 4, 2023. Treasury and the IRS indicated they will be issuing proposed regulations.
### Timing to Test if a Project or Facility is in an Energy Community:

<table>
<thead>
<tr>
<th>Project Type</th>
<th>Begun Construction</th>
<th>Placed in Service</th>
<th>Energy Community Testing Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Section 48 ITC</td>
<td>November 15, 2022</td>
<td>December 15, 2024</td>
<td>December 15, 2024</td>
</tr>
<tr>
<td></td>
<td>June 30, 2023</td>
<td>August 1, 2026</td>
<td>June 30, 2023 or August 1, 2026</td>
</tr>
<tr>
<td>Section 45 PTC</td>
<td>July 15, 2022</td>
<td>September 15, 2023</td>
<td>Each year during the qualified facility’s 10-year credit period</td>
</tr>
<tr>
<td></td>
<td>March 1, 2023</td>
<td>January 31, 2024</td>
<td>March 1, 2023 or each year during the qualified facility’s 10-year credit period.</td>
</tr>
</tbody>
</table>
Bonus credits for Low-Income Communities

• Applicable to the following sections:
  o Section 48 (investment tax credit); and
  o Section 48E (clean electricity investment credit)
Federal Credits and Incentives Updates

Bonus credits for Low-Income Communities

Section 48(e) – Low Income Communities Bonus Credit Program:

Background and Timeline:

Annual allocation of environmental justice solar and wind capacity limitation (total 1.8GWdc annually) to:

• Small scale solar and wind facilities

• With a maximum net output of less than 5MW (AC)

• Placed in service within specified low-income communities

10% adder > located in a low-income community (LIC) or on Indian land

20% adder > qualified low-income residential building project or a qualified low-income economic benefit project

1. Notice 2023-17 (03/23)
   • Definitions and requirements for allocations in 2023
   • “SINGLE Project” factors (Notice 2018-59 or Notice 2013-29)

2. REG-110412-23 (06/23)
   • Proposed Regulations

3. T.D. 9979
   • Final regulations applicable to the Program
   • Definitions
   • Applications procedure
   • Additional criteria
   • Among others

   • Information that must be submitted by the applicant
   • Application review process
   • Manner of obtaining an allocation from the IRS

5. Announcement 2023-28
   • Citation modifications to Rev. Proc. 2023-27
Allocations

For 2023*, the capacity limitation for each facility category is:

- **Category 1: Located in LIC** 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

*Treasury and IRS may adjust this initial reservation of capacity in future guidance.

**This amount will be subdivided between BTM (490 mW) and FTM facilities (210 mW).

Application & Applicant

The owner of the facility must submit an application per facility per the allocation year to apply for an allocation of the Capacity Limitation. The application must contain the required information, documentation, and attestations. DOE will publicly announce opening and closing dates for the application.

In general – The owner of the facility is the applicant and is the recipient of the allocation.

Disregarded entities - The owner of the disregarded entity is the owner of the facility and is the applicant.

Partnerships and S corporations – The owner of the facility is the partnership or S corporation and is the applicant, not the partners or shareholders.
Federal Credits and Incentives Updates

Bonus credits for Low-Income Communities

**Low Income Communities**
- Any population census tract with a poverty rate of at least 20% based on the 2012-2015 American Community Survey data;
- A non-metropolitan area with a median family income less than or equal to 80% of the statewide median family income; or
- A metropolitan area with a median family income less than or equal to 80% of the greater of: (a) the statewide median family income or (b) the metropolitan area median family income.

*The Department of Energy received Category 1 allocation applications totaling 4,227 MW, more than 6x the 700 MW capacity limit originally set.*

**Indian Land**
- Any population census tract with a poverty rate of at least 20% based on the 2012-2015 American Community Survey data;

*The Department of Energy received Category 2 allocation applications totaling 49 MW, out of a 200 MW capacity limit originally set.*

**Qualified low-income residential building project**
- Facility installed on the same or adjacent parcel of land as a qualified low-income residential building project. A qualified low-income residential building project is:
  - A residential rental building that participates in a covered housing program or other affordable housing program (“Qualified Residential Property”); and
  - At least 50% of the financial benefits of the electricity produced by such facility are allocated equitably among occupants.

*The Department of Energy received Category 3 allocation applications totaling 165 MW, out of a 200 MW capacity limit originally set.*

**Qualified low-income economic benefit project**
- The Facility must serve multiple qualifying low-income households (“Qualifying Household”);
- At least 50% of the facility’s total output in kW must be assigned to Qualifying Households; and
- Each Qualifying Household must be provided a bill credit discount rate of at least 20%.

*The Department of Energy received Category 4 allocation applications totaling 3,892 MW, more than 5x the 700 MW capacity limit originally set.*

(1) According to the DOE’s Low-Income Communities Bonus Credit Program Capacity Dashboard (last accessed 01/23/2024).
Transferability and Direct Pay
Federal Credits and Incentives Updates

Transferability and Direct Pay

• Elective Payment – Section 6417 allows an applicable entity or electing taxpayer* to elect to be treated as having made a payment of tax equal to 100% of the value of the applicable credit determined for the taxable year. This provision applies to the following tax credits:

<table>
<thead>
<tr>
<th>Direct Pay Election: Applicable Credits</th>
</tr>
</thead>
<tbody>
<tr>
<td>Section 30C alternative fuel vehicle refueling property credit</td>
</tr>
<tr>
<td>Section 45 renewable electricity production tax credit</td>
</tr>
<tr>
<td><strong>Section 45Q carbon oxide sequestration credit</strong>*</td>
</tr>
<tr>
<td>Section 45U zero-emission nuclear power production credit</td>
</tr>
<tr>
<td><strong>Section 45V clean hydrogen production credit</strong>*</td>
</tr>
<tr>
<td>Section 45W qualified commercial vehicles (tax-exempt entity)</td>
</tr>
<tr>
<td><strong>Section 45X advanced manufacturing production credit</strong>*</td>
</tr>
<tr>
<td>Section 45Y electricity production credit</td>
</tr>
<tr>
<td>Section 45Z clean fuel production credit</td>
</tr>
<tr>
<td>Section 48 energy investment tax credit</td>
</tr>
<tr>
<td>Section 48C qualifying advanced energy project credit</td>
</tr>
<tr>
<td>Section 48E clean electricity investment credit</td>
</tr>
</tbody>
</table>

*Electing taxpayer – For the section 45V clean hydrogen production credit and the section 45Q carbon oxide sequestration credit, any taxpayer can elect direct pay for the first five years of the credit period. For the section 45X advanced manufacturing credit, any taxpayer can elect direct pay for any consecutive five years within the credit period. During these periods the electing taxpayer engaged in these tax credit qualified activities is treated as an applicable entity.

Timing – Generally, the election must be made by the applicable entity no later than the due date of the tax return for the taxable year for which the election is made (including extensions), but in no event earlier than February 13, 2023. The payment is generally treated as made on the later of (1) the due date (determined without regard to extensions) of the tax return, or (2) the date that the tax return is filed.
Federal Credits and Incentives Updates

Transferability and Direct Pay

Transferability Election – Section 6418 allows an eligible taxpayer to elect to transfer all (or any portion specified in the election) of an eligible credit determined to an unrelated taxpayer for cash consideration. Such consideration is not includible in gross income of the transferor and is not deductible by the transferee. The transferee is not able to transfer the credit. This provision applies to the following eligible credits:

<table>
<thead>
<tr>
<th>Transferability Election: Eligible Credits</th>
</tr>
</thead>
<tbody>
<tr>
<td>Section 30C alternative fuel vehicle refueling property credit</td>
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<td>Section 45 renewable electricity production tax credit</td>
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<tr>
<td>Section 48C qualifying advanced energy project credit</td>
</tr>
<tr>
<td>Section 48E clean electricity investment credit</td>
</tr>
</tbody>
</table>

Partnerships or S Corporations – With respect to a transferor that is a partnership or S corporation, any amount received as consideration is treated as tax-exempt income for purposes of sections 705 and 1366. Each partner’s distributive share of such tax-exempt income is based on such partner’s distributive share of the otherwise eligible credit for each taxable year. Similar rules apply in the case of S corporations and their shareholders.

Timing – Elections to transfer the credit must be made not later than the due date (including extensions) for the tax return for the taxable year for which the credit is determined, but in no event earlier than February 13, 2023. The credit is taken into account in the first taxable year of the transferee taxpayer ending with, or after, the taxable year of the transferor with respect to which the credit was determined.

Ineligible Credits

- Section 30D Clean Vehicle Credit
- Section 45W Credit for Qualified Commercial Clean Vehicles
- Section 48D Advanced Manufacturing Investment Credit
Federal Credits and Incentives Updates

Transferability and Direct Pay: Utilization considerations

1. **Does the Company have a US federal income tax liability?**
   - **No**
   - **Yes**
     - **Is the Company or its owners subject to passive activity rules?**
       - **No**
         - **Is the Company subject to the Corporate Alternative Minimum Tax (CAMT)?**
           - **No**
             - **Is the Company subject to BEAT?**
               - **No**
                 - **Is the Company considered part of a Multinational Enterprise (“MNE”) Group under the definition set forth in OECD guidance, and thus subject to, Pillar 2?**
                   - **No**
                     - The Company should **not procure additional tax credits.**
                   - **Yes**
                     - Tax advisor should do a thorough analysis to determine if the Company or its owners can effectively utilize additional tax credits before procuring.
               - **Yes**
                 - **General Business Tax credits** can be utilized to offset Corporate Income Tax (CIT) and CAMT by only up to **75% of the aggregate tax liability.** Has the Company already hit their 75% threshold?
                 - **Yes**
                   - The Company should consider procuring tax credits under section 6418 or through a tax equity structure.
                 - **No**
                   - **General Business Tax credits** can be utilized to offset CIT and CAMT by only up to **75% of the aggregate tax liability.** Has the Company already hit their 75% threshold?
         - **Yes**
           - **General Business Tax credits** can be utilized to offset Corporate Income Tax (CIT) and CAMT by only up to **75% of the aggregate tax liability.** Has the Company already hit their 75% threshold?
   - **No**
     - **Is the Company considered part of a Multinational Enterprise (“MNE”) Group under the definition set forth in OECD guidance, and thus subject to, Pillar 2?**
       - **No**
         - The Company should **not procure additional tax credits.**
       - **Yes**
         - Tax advisor should do a thorough analysis to determine if the Company or its owners can effectively utilize additional tax credits beforeprocuring.
Transferability and Direct Pay: Deep dive into Direct Pay
Who can make a direct pay election?

- An “applicable entity” or “electing taxpayer.”
- Election must be made with respect to each “applicable credit property” determined with respect to the “applicable entity” or “electing taxpayer.”

What is an "applying taxpayer"?

- Taxpayer other than an applicable entity that elects to receive direct payments during the applicable 5-year periods for 45V, 45Q, or 45X.
- Partnerships and S corporations may be electing taxpayers.
- A partnership or S corporation must elect to receive direct payments for credits; NOT the partners or S corporation shareholders.

What is the “applicable credit property”?

- A property or facility election except in the case of energy property described in section 48, where an applicable entity or electing taxpayer may choose to make the direct-pay election with respect to an energy project.

What is an “applicable entity”?

- Includes, but is not limited to, section 501(a) tax-exempt organizations, governments of any U.S. territory, State, the District of Columbia, Indian tribal governments, or any political subdivision, agency or instrumentality thereof, and rural electric cooperatives, Alaska Native Corporations, and the Tennessee Value Authority.
  - All organizations described in sections 501(c) and 501(d) including public charities, private foundations, social welfare organizations, labor unions, business leagues, and religious or apostolic organizations.
  - Cities, counties, and other political subdivisions including water districts, school districts, economic development agencies, and public universities and hospitals that are agencies and instrumentalities of states or political subdivisions.
  - Agencies and instrumentalities of the United States are not defined as applicable entities.
  - Co-owners of an undivided interest in applicable credit property, including an arrangement treated as a tenancy in common, or pursuant to a joint operating agreement that has properly elected out of subchapter K under section 761.
  - Partnerships and S corporations are not "applicable entities" even if some or all of their owners are applicable entities.
To make a valid direct payment election, applicable entity or electing taxpayer files as part of its original tax return the following:

- Appropriate IRS Form for the applicable credit, Form 3800 and a schedule.
- Any other information specified in guidance.
- For entities not required to file income tax returns, the election must be made by the 15th day of the fifth month after the entity’s taxable year unless an additional six-month extension of time is granted pursuant to additional guidance that has not yet been published.
- 9100 relief for late election is not available.

Other special rules

- No direct-payment election may be made for any credits purchased pursuant to section 6418.
- Each direct-payment election is made for an applicable credit property as an all or nothing election.
- Except for credits under section 45V, 4SQ, and 45X, any election once made is irrevocable and remains in effect for the entirety of the applicable tax credit period (i.e., 10-year or 12-year PTC period).
- An applicable entity or electing taxpayer must directly own the underlying property or conduct activities giving rise to the underlying applicable credit or the election cannot be made (i.e., the recipient of an election pursuant to section 4SQ(f)(3)(B), and the lessee in a lease passthrough election under section 50(d)(5) and Treas. Reg. 1.48-4 cannot make the election).
How to determine the “applicable credit”? 

- Special rules apply for tax exempt organizations and governmental entities allowing the amount of any applicable credit to be determined without regard to certain governmental and tax-exempt use restrictions under sections 50(b)(3) and (b)(4)(A)(i) and by treating any property as used in a trade or business of the applicable entity.
  - Allows for the determination of an applicable credit outside the unrelated business context
  - Allows the use of accelerated depreciation for applicable credit property used in a trade or business
  - Requires the application of the at risk rules (section 49) in the context of investment credit property and the passive activity rules (section 469) for all applicable credits when engaged in a trade or business

- General rule with respect to income, including certain grants and forgivable loans, that are exempt from federal income tax:
  - Proposed Regulations provide that all grants and forgivable loans used to purchase, construct, reconstruct, erect, or otherwise acquire investment-related property (i.e., 30C, 45W, 48, 48C, or 48E applicable credit property) is generally included in the basis for purposes of computing the applicable credit amount.

- Special rule / exception:
  - If income exempt from tax under subtitle A is received for the specific purpose of purchasing, constructing, reconstructing, erecting, or otherwise acquiring investment-related property (the “Restricted Tax Exempt Amount”), the applicable credit amount is reduced to the extent the Restricted Tax Exempt Amount plus the applicable credit exceeds the cost of the investment-related property.

Example:

Public charity B receives a $60,000 grant from a private foundation to build energy property, P, a qualified investment credit property that costs $80,000.

B uses $20,000 of its own funds plus the $60,000 grant to build P.

B’s basis in P is $80,000. Based upon acquisition cost, B can earn a section 48 investment credit (with bonus credit amounts) of $40,000 (50% of basis).

However, because the amount of the restricted tax exempt grant ($60,000) plus the section 48 credit ($40,000) exceeds P’s cost by $20,000, B’s section 48 applicable credit is reduced by $20,000 so that the total amount of the section 48 investment credit plus the restricted tax exempt grant equals the cost of P.
Transferability and Direct Pay: Deep dive into Transferability
Federal Credits and Incentives Updates

Transferability and Direct Pay: Deep dive into Transferability

Who can make a transfer election?

• Only an "eligible taxpayer" that is not an “applicable entity” or “electing taxpayer” otherwise eligible for the direct pay election.
• Election must be made with respect to each “eligible credit property” determined with respect to the “eligible taxpayer.”

Limitations on the "eligible credits" that can be transferred

• Once an eligible credit is transferred with respect to eligible credit property, the eligible credits cannot be transferred again (no second transfer rule).
• While brokerage arrangements are allowed to facilitate transfers, dealer arrangements are not.
• An eligible taxpayer may also elect to transfer specified portions of an eligible credit to one or multiple transferees, but the same credit cannot be sold to different parties or double counted in any way.
• An eligible taxpayer must directly own the underlying property or conduct activities giving rise to the underlying eligible credit or the transfer election cannot be made (i.e., the recipient of an election pursuant to section 45Q(f)(3)(B), and the lessee in a lease passthrough election under section 50(d)(5) and Treas. Reg. 1.48-4 cannot make the election).

What is an "eligible taxpayer”?

• Any taxpayer that is not an applicable entity under section 6417(d)(1)(A).
• Partnership, S corporation, sole owner of a disregarded entity.
• Co-owners of an undivided interest in eligible credit property including an arrangement treated as a tenancy in common, or pursuant to a joint operating arrangement that has properly elected out of subchapter K under section 761.
• Member of a consolidated group.

What is the “eligible credit property”?

• A property-by-property or facility-by-facility election except in the case of energy property described in section 48, where an eligible taxpayer may choose to make the transfer election with respect to an energy project.
Federal Credits and Incentives Updates

Transferability and Direct Pay: Deep dive into Transferability

How to determine the “eligible credit”?

- All federal income tax rules apply to determine the eligible credit amount including certain governmental and tax-exempt use restrictions under sections 50(b)(3) and (b)(4)(A)(i), and when applicable, the section 49 at risk rules.
- However, taxpayer-specific utilization rules DO NOT apply when determining the eligible amount (i.e., limitations imposed under section 38(b), 38(c), and section 469).
- Special rules apply for REITs (or partnerships with REIT partners) allowing the amount of any eligible credit to be determined without regard to the former section 46(e).

Paid in Cash Requirement

- Cash payments to transferors as consideration must be made no earlier than the first day of the eligible taxpayer’s taxable year during which the credit is determined and no later than the due date for completing a transfer election statement.
- Implications for the financing investments that generate eligible credits.

"Excessive Credit Transfer" Penalty

- Recapture does not result in excessive credit transfer penalties
- Anti-abuse rule

Is transferee taxpayer subject to risk of recapture?

- Transferee taxpayer generally subject to risk of recapture with respect to transferred investment tax credits ("ITCs").
  - Exception for recapture when the transferor is a partnership or S corporation, and the recapture occurs as a result of changes in the ownership of the partnership or S corporation.
    - In such case, transferee taxpayer is NOT subject to recapture.
    - Recapture consequences imposed solely upon the owner(s) of the partnership or S corporation.

Recapture notification required

- Transferor must notify transferee of the occurrence of a recapture and information necessary to calculate the recapture amount.
- Transferee must notify transferor of the recapture amount in order for the transferor to adjust basis of the eligible.
To make a valid transfer election, eligible taxpayer files as part of its *original tax return* (including extensions) the following:

- Appropriate IRS Form for the eligible credit, Form 3800 and a schedule
- **Transfer election statement** *(completed by both transferor and transferee)*
  - Must include among others, a representation that the transferor provided the "required minimum documentation" to the transferee
- Any other information specified in guidance
- 9100 relief for late election is not available

May transfer all or a portion of the eligible credit to one or multiple transferees; however, cannot separately transfer any bonus amount from the base amount

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**Required minimum documentation:**

- Information that validates the existence of the credit property
- Documentation substantiating the transferor satisfied the requirements to include any bonus credit amounts
- Evidence of the transferor’s qualifying costs, production activities and sales amounts
- **Must be retained by the transferee pursuant to recordkeeping requirements**
Federal Credits and Incentives Updates

Transferability and Direct Pay: Deep dive into Transferability

Transferee will perform due diligence on the investment and Transferor

• the type of credit being transferred,
• quality of supporting documentation provided by Transferor,
• Transferor’s credit-worthiness, and
• maturity of the technologies generating the credit.

The market pricing and credit availability is influenced by many factors, including, but not limited to:

• the type of credit being transferred,
• quality of supporting documentation provided by Transferor,
• Transferor’s credit-worthiness,
• maturity of the technologies generating the credit, and
• Transferee’s ability to utilize tax credits, book the effective rate benefit, and save cash taxes.
Transfer transactions often involve the execution of the following legal documents subject to negotiation by the parties:

- Term sheet
- Tax credit purchase and sale agreement:
  - Purchase price
  - Seller guaranty / indemnification
  - Representations, warranties, and covenants
  - Closing date or firm date conditions precedent
  - Funding date conditions precedent
  - Compliance period provisions
  - IRS audit / tax contest provisions
  - Tax credit insurance provisions
  - Transaction cost provisions
  - Forbearance agreement / permitted encumbrances
  - Certificates, compliance reports, other forms and exhibits (e.g., funding date certificate, IE certificate, funding notice, annual compliance certificate, quarterly asset performance reports, minimum insurance requirements)
- Transfer election statement

Differing sales paradigms
- Direct negotiations between seller and buyer/credit consumer
- Broker arranges the buy-sell but takes no “long” exposure to credits
- Initial buyer expects to broker, but accepts a “long” position as buyer of last resort to capture greater value
Endnotes


ii. I.R.C. § 179D.

iii. I.R.C. §§ 48(a), 48E.

iv. I.R.C. §§ 45(a), 45Y.

v. I.R.C. § 45W.

vi. I.R.C. § 30C.


viii. I.R.C. § 30C(b)(1).

ix. I.R.C. § 30C(a).

x. I.R.C. § 179D(c)(1).

xi. I.R.C. § 179D(c)(1)(c).


xiv. I.R.C. §§ 45(b)(2)-(6), 45Y(a)(2).


xvi. I.R.C. § 30C(b)(1).

xvii. I.R.C. § 30C(i).

xviii. I.R.C. § 30C(e)(2).


xx. I.R.C. § 30C(c).

xxi. I.R.C. § 30C(i).

xxii. I.R.C. § 30C(e)(2).

xxiii. I.R.C. § 30C(g)(1)(B).

xxiv. I.R.C. § 30C(c).

xxv. I.R.C. § 179D(b).

xxvi. I.R.C. § 179D(c)(1)(D).


xxxiv. I.R.C. §§ 45(b)(11)(A), 45Y(g)(7).


xxxvi. See generally the Prevailing Wage and Apprenticeship Requirements sections for all relevant credits.
Endnotes

lxii. I.R.C. § 6417(a).
lxvi. I.R.C. § 6417(a), Prop. Treas. Reg. § 1.6417-1(g).
About the Authors

The creation of this action guide was a collaborative effort from Deloitte and the Commonwealth Fund.

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Want to act on topics discussed in this Activation Guide? Need help?

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Have suggestions for how to improve this Activation Guide?

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Have a story, example, or resource to share with the development team?

Help us continue amplifying the topics of decarbonization and health equity and by sharing your learnings with us.

Feel free to contact the Action Guide development team:

Dr. Elizabeth Baca
Managing Director, Deloitte Consulting LLP
ebaca@deloitte.com

Christine Brynaert
Partner, Deloitte Tax LLP
cbrynaert@deloitte.com

Lovisa Gustafsson
Vice President, The Commonwealth Fund
ILG@cmwf.org