THE OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF ILLINOIS

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October 30, 2023

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Via Electronic Submission

Re: Notice of Proposed Rulemaking: Increased Credit or Deduction Amounts for Satisfying Certain Prevailing Wage and Registered Apprenticeship Requirements (IRS REG–100908–23)

The Attorneys General of Illinois, Colorado, Connecticut, Delaware, the District of Columbia, Maine, Maryland, Massachusetts, Michigan, Minnesota, New Jersey, New York, Oregon, and Pennsylvania (collectively, the States) submit these comments in response to the Department of the Treasury (Treasury) and the Internal Revenue Service's (the IRS) Notice of Proposed Rulemaking on Increased Credit or Deduction Amounts for Satisfying Certain Prevailing Wage and Registered Apprenticeship Requirements, IRS REG–100903–23, 88 Fed. Reg. 60,018 (Aug. 30, 2023).

The Inflation Reduction Act (IRA) presents a historic opportunity to curb dangerous greenhouse gas emissions and create high-road careers in an equitable green economy. Many of the States previously commented on IRS Notice 2022–51 in support of fair and effective

implementation of the IRA to achieve these twin aims.[1] As we have previously explained, the increased tax credits conditioned on satisfying prevailing wage and apprenticeship requirements are a key policy for accomplishing these goals. The States comment to raise their significant concern that the enforcement of the requirements, as currently envisioned, could allow abuse of the enhanced credits that will undermine the aims of the IRA. The States believe that a more thorough collaboration among Treasury, the IRS, and the Wage and Hour Division of the Department of Labor (WHD) would better promote full compliance with these important provisions.

I. Effective prevailing wage and apprenticeship compliance depends on fact-specific investigations conducted while the covered work is ongoing.

The States' experiences confirm that effective prevailing wage compliance depends on enforcement agencies with boots on the ground—not only WHD but also state and local labor enforcers. Under state and local laws in many jurisdictions, contractors engaged in public works must pay state-mandated prevailing wage rates, submit certified payroll records to the contracting government agency, and maintain those records for specified periods of time. For example, in New York, government contractors and subcontractors must pay the prevailing wage to all workers under a public works contract. Contractors must submit certified payroll records demonstrating compliance to the government agency that contracts for the work, and those payroll records must be stored on site during the project and with the contracting agency for three years after the project is completed.[2] Some jurisdictions require government contractors to use specific software to submit certified payroll records.[3] Prevailing wage and apprenticeship enforcement occurs both in response to complaints and also proactively. Investigators will typically visit the job site, review the certified payroll records on site, interview workers, and take other affirmative steps to uncover violations in real time.

As enforcers of worker protection laws, including state prevailing wage requirements, the States have first-hand experience with complex schemes to circumvent these protections. And we have found that on-the-ground, contemporaneous investigations are needed because paper records alone often do not reveal violations. Indeed, it is all too common for employers and contractors to submit certified payroll records that on their face appear to comply with prevailing wage requirements while concealing that workers were paid off the books at non-prevailing rates of pay

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[1] *See* Comments of the Attorneys General of Massachusetts, Colorado, Delaware, Illinois, Maine, Maryland, Michigan, New Jersey, New York, Oregon, Rhode Island, and the District of Columbia; the California Air Resources Board; and the Ramsey County, Minnesota, Attorney, IRS Notices No. 2022–46 through 2022–51 & 2022–56 through 2022–58, at 13–15 (Dec. 1, 2022) (attached as Exhibit A).

[2] *See generally* N.Y. State Dep't of Labor, Public Work and Prevailing Wage, https://dol.ny.gov/public-work-and-prevailing-wage. Massachusetts's laws have similar requirements regarding the payment of prevailing wage and the submittal of certified payroll records. *See* Mass. Gen. Laws ch. 149, § 27B.

[3] *See* LCP Tracker, https://lcptracker.com/. The company provides case studies on its website, which show how the software has been used in different localities. *See* LCP Tracker, Case Studies, https://lcptracker.com/why-lcptracker/case-studies.

or were required to "kick back," or pay back, part of their paychecks to their employers. While far from exhaustive, the following examples present some of the typical fact patterns that the States encounter in their work:

- In Illinois, the Attorney General sued a construction company over an elaborate scheme to keep its employees off payroll. Drive Construction, Inc., obtained contracts for public works projects, such as schools and public housing apartments, worth nearly $40 million over several years. The contracts required Drive to pay its carpenters at mandated prevailing wages. But the Illinois Attorney General has alleged that Drive paid workers in cash, off the books, for thousands of hours of labor at rates well below the prevailing wage rates. Drive initially was able to conceal the off-the-books hours by funneling money through two layers of sham subcontractors, but an on-the-ground investigation revealed the unlawful conduct.[4]
- In Massachusetts, the Attorney General sued a construction management firm for submitting fraudulent payroll records to conceal that workers on multiple public projects were not being paid prevailing wages. After a tip from a labor union, the Massachusetts Attorney General investigated and uncovered that workers were being underpaid by more than $35 per hour. A simple review of the falsified certified payroll records would not have revealed this practice.[5]
- In New York, a property developer took advantage of a tax credit conditioned on the payment of prevailing wages to building service employees but then paid workers less than half of what they were due. The New York Attorney General was able to recover $3 million in back wages to the workers and penalties to the government. A tip from a labor union again brought the issue to the Attorney General's attention.[6]
- In Oregon, the owner of a building contracting company pleaded guilty under racketeering laws to a sprawling scheme that involved forcing workers on prevailing wage contracts to return large percentages of their paychecks to him.[7]
- In New Jersey, a contractor who was legally barred from prevailing wage work because of past violations used a new business entity to obtain a public subcontract worth $400,000 to

[4] Attorney General Raoul Sues Construction Company Over Complex Scheme to Avoid Paying Fair Wages and Taxes (Sept. 2, 2022), https://ag.state.il.us/pressroom/2022_09/20220902.html.
[5] Framingham Construction Company to Pay Over $540,000 for Failing to Pay Prevailing Wages to Workers During Middleborough and Westport Projects (Dec. 20, 2021), https://www.mass.gov/news/framingham-construction-company-to-pay-over-540000-for-failing-to-pay-prevailing-wages-to-workers-during-middleborough-and-westport-projects.
[6] *Attorney General James, Comptroller Lander, and 32BJ SEIU Recover $3 Million from Real Estate Developer for Underpaying Workers* (Oct. 6, 2022), https://ag.ny.gov/press-release/2022/attorney-general-james-comptroller-lander-and-32bj-seiu-recover-3-million-real.
[7] *Hillsboro Corporation and Its Owner Plead Guilty to Criminal Antitrust and Racketeering Charges* (July 29, 2011), https://www.doj.state.or.us/media-home/news-media-releases/hillsboro-corporation-and-its-owner-plead-guilty-to-criminal-antitrust-and-racketeering-charges/?hilite=%22prevailing+wage%22.

provide masonry work for a student housing project. The contractor paid most of his employees only a fraction of the prevailing wages they were entitled to be paid, while not paying others at all. To cover up the violations, he submitted certified payroll records containing false information to the general contractor on a weekly basis. In addition to producing false records, he instructed several employees to provide false information to a state investigator regarding the wages they were receiving.[8]

As the above examples show, low-road employers can and do falsify payroll records in order to evade legally required prevailing wages. In such cases, a paper audit alone can fail to reveal the scope of the legal violations—or even their existence. Instead, the States rely on combining certified payroll records with information from whistleblowers, interviews with workers, and investigative subpoenas to third parties with relevant information. Whistleblowers often include workers, advocacy organizations, and labor unions with related work at the site. Enforcement agencies with boots on the ground can build the necessary relationships to do this work. By the same token, finding and addressing violations is far more achievable when a project is ongoing. Workers are present in one location; enforcement agencies can use tools like confidential informants or surveillance; contractors and foremen are available to be interviewed; short-lived records like sign-in sheets remain available for review. None of this is possible during a paper audit conducted years after the fact.

II. The purely retrospective enforcement regime contemplated by the proposed rule risks serious compliance and enforcement failures.

The proposed rule, in contrast to the on-the-ground enforcement investigations described above, contemplates a purely retrospective compliance regime that would not enable any real-time, affirmative enforcement efforts. The recordkeeping provisions found in Proposed § 1.45–12 require only the preservation of relevant documents rather than any affirmative disclosure of them while the work is ongoing. Treasury and the IRS take the position that "because the increased credit is not claimed until the time of filing a return, which will only occur after a qualified facility is placed in service, the proposed regulations would not adopt the Copeland Act requirement to report payroll records to the IRS on a weekly basis in advance of claiming an increased credit." 88 Fed. Reg. at 60,035. But this time delay only highlights the need for more affirmative compliance measures. Enhanced credits will often be claimed months or even years after much of the work has been performed. Under the proposed rule, during this entire time period, no one—except the taxpayer—would have any knowledge at all that the taxpayer was supposed to be paying prevailing wages.

Therefore, the records required to be kept under Proposed § 1.45–12 and the IRS form that will be required to retroactively claim the credit will not provide opportunity for adequate

[8] Contractor Pleads Guilty to Falsifying Records to Cheat Workers Out of $200,000 by Not Paying Prevailing Wages (Mar. 27, 2019), https://www.nj.gov/oag/newsreleases19/pr20190327b.html.

enforcement. As discussed in the previous section of this comment, many prevailing wage investigations start with a tip from a whistleblower while work is ongoing. That whistleblower is often a worker at the site or a labor union approached by a worker. Apprised of the possible violations, state agencies are then able to look beyond the paper records to other sources of information concerning the violations. Similar enforcement actions would simply not be possible under the current proposed rule. The likely result is that many taxpayers could claim the enhanced credits unlawfully and yet never be detected.

Finally, the States want to make clear that the IRS will not be able to refer to any list or database at the state or local level providing comprehensive information about a contractor's compliance with prevailing wage laws. Despite the robust enforcement programs set up by state and local governments, no such centralized databases exist. Rather, state and local enforcement agencies determine compliance through targeted enforcement against specific falsifications in certified payroll records. Thus, unless Treasury and the IRS implement contemporaneous notice and reporting requirements, there will be no way for the federal government or any other interested party to bring violations to light.

III. A more robust compliance regime should mandate contemporaneous notice to workers and the inclusion of Davis-Bacon contract provisions.

The States present several proposals for improvement on the proposed rule's compliance regime. At a minimum, effective compliance requires that the workers themselves know that they are supposed to be receiving prevailing wages, in other words that their employer intends ultimately to claim the increased tax credits under 26 U.S.C. § 45(b)(7) or a related provision. The proposed rule already includes a measure on posting and notice to workers: Proposed § 1.45–7(c)(3)(iii)(H) provides that appropriate notice to workers weighs against a finding that there was intentional disregard of the prevailing wage requirements. 88 Fed. Reg. at 60,044. The States support this practice and largely agree with the content of Proposed § 1.45–7(c)(3)(iii)(H). The States comment, however, that appropriate posting and notice to workers should not be only a factor as to intentional disregard; rather, it should be a universal requirement to claim the increased tax credits and deductions.

In addition to being made mandatory, Proposed § 1.45–7(c)(3)(iii)(H) should also be improved in certain respects. Specifically, the language should make clear that such posting or notice must be made, at the latest, at the time that the construction, alteration, or repair begins. The current language leaves the timing of posting and notice ambiguous. The analogous Massachusetts statute, for instance, requires that the posting be up "during the life of the contract." Mass. Gen. Laws ch. 149, § 27. Furthermore, an improved Proposed § 1.45–7(c)(3)(iii)(H) should specify that the written notice must be delivered along with the worker's paycheck or similar remittance to ensure that the worker receives actual notice.

Another best practice already found in the proposed rule's intentional disregard factors is whether the taxpayer included prevailing wage and apprenticeship provisions in its contracts. *See* Proposed § 1.45–7(c)(3)(iii)(G), 88 Fed. Reg. at 60,044; Proposed § 1.45–8(e)(2)(ii)(C)(*5*), 88 Fed. Reg. at 60,050. Regulations promulgated under the Davis-Bacon Act (DBA), 40 U.S.C. § 3141 *et seq.*, detail the standard contract provisions, which can be readily applied in this context as well. *See* 29 C.F.R. §§ 3.11, 5.5. Here again, the rule should make contractual compliance a universal requirement rather than merely a factor for intentional disregard. In many situations, workers, labor organizations, and state-level enforcers will be able to obtain the contracts for important projects, thereby aiding in the identification of taxpayers intending to claim the enhanced credits and deductions.

IV. An inter-agency collaboration between the IRS and WHD would enable contemporaneous monitoring of prevailing wage and apprenticeship compliance.

More broadly, the States urge Treasury and the IRS to set up an inter-agency collaboration with WHD to facilitate the receipt of more robust contemporaneous reporting from taxpayers intending to claim the increased credits. This collaboration would likely need to be formalized through a memorandum of understanding or similar document. But the expertise and capabilities of WHD would vastly improve prevailing wage and apprenticeship compliance in connection with the IRA's enhanced credits.

For example, as discussed above, the lack of any required disclosure to Treasury and the IRS until the moment when the taxpayer claims the credit or deduction will severely undermine compliance. The States recognize that the IRS may lack the capacity or subject-matter expertise to receive and review typical DBA reporting. *Cf.* 88 Fed. Reg. at 60,035 (stating that weekly reporting to the IRS would not assist the IRS in administering the provision). WHD, however, does have the relevant subject-matter expertise and would be a more appropriate recipient for contemporaneous reporting from taxpayers intending to claim the increased credits or deductions.

Accordingly, the States comment that Treasury and the IRS should require all contractors and taxpayers intending to seek prevailing wage and apprenticeship enhancements to file a statement of intent with WHD at the time that the work begins. The statement of intent would convey a future intent to claim an enhanced tax credit for purposes of facilitating compliance throughout the life of the project. The statement would contain basic information about the project such as the location and type of qualified facility, the anticipated wage determinations for the type and location of the facility, and an estimate of the total labor hours for the construction, alteration, or repair by any laborer or mechanic employed by the taxpayer or any contractor or subcontractor. *Cf.* 88 Fed. Reg. at 60,035 (setting forth the information likely to be required for claiming increased credits at the time a tax return is filed).

Furthermore, as part of its inter-agency collaboration with the IRS, WHD should publicly disclose the statements of intent filed with WHD through its website. Public disclosure would

enable interested parties—including workers, labor organizations, and state and local enforcers—to monitor prevailing wage projects and to report possible violations. Without this, states and other law enforcement entities will have no idea which companies intend to claim or have claimed the enhanced credits and will be unable to target their own enforcement appropriately.

Allowing the public to view disclosures submitted to WHD would not violate tax confidentiality because such information would not be "received by, recorded by, prepared by, furnished to, or collected by the Secretary." 26 U.S.C. § 6103(b)(2); *see Lomont v. O'Neill*, 285 F.3d 9, 14–15 (D.C. Cir. 2002) (holding that disclosure of tax-related information submitted to local law enforcement agencies did not violate § 6103 because it was not initially sent to the IRS and thus did not fall under the statutory prohibition); *Stokwitz v. United States*, 831 F.2d 893, 895–96 (9th Cir. 1987) ("[T]he statutory definitions of 'return' and 'return information' to which the entire statute relates, confine the statute's coverage to information that is passed through the IRS."). Making the universe of potentially covered projects available to third-party enforcers is crucially important because, as noted above, a paper review may not always reveal prevailing wage and apprenticeship violations.

Treasury and the IRS should also require, as the work is performed, the filing of certified payroll records covering each week of the period for which the taxpayer intends to claim enhanced benefits. The certified payroll records could also be directed to WHD rather than the IRS as part of the inter-agency collaboration to facilitate compliance. WHD regulations and the Federal Acquisition Regulation (FAR) already describe certified payroll record requirements in detail. *See* 29 C.F.R. §§ 3.3–.4; FAR 52.222–8(b)(1). Certified payroll records must be accompanied by a signed statement certifying under penalty of perjury that the information contained within the certified payroll records is accurate. *See* 29 C.F.R. § 5.5(a)(3)(ii)(B)–(D); FAR 52.222–8(b)(2)-(4). As to apprenticeship requirements, the States also suggest requiring contractors to include apprentice identification cards from a registered apprentice program alongside certified payroll records to deter contractors from claiming new or inexperienced workers as qualified apprentices.[9]

Contemporaneous reporting of certified payroll records, submitted under penalty of perjury, has incalculable benefits for long-term compliance with prevailing wage and apprenticeship requirements. The requirement to regularly certify correct payroll deters violators and also makes it more difficult to invent falsified payroll after the fact. It also allows law enforcement agencies to review records in real time and spot potential violations while memories are still fresh. Even for taxpayers who might unlawfully claim enhanced credits despite the requirement, the submission of the false statements gives rise to additional legal violations and thereby facilitates enforcement. In particularly egregious cases, false certified payroll records can

[9] As an example of this requirement, see Mass. Gen. Laws ch. 149, §§ 27, 27B.

create criminal liability. *See, e.g.*, *United States v. Estepa*, 998 F.3d 898, 900 (11th Cir. 2021). Needless to say, that possibility carries a powerful deterrent effect.

V. Treasury and the IRS may impose the above requirements consistent with their statutory authority and sound tax administration.

The Notice of Proposed Rulemaking asserts that, because the prevailing wage and apprenticeship requirements become binding only once a tax return claiming the increased credit is filed, it "would not assist the IRS" to implement contemporaneous reporting requirements like those discussed in the previous section. 88 Fed. Reg. at 60,035. Treasury and the IRS thus do *not* take the position that they lack *legal authority* to impose contemporaneous reporting requirements as a condition of the enhanced credits. Indeed, the grant of authority in § 45(b)(12) clearly encompasses such requirements. Treasury and the IRS are empowered to issue any regulations that "the Secretary determines necessary to carry out the purposes of" the IRA, including "information reporting for purposes of administering the requirements." 26 U.S.C. § 45(b)(12). The D.C. Circuit has summarized another statute with the same wording as "broad language" that "left it to the Secretary to determine which regulations were 'necessary.'" *FORMULA v. Heckler*, 779 F.2d 743, 757 (D.C. Cir. 1985).

The sole question, then, is whether a collaboration with WHD to implement contemporaneous reporting would further "sound tax administration," a consideration repeatedly emphasized by Treasury and the IRS. 88 Fed. Reg. at 60,022. Contrary to the proposed rule's conclusory assertion, however, contemporaneous reporting through partnership with an expert agency would further sound tax administration. The foremost reason, as already discussed above, is that contemporaneous reporting would discourage improper claims of enhanced credits and deductions, a key goal for any IRS rulemaking.

In addition, sound tax administration, as an IRS official recently noted in a law review article, embraces (1) legal certainty and (2) consistent treatment of similarly situated taxpayers.[10] Contemporaneous reporting of certified payroll records would also further these important goals. Contemporaneous reporting to WHD will enable an expert agency to identify potential compliance issues that could arise in this novel context up front, potentially years before the enhanced credit is ultimately claimed. Taxpayers will then have the opportunity to seek guidance from WHD, Treasury, and the IRS as issues arise. For the same reason, contemporaneous reporting will ensure that similarly situated taxpayers are treated alike. Implementing the normal DBA reporting requirements will promote uniformity across taxpayers claiming the enhanced credits, some of whom may not already be familiar with the DBA process if they have not worked on covered projects in the past.

[10] Heather C. Maloy, *Where the Rubber Meets the Road: A View of the Tax System from a Tax Administrator's Perspective*, 39 Ohio. N. Univ. L. Rev. 1, 4 (2023).

The § 48(e) low-income communities bonus credit program and the § 48C(e) qualifying advanced energy project program both provide analogous models and support the States' views. Treasury and the IRS implemented both these IRA credits by partnering with the Department of Energy (DOE) to help review potential projects and vet them for compliance with statutory goals. *See Additional Guidance on Low-Income Communities Bonus Credit Program*, 88 Fed. Reg. 55,506 (Aug. 15, 2023); *Additional Guidance for the Qualifying Advanced Energy Project Credit Allocation Program Under Section 48C(e)*, Notice 2023–44, 2023–25 I.R.B. 924 (June 30, 2023). Both examples show how prior disclosure to an expert agency, rather than merely retrospective recordkeeping, furthers sound tax administration. The DOE has more subject-area knowledge than the IRS concerning renewable energy and advanced energy projects, warranting DOE's review of taxpayers' submissions on the front end. The States suggest that the IRS should enter into a similar collaboration with WHD to help monitor compliance with prevailing wage and apprenticeship requirements.

In fact, with regard to the § 48C(e) credit, Treasury and the IRS already require the taxpayer to notify DOE that the taxpayer intends to satisfy prevailing wage requirements as part of the taxpayer's initial application. *See Initial Guidance Establishing Qualifying Advanced Energy Project Credit Allocation Program Under Section 48C(e)*, Notice 2023–18, 2023–10 I.R.B. 508, § 5.07 (Mar. 6, 2023). This fact is also noted in the Notice of Proposed Rulemaking here. *See* 80 Fed. Reg. at 60,034. So, under the proposed rule, only taxpayers claiming the § 48C(e) credit with a prevailing wage enhancement—but none of the other IRA prevailing wage enhancements—will need to affirmatively disclose their intention to do so. This example shows, first, that prior disclosure is possible and desirable. It also shows that, unless Treasury and the IRS impose similar requirements with respect to the other IRA enhanced credits, similarly situated taxpayers will be treated differently. To promote sound tax administration and avoid this inequity, all the prevailing wage and apprenticeship enhanced credits and deductions should require affirmative, contemporaneous disclosure and reporting by taxpayers.

VI. Conclusion

The States appreciate the opportunity to provide these recommendations to ensure fair and effective implementation of the IRA.

Respectfully submitted,

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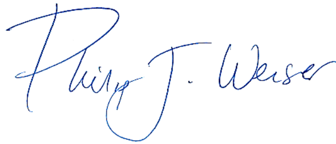

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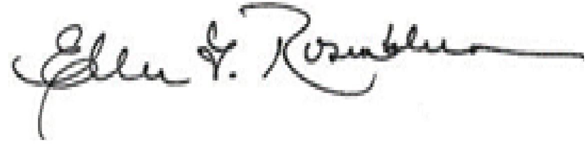

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EXHIBIT A

COMMENTS OF THE ATTORNEYS GENERAL OF MASSACHUSETTS, COLORADO, DELAWARE, ILLINOIS, MAINE, MARYLAND, MICHIGAN, NEW JERSEY, NEW YORK, OREGON, RHODE ISLAND, AND THE DISTRICT OF COLUMBIA; THE CALIFORNIA AIR RESOURCES BOARD; AND THE RAMSEY COUNTY, MINNESOTA, ATTORNEY

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Via Electronic Submission

Re: Requests for Comments on Implementation Guidance for the Inflation Reduction Act (IRS Notices No. 2022-46 through 2022-51 & 2022-56 through 2022-58)

The Attorneys General of Massachusetts, Colorado, Delaware, Illinois, Maine, Maryland, Michigan, New Jersey, New York, Oregon, Rhode Island, the District of Columbia, and the California Air Resources Board (CARB), and the Ramsey County, Minnesota, Attorney (State and Local Governments) submit these comments in response to the Department of the Treasury (Treasury) and the Internal Revenue Service's (the IRS) nine notices (Notices) requesting comment on guidance for implementation of the Inflation Reduction Act (IRA).[1] The IRA

[1] The States and Local Governments file these Comments on the following Notices: 2022-46 (Request for Comments on Credits for Clean Vehicles); 2022-47 (Request for Comments on Energy Security Tax Credits for Manufacturing Under Sections 48C and 45X); 2022-48 (Request for Comments on Incentive Provisions for Improving the Energy Efficiency of Residential and Commercial Buildings); IRS 2022-49 (Request for Comments on Certain Energy Generation Incentives); IRS 2022-50 (Request for Comments on Elective Payment of Applicable Credits and Transfer of Certain Credits); IRS 2022-51 (Request for Comments on Prevailing Wage, Apprenticeship, Domestic Content, and Energy Communities Requirements Under the Act Commonly Known as the Inflation Reduction Act of 2022); 2022-56 (Request for Comments on Section 45W Credit for Qualified Commercial Clean Vehicles and Section 30C Alternative Fuel

presents an historic opportunity to curb climate-damaging greenhouse gas emissions, create good, green jobs, and incentivize an equitable transition to the clean energy economy needed to avoid the worst effects of the climate crisis. To fulfill its promise, however, the IRA must be implemented carefully and quickly, informed by extensive stakeholder input and existing state programs, and in a manner designed to ensure equitable distribution of benefits.

We commend Treasury and the IRS for promptly seeking public input to ensure effective and equitable implementation of the IRA. We also appreciate the flexibility to submit comments on these important and complex issues beyond the initial thirty-day comment window on some of the Notices. In response to the Notices, we offer the following general and specific comments to guide implementation of the IRA's tax provisions. First, we describe the State and Local Governments' interest in prompt, effective, and equitable implementation of the IRA to reduce greenhouse gas emissions and transition to a clean energy economy. Second, we emphasize the importance of centering equity and environmental justice in IRA implementation. Finally, we offer specific suggestions regarding IRS Notices 2022-58, 2022-57, 2022-56, 2022-51, 2022-49, 2022-48, 2022-47, and 2022-46.

I. Our State and Local Governments Have Significant Interests in Prompt, Effective, and Equitable Implementation of the IRA.

Climate change is already causing significant harms and costs for our State and Local Governments and our residents. The past eight years are on track to be the eight warmest years on record,[2] with 2020 tied for the lead.[3] Wildfires, heat waves, increases in the frequency and severity of extreme weather events, sea-level rise, changes in agriculture and food production, precipitation changes, and other climate-change harms threaten our residents' physical and mental health and our economies and natural resources.[4] For example, this year Massachusetts has experienced significant or critical drought conditions across the entire state,[5] leading to drought-induced fires, water restrictions, and water quality and availability impacts on private wells and water-dependent habitats across the state.[6] California has experienced eight of the ten warmest years on record between

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Vehicle Refueling Property Credit); 2022-57 (Request for Comments on the Credit for Carbon Oxide Sequestration); 2022-58 (Request for Comments on Credits for Clean Hydrogen and Clean Fuel Production).

[2] *See* World Meteorological Org., Provisional State of the Global Climate in 2022, http://bit.ly/3GusNsm.

[3] Press Release, Nat'l Aeronautics & Space Admin., 2020 Tied for Warmest Year on Record, NASA Analysis Shows (Jan. 14, 2021), http://bit.ly/3EhvfzQ.

[4] *See, e.g.*, U.S. Glob. Change Rsch. Prog., *Climate Science Special Report: Fourth National Climate Assessment, Volume I*, at 10 (D.J. Wuebbles et al. eds., 2017), http://bit.ly/3hLN1U9.

[5] Massachusetts Drought Status (Sept. 8, 2022), http://bit.ly/3hKCnwR (last visited Nov. 28, 2022).

[6] Press Release, Mass. Exec. Off. of Energy & Env't Aff., Massachusetts Continues to Experience Drought Conditions (July 21, 2022), http://bit.ly/3Vi0RfS.

2012 and 2022, with accompanying increases in heat-related illnesses, drought, pest infestations, and wildfires.[7] New York State has also experienced dramatic increases in the frequency and intensity of extreme rainstorms, consistent with scientists' predictions of the alteration of historical weather patterns resulting from climate change.[8] For example, last year, the remnants of Hurricane Ida dumped nearly a half of a foot of rain in the New York City area in a few hours, resulting in flash flooding that killed more than forty people in the region, including drowning several Queens residents in their basement apartments.[9] In 2012, Superstorm Sandy slammed into the New Jersey coast, causing thirty-eight deaths, widespread inundation, and almost $30 billion in damage.[10] In the District of Columbia, more intense, heavy rains and rising sea levels have led to frequent flooding events and the area has suffered from record-breaking heat waves.[11] And the dire consequences of climate change will continue to disproportionately impact disadvantaged communities—including Black and Latinx populations and communities of low wealth, as well as Native American tribal communities—which already bear a disproportionate burden of public health and environmental hazards.[12]

Our states have established ambitious greenhouse gas reduction targets to tackle the climate crisis.[13] And we have spent significant resources and developed substantial expertise in implementing mitigation measures to meet those targets

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[7] Cal. Env't Prot. Agency, Off. of Env't Health Hazard Assessment, *Indicators of Climate Change in California* i-6 to i-7, i-14 to i-15 (C. Milanes et al., 4th ed. Nov. 2022), http://bit.ly/3VusCBI.

[8] *See* N.Y. State Off. of the Att'y Gen., Current & Future Trends in Extreme Rainfall Across New York State, A Report from the Environmental Protection Bureau of New York State Attorney General Eric T. Schneiderman (Sept. 2014), http://bit.ly/3EQUo4t (based on data from the 2014 National Climate Assessment and the National Oceanographic and Atmospheric Administration's Northeast Regional Climate Center).

[9] *See* Jesse McKinley et al., "Flooding from Ida Kills Dozens of People in Four States," *New York Times* (Sept. 2, 2021, updated Oct. 13, 2021), http://bit.ly/3XKBK6Z.

[10] Stephanie Hoopes Halpin, Rutgers Sch. of Pub. Aff. & Admin., The Impact of Superstorm Sandy on New Jersey Towns and Households (Oct. 25, 2013), https://rucore.libraries.rutgers.edu/rutgers-lib/44886/PDF/1/play/.

[11] World Health Organization, Heath and Climate Change Urban Profile: Washington, District of Columbia (May 4, 2022), http://bit.ly/3uf4ZBE.

[12] *See* EPA, Climate Change and Social Vulnerability in the United States 6-7 (Sept. 2021), http://bit.ly/3GUqbEs; IPCC, 2022: Summary for Policymakers, in *Climate Change 2022: Impacts, Adaptation and Vulnerability* 9, 12 (2022), http://bit.ly/3EEzBCy.

[13] *See, e.g.*, Mass. Gen. Laws ch. 21N, § 3(b) (establishing statewide greenhouse gas emissions limits, including net-zero emissions in 2050); Mass. Exec. Off. of Energy & Env't Aff., Determination of Statewide Greenhouse Gas Emissions Limits and Sector-Specific Sublimits for 2025 and 2030 1 (June 30, 2022), http://bit.ly/3ggrZg9 (establishing statewide greenhouse gas emissions limits of 33 percent below 1990 levels for 2025 and 50% below 1990 levels for 2030, with sector-specific sublimits, including for residential heating and cooling, transportation, and electric power); N.Y. Gen. Laws 2019, ch. 106 (establishing statewide greenhouse gas emissions limits of 40 percent below 1990 levels by 2030 and 85 percent below 1990 levels by 2050); 2022 Md. Laws Ch. 38 (requiring a 60 percent reduction in statewide greenhouse gas emissions from 2006 levels by 2030 and statewide net-zero statewide greenhouse gas emissions by 2045).

and improve the resilience of our communities—including significant incentives relating to energy efficiency, clean energy, and electric vehicles. For example:

- Massachusetts spent over $2.8 billion on energy efficiency programs from 2019 to 2021, including through the Mass Save Energy Efficiency (Mass Save) program,[14] and awarded $13 million for installation of electric vehicle charging stations in 2022.[15] Reflecting the importance of continued energy efficiency investment, the 2022-2024 Mass Save Energy program will invest $3.94 billion to deliver an estimated $9 billion in benefits to Massachusetts residents and reductions of 845,000 metric tons of CO^2e by 2030, with significantly increased incentives for electric heat pumps for residential, income-eligible, and commercial and industrial customers.[16]
- California has appropriated over $21 billion, funded by the auction of emission allowances under its cap-and-trade program, to climate programs across the state, including incentives for low-carbon transportation, green jobs training, and renewable energy.[17]
- New York's Climate Leadership and Community Protection Act requires the state to procure at least 6,000 megawatts of distributed solar generation by 2025, 3,000 megawatts of energy storage by 2030, and 9,000 megawatts of offshore wind by 2035.[18]
- In the District of Columbia, the Department of Energy and Environment has spent over $500 million since 2017 on executing an equitable and affordable clean energy transition, including by supporting energy efficiency, clean transportation, and renewable energy and energy democracy programs serving residential, commercial, institutional, and government sectors in the District.[19] Over the past 5 years, the DC Sustainable Energy Utility

[14] *See* Ariela Lovett, Mass. Mun. Ass'n, "State approves new three-year energy efficiency plan" (Feb. 27, 2019), http://bit.ly/3XHtPYd; Mass. Dep't of Pub. Util. (DPU) Order, D.P.U. 18-110 through D.P.U. 18-119 (Jan. 29, 2019), http://bit.ly/3Vl2jyc; 2019-2021 Three-Year Energy Efficiency Term Reports, D.P.U. 22-110 through D.P.U. 22-119, http://bit.ly/3EIBpum (detailing Mass Save program budgets, savings, benefits, and greenhouse gas reductions).

[15] Press Release, Mass. Dep't of Env't Prot. (DEP), Baker-Polito Administration Awards Over $13 Million for Electric Vehicle Fast-Charging Stations at 150 Locations Across the Commonwealth (Feb. 3, 2022), http://bit.ly/3gQHFag.

[16] Press Release, Mass. DPU, DPU Approves Massachusetts' Nation-Leading Three Year Energy Efficiency Plan (Feb. 2, 2022), http://bit.ly/3tFS4Iy; *see also* Mass. DPU Order, D.P.U. 21-120 through D.P.U. 21-129 (Jan. 31, 2022), https://fileservice.eea.comacloud.net/FileService.Api/file/FileRoom/14461268.

[17] Cal. Air Res. Bd. (CARB), California Climate Investments Funded Programs (Sept. 2022), http://bit.ly/3ufHA2V.

[18] N.Y. Env. Cons. L. § 75-0103[13][e].

[19] D.C. Off. of the Chief Fin. Off., FY2023 Approved Budget and Financial Plan, Vol. 4, Agency Budget Chs. Pt. III at F-15 (Aug. 1, 2022), https://cfo.dc.gov/node/289642; D.C. Off. of the Chief Fin. Off., FY2022 Approved Budget and Financial Plan, Vol. 4, Agency Budget Chs. Pt. III at F-23, (Sept. 17, 2021); D.C. Off. of the Chief Fin. Off., FY2021 Approved Budget and Financial Plan, Vol. 4, Agency Budget Chs. Pt. III at F-23 (Aug. 27, 2020); D.C. Off. of the Chief Fin. Off., FY2020 Approved Budget and Financial Plan, Vol. 4, Agency Budget Chs. Pt. III at F-47 (July 25, 2019).

(DCSEU)—which delivers financial incentives, technical assistance, and education in energy efficiency and renewable energy to District residents—has spent over $100 million, which resulted in more than an estimated $856 million in lifetime energy cost savings, prevented about 4.6 million metric tons of projected lifetime CO_2e emissions, and created over 420 new full-time green jobs.[20] In addition, the District's Capital Improvements Plan for 2022-28 includes nearly $8 million to retrofit District government buildings to improve energy efficiency and install new electric charging stations that will support electrification of the District's vehicle fleet.[21]

And we have spent significant resources on adaptation measures needed to respond to the already occurring and unavoidable consequences of climate change. For example, since 2017, Massachusetts has invested $100 million in 341 municipalities on resilience measures,[22] including $32.8 million in grants this year.[23] California appropriated $81 million for resilience planning and wetlands restoration and over $500 million on wildfire prevention and readiness.[24] New Jersey has spent a total of $1.2 billion rebuilding its barrier island beach and dune system to protect its coastal communities from rising seas and extreme weather.[25] Our experiences both highlight the need for immediate, substantial investment in emissions reduction measures nationwide and provide insight into effective, equitable approaches to implementing energy efficiency, clean energy, and electric vehicle incentives, as further described below.

Our State and Local Governments also have a substantial interest in ensuring that workers' rights are protected and that employers claiming federal benefits operate on a level playing field—interests squarely implicated by the IRA's credit enhancements for compliance with its prevailing wage and apprenticeship provisions. Violations of wage and hour laws continue to harm our workforces and demand significant enforcement resources. The Massachusetts Attorney General's Office, for example, has received over 800 complaints related to the Commonwealth's Prevailing Wage Laws since 2015.[26] In the same time period, the Office has issued over 451 prevailing wage civil citations totaling over $11 million

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[20] DC Sustainable Energy Util., A Decade of Transformation: 2021 Annual Report (2021).

[21] D.C. Off. of the Chief Fin. Off., FY2023 Approved Budget and Financial Plan, Vol. 5, Capital Improvements Plan at 5-15 (Aug. 1, 2022), https://cfo.dc.gov/node/289642.

[22] Mass. Exec. Order No. 569: Establishing an Integrated Climate Change Strategy for the Commonwealth (Sept. 16, 2016), http://bit.ly/3UKqaH7.

[23] Press Release, Exec. Off. of Energy & Env't Aff., Baker-Polito Administration Awards Over $32 Million in Climate Change Funding to Cities and Towns Bringing Total Investment to $100 Million (Aug. 30, 2022), http://bit.ly/3GlIT7H.

[24] CARB, California Climate Investments Funded Programs, *supra* n.17.

[25] Nicholas Angarone et al., State of New Jersey Climate Change Resilience Strategy 95-96 (Oct. 12, 2021), https://www.nj.gov/dep/climatechange/docs/nj-climate-resilience-strategy-2021.pdf.

[26] *See* Off. of Mass. Att'y Gen., AG's Fair Labor Division Enforcement (Nov. 14, 2022), https://tinyurl.com/5b7fmfn3 (tracking the Massachusetts Attorney General's Fair Labor Division's enforcement citations).

and conducted dozens of trainings on the subject for municipalities, procurement officers, unions, and other interested members of the public.[27] While our State and Local Governments' enforcement of our own prevailing wage and apprenticeship laws runs parallel to, and is distinct from, enforcement of the federal laws incorporated in the IRA's tax credit provisions, the interest in ensuring that workers are paid adequate wages and that publicly subsidized projects contribute to the continued availability of skilled labor is similar under state and federal law.

II. Treasury and the IRS Should Center Equity and Justice as Guiding Principles in All IRA-Related Guidance.

We commend Treasury and the IRS's commitment to three guiding principles—robust public engagement, clarity and certainty, and sound stewardship[28]—and urge Treasury and the IRS to further commit to centering equity and environmental justice in all aspects of IRA implementation. Indeed, multiple executive orders require Treasury and the IRS to consider equity and environmental justice in implementing the IRA's climate- and labor-related provisions. *See* Exec. Order 13,985, 86 Fed. Reg. 7009 (Jan. 25, 2021) (directing all federal agencies to "work to redress inequities in their policies and programs that serve as barriers to equal opportunity"); Exec. Order 14,008, 86 Fed. Reg. 7619 (Jan. 27, 2021) (directing federal agencies to "secure environmental justice and spur economic opportunity for disadvantaged communities that have been historically marginalized and overburdened by pollution and underinvestment").[29] To fulfill those mandates and to secure the IRA's intended benefits for disadvantaged and low wealth communities, we recommend that Treasury and the IRS prioritize: (1) robust community engagement and affirmative, iterative outreach; (2) clarity and accessibility in IRA-related guidance, regulations, and public communications; (3) implementation targeted toward increasing eligibility and reducing tax burdens

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[27] *See* Off. of Mass. Att'y Gen. Maura Healey, Protecting Massachusetts Workers: Attorney General Maura Healey's 2022 Labor Day Report 6-13 (2022), http://bit.ly/3Gtjp8f. In addition to the staff and resources at the Massachusetts Attorney General's Office dedicated to prevailing wage enforcement, the Massachusetts Department of Labor Standards and the Division of Apprentice Standards devote extensive resources to administering the state's prevailing wage and apprenticeship programs, including by issuing prevailing wage rate schedules, determining proper classification, and monitoring apprenticeship programs throughout the state.

[28] U.S. Treasury Dep't, Fact Sheet: Treasury, IRS Open Public Comment on Implementing the Inflation Reduction Act's Clean Energy Tax Incentives, http://bit.ly/3V94aW6.

[29] *See* Exec. Order 13,990, 86 Fed. Reg. 7037 (Jan. 25, 2021) (directing all executive departments and agencies to address any actions that conflict with goals of reducing greenhouse gas emissions and prioritizing environmental justice, among other national objectives); Exec. Order 13,563, 76 Fed. Reg. 3821 (Jan. 21, 2011) (directing agencies to select regulatory approaches that maximize net benefits including "distributive impacts[] and equity"); Exec. Order 12,898, 59 Fed. Reg. 7629 (Feb. 16, 1994) (directing each federal agency to "make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations"); Exec. Order 12,866, 51 Fed. Reg. 51,735 (Oct. 4, 1993) (ordering agencies to consider "distributive impacts[] and equity" in designing regulations).

for disadvantaged and low wealth communities; and (4) robust monitoring and enforcement to ensure equitable distribution of benefits.

First, Treasury should engage in robust, iterative public outreach and community engagement in developing and preparing all guidance, rules, and public-facing materials related to the IRA. Where such extensive outreach cannot be completed without delaying implementation, Treasury and the IRS should promptly issue transitional guidance with a timeline for additional outreach and publication of additional guidance informed by such outreach. In particular, we urge Treasury and the IRS to consider:

- significantly increasing resources devoted to stakeholder outreach, particularly regarding provisions intended to benefit disadvantaged communities and communities of low wealth;
- providing multiple ways to participate in stakeholder sessions, including through phone and remote access;
- providing opportunities to participate in stakeholder sessions outside the hours of 9:00AM and 5:00PM;
- publicizing opportunities for input through regular updates on websites, mailing lists, press releases, and social media posts;
- providing all materials in multiple languages and providing translation for stakeholder sessions, as further described below;
- consulting with other federal agencies—including the U.S. Environmental Protection Agency (EPA)—to explore established channels for community engagement;
- conducting affirmative, on-the-ground outreach in communities that have historically been under-represented in government decision making to identify additional barriers to effective participation in Treasury and IRS proceedings;
- establishing a dedicated stakeholder working group to develop recommendations to improve access to IRA benefits by disadvantaged communities and communities of low wealth; [30] and
- providing resources to states to conduct simultaneous public outreach and community engagement clarifying how state and federal rebates and tax credits will work together.

In addition, Treasury and the IRS should commit to continued engagement with affected taxpayers and other stakeholders even after issuance of guidance and regulations to ensure IRA implementation evolves alongside changing

[30] The Massachusetts Energy Efficiency Advisory Council Equity Working Group could serve as a useful model. *See* Mass. Energy Efficiency Advisory Council Equity Working Group (May 20, 2020), http://bit.ly/3XghtWD (describing sub-committee dedicated to working with stakeholders to develop programmatic and implementation recommendations to improve access by hard-to-reach and underserved populations).

circumstances and need communicated by affected communities. Meaningful stakeholder engagement will not only help ensure the IRA is implemented effectively, drawing on the experiences of states and other regulators with similar programs and the lived experience and expertise of affected communities.[31] It also will enhance public awareness of the IRA's many benefits and increase public confidence in Treasury and the IRS's implementation of the IRA.[32]

Second, and relatedly, Treasury and the IRS should ensure that all regulations, guidance, and public communications regarding tax credits and other benefits available under the IRA are easily understandable and accessible so that all affected communities understand how to receive benefits. While some taxpayers can hire professional accountants to complete their tax returns, many cannot. We appreciate IRS's prompt efforts to hire thousands more customer service representatives to assist taxpayers by phone and in person during the 2023 tax season.[33] And we further emphasize that all guidance and IRA-related communications must be straightforward, including, where appropriate, step-by-step instructions in plain language and concise Question and Answer documents.[34] Additional measures Treasury and the IRS should consider include establishing a dedicated IRA hotline for low-income taxpayer households, providing funding for low-income taxpayer clinics, offering technical assistance for nonprofits and state and local governments, and providing alternative communication forms to increase understanding and accessibility, like webinars, video tutorials, and easy-to-use online tools to calculate benefits available for particular technologies. Finally, and

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[31] *See* Cary Coglianese et al., *Transparency and Public Participation in the Federal Rulemaking Process: Recommendations for the New Administration*, 77 Geo. Wash. L. Rev. 924, 946-47 (2009) ("Robust public participation in the rulemaking process allows agencies to obtain information that helps them (1) improve the quality of new regulations, (2) increase the probability of compliance, and (3) create a more complete record for judicial review. Public participation is also fundamentally linked to concepts of legitimacy and fairness in agency rulemaking."); Cynthia R. Farina et al., *Knowledge in the People: Rethinking "Value" in Public Rulemaking Participation*, 47 Wake Forest L. Rev. 1185, 1197 (2012) (positing that broader participation in rulemaking by "individuals and small private or public entities who would be directly affected …. but who, based on historical participation patterns, are unlikely to engage in the conventional comment process" can contribute valuable information such as "information about impacts, ambiguities and gaps, enforceability, contributory causes, unintended consequences, etc. that is known by participants because of their lived experience in the complex reality into which the proposed regulation would be introduced.").

[32] *See* Marc B. Mihaly, *Citizen Participation in the Making of Environmental Decisions: Evolving Obstacles and Potential Solutions Through Partnership with Experts and Agents*, 27 Pace Env't L. Rev. 151, 164-65 (Sept. 2009) (detailing myriad benefits of public participation).

[33] *See* News Release, IRS, IRS announces job openings to hire over 700 new employees across the country to help taxpayers in person (Nov. 9, 2022), http://bit.ly/3OeDrFw; News Release, IRS, IRS quickly moves forward with taxpayer service improvements; 4,000 hired to provide more help to people during 2023 tax season on phones (Oct. 27, 2022), http://bit.ly/3Oe1CUH.

[34] For example, the Mass Save website is consumer-friendly, easily navigated, and provides easy-to-understand, multi-lingual information on available energy efficiency incentives, as well as ways to participate in the energy efficiency programs. *See* Mass Save, https://www.masssave.com/ (last visited Nov. 29, 2022).

critically, we also urge Treasury and the IRS to provide community-focused and responsive language access, including translating public documents into multiple languages, providing interpretation and translation services for all stakeholder sessions, and establishing a transparent procedure for receiving and promptly responding to community requests for improved language access.

Third, Treasury and the IRS should implement the IRA with the goal of increasing eligibility and reducing tax burdens for disadvantaged and low-wealth communities. For example, where the IRA requires income verification, Treasury and the IRS should accept participation in existing federal income-eligible support programs so that verification does not itself pose a barrier to delivery of incentives.[35] Treasury and the IRS also should craft guidance to ensure that participants in these support programs are not penalized for receiving the benefits Congress intended for them. Particularly in the case of low-income participants, IRA incentives should fall under the General Welfare Exception and not be counted as taxable income. Similarly, we urge Treasury and the IRS to clarify that participation in analogous state programs that facilitate the adoption of clean vehicles (such as California's "Clean Cars 4 All" scrap-and-replace program), weatherized and energy efficient homes, and other climate-related general welfare benefits will not increase participants' tax burden.[36]

Fourth, we urge Treasury and the IRS to verify and work to ensure that the benefits of IRA incentives are actually delivered to communities as intended by the statute. Treasury and the IRS should establish procedures to monitor the distribution and environmental and economic impacts of IRA climate and clean energy incentives—including increased credits for projects in "energy communities" in §§ 45(b)(11), 48(a)(14), 45Y(g)(7), and 48E(a)(3)(A) and low-income communities in § 48(e) and 48E(h)—to verify that IRA benefits are widely and equitably distributed to disadvantaged and low wealth communities. Finally, it is critical that Treasury and the IRS prioritize and devote significant resources to enforcement of IRA provisions. And, as further discussed *infra*, Section III.d.i., Treasury and the IRS should enhance enforcement and foster accountability by requiring entities claiming credits under the IRA to disclose the credit claimed, allowing interested parties—including states, affected communities, and workers—to verify claims of compliance with IRA conditions designed to ensure equitable distribution of climate and labor benefits.

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[35] In Massachusetts, for example, customers can establish eligibility for utility low-income discount rates "upon verification of a low-income customer's receipt of any means tested public benefit . . . for which eligibility does not exceed 200 per cent of the federal poverty level based on a household's gross income." Mass. Gen. Laws ch. 164, § 1F(4)(i).

[36] CARB, Clean Cars 4 All: About, http://bit.ly/3GY4lQz (last visited Nov. 29, 2022).

III. Specific Comments on IRS Notices 2022-58, 2022-57, 2022-56, 2022-51, 2022-49, 2022-48, 2022-47, and 2022-46.

a. Comments on Clean Hydrogen Credit Provisions, IRS Notice 2022-58

When used as a fuel, hydrogen produces no end-point carbon emissions. But the overall carbon intensity of hydrogen depends largely on how it is produced in the first place. For example, the carbon intensity of hydrogen produced through the electrolysis of water, colloquially known as "green" hydrogen, depends on the carbon intensity of the electricity used to run the electrolyzer, which, in turn, depends on the resource mix used to supply the electric grid where the hydrogen is generated at the time it is produced. Accordingly, Treasury should work with EPA and the U.S. Department of Energy (DOE) to establish resources and guidance for calculating and verifying the carbon intensity of the source electricity used to produce "green" hydrogen.

Treasury and the IRS also should work with EPA and DOE to adopt rigorous carbon accounting principles on an expedited basis to determine lifecycle greenhouse gas emissions rates from other hydrogen production processes. For example, hydrogen produced from the reformation of natural gas or coal-derived syngas, colloquially known as "blue" or "gray" hydrogen, has the potential to result in more greenhouse gas emissions than coal if all lifecycle emissions, including fugitive methane emissions, are accounted for.[37] Accordingly, hydrogen produced through these processes should not qualify for the 45V credit simply because Carbon Capture and Sequestration (CCS) is used to limit emissions at the point of production. And Treasury should establish a transparent process for reviewing and responding to petitions to determine lifecycle greenhouse gas emissions rates where none has been determined, including comprehensive documentation, monitoring, and auditing requirements and procedures for consultation with EPA and DOE on each such petition.

California, Oregon, and Washington have developed low-carbon fuel standard (LCFS) regulations, which are designed to drive down the lifecycle greenhouse gas emissions, or carbon intensity, of transportation fuels sold, supplied, or offered for sale in each state over time. These state regulations confront many of the issues on which Treasury and the IRS have requested comment concerning hydrogen's lifecycle emissions. Under California's LCFS, for example, fuel providers must report carbon intensity scores reflecting the greenhouse gas emissions directly associated with the production, transportation, and use of a given fuel, as well as

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[37] *See* R. Howarth & M. Jacobson, *How green is blue hydrogen?,* 9 Energy Sc. & Eng'g 1676, 1683 (July 16, 2021), http://bit.ly/3UPNB22.

significant indirect effects on greenhouse gas emissions, such as changes in land use. To determine the carbon intensity of a particular incentivized low-carbon-intensity fuel, suppliers may either use average carbon intensity scores calculated by CARB and provided on a regularly updated "Lookup Table"[38] or calculate an individual score based on the lifecycle emissions of a fuel's specific production process.[39]

Hydrogen is one such incentivized low-carbon-intensity fuel. A supplier of hydrogen produced in California from steam-methane reforming may rely on an assigned average carbon intensity score provided in the Lookup Table, varying by the feedstock and source of energy used in production. A hydrogen supplier may use one of these default carbon intensity scores upon approval based on a few simple pieces of documentation. Alternatively, the supplier may obtain an individual score based on the modeled lifecycle emissions associated with producing and transporting their hydrogen, using the GREET model specified in the regulation, with more thorough documentation and verification requirements.[40] The LCFS regulations include requirements for recordkeeping and auditing,[41] including ongoing monitoring, as well as requirements for periodic third-party verification,[42] with accreditation requirements for third-party verification services[43] and conflict-of-interest provisions to ensure independence and integrity of third-party verification services.[44] We urge Treasury and the IRS to consider similar methods, procedures, and safeguards to accurately assess, and regularly update assessments of, lifecycle greenhouse gas emissions in implementing § 45V.

b. Comments on Carbon Oxide Sequestration Credit Provisions, IRS Notice 2022-57

California's LCFS regulation also allows CCS projects to generate credits that fuel providers can use to meet their compliance obligations. To ensure the environmental integrity of such credits, CARB created a CCS Protocol to ensure the emissions associated with such credits are real, accurately quantified, verified, and

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[38] *See* Cal. Code Reg., tit. 17, § 95488.5, subd. (e), Table 7-1 (default carbon intensity scores for hydrogen (i.e., the Lookup Table)); *id.*, subd. (b) (requirements for applications for new fuel types to be included in the Lookup Table); CARB, CA-GREET3.0 Lookup Table Pathways, Technical Support Documentation, 35-44 (Aug. 13, 2018), http://bit.ly/3VlEm9N (summarizing the factors that lead to varying carbon intensities for different sources and forms of hydrogen fuel).

[39] *See* Cal. Code Reg., tit. 17, § 95488.1.

[40] *See id.* § 95488.7, subd. (a) (documentation requirements for sources and forms of hydrogen fuel not found in the Lookup Table).

[41] *See id.* § 95491.1.

[42] *See id.* § 95500.

[43] *See id.* § 95501.

[44] *See id.* § 95503.

permanently sequestered.[45] The CCS Protocol contains detailed provisions for recordkeeping and reporting, third-party verification, and sequestration integrity that Treasury and the IRS may find relevant to the specific requests for comment in Notice 2022-57. Although Treasury and the IRS seek comment on verifying the *capture* amounts in § 45Q(d)(2) specifically, we urge Treasury and the IRS to also ensure sound implementation of the "secure geological storage" requirement in § 45Q(f)(2) to preserve Congress's fundamental environmental objectives in designing the § 45Q credit.

c. Comments on Qualified Commercial Clean Vehicles and Section 30C Alternative Fuel Vehicle Refueling Property Credits Provisions, IRS Notice 2022-56

Since 1990, California and other states have encouraged the adoption of zero-emission vehicles (ZEVs) that offer clean alternatives to the internal combustion engine, including battery electric vehicles.[46] The ZEV regulation defines a battery electric vehicle as "any vehicle that operates solely by use of a battery or battery pack, or that is powered primarily through the use of an electric battery or battery pack but uses a flywheel or capacitor that stores energy produced by the electric motor or through regenerative braking to assist in vehicle operation."[47] The ZEV regulation further defines an "electric drive system" as "an electric motor and associated power electronics which provide acceleration torque to the drive wheels sometime during normal vehicle operation," but not including" components that could act as a motor, but are configured to act only as a generator or engine starter in a particular vehicle application."[48] Previous versions of the ZEV regulation have provided partial credit for hybrid electric vehicles based on the extent of the electric drive's power and other characteristics.[49]

These definitions may help the IRS provide guidance on what it means for a motor vehicle to be "propelled to a significant extent by an electric motor which draws electricity from a battery" for purposes of the Sections 30D(d)(1)(F) and

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[45] *See id.* § 95490; CARB, Carbon Capture and Sequestration Protocol under the Low Carbon Fuel Standard (Aug. 2018), http://bit.ly/3UoViuS.

[46] California enforces its ZEV regulation pursuant to a preemption waiver granted by the U.S. Environmental Protection Agency under Clean Air Act § 209(b), *see* 42 U.S.C. § 7543(b), which allows other states to adopt the same ZEV regulation under Clean Air Act § 177, *see id.* § 7507.

[47] Cal. Code Regs., tit. 13, § 1962, subd. (i)(2); *id.* § 1962.1, subd. (i)(3); *see also* CARB, California Exhaust Emission Standards and Test Procedures for 2018 and Subsequent Model Zero-Emission and Hybrid Electric Vehicles, in the Passenger Car, Light-Duty Truck and Medium-Duty Vehicle Classes, at B-2 (as amended Sept. 3, 2015), https://tinyurl.com/ynawf9jn.

[48] Cal. Code Regs., tit. 13, § 1962, subd. (i)(3); *id.* § 1962.1, subd. (i)(7); *see also* California Exhaust Emission Standards and Test Procedures, *supra* n.47, at B-3.

[49] Cal. Code Regs., tit. 13, § 1962, subd. (c)(4)(B)(1) (table); *id.* § 1962.1, subd. (c)(4)(B)(1) (table). The hybrid electric vehicles classification tables are not featured in the current ZEV regulation and are offered here solely to illustrate the different gradations of an electric drive system's contribution to vehicle operation.

45W(c)(3)(A) credits.[50] In particular, "propelled to a significant extent" should be defined to accommodate popular ZEV features like regenerative braking that promote the vehicle's efficient operation. We also request that the definition of "mobile machinery" in Internal Revenue Code § 4053(8) be interpreted broadly to include a wide variety of off-road equipment types and powertrains, which may be mobile self-propelled or portable (towed), or perform work when stationary. We urge the IRS to allow tax credits for zero-emission off-road equipment such as zero-emission construction, agricultural, and industrial equipment (e.g., battery powered forklifts, lawn and garden equipment, skid steer loaders).

d. Comments on Prevailing Wage, Apprenticeship, and Energy Community Enhancement Provisions, IRS Notice 2022-51

i. Prevailing Wage and Apprenticeship Recommendations

We appreciate Treasury and the IRS's prompt publication of initial guidance regarding the IRA's prevailing wage and apprenticeship provisions (Initial Guidance), starting the 60-day clock for these important requirements to take effect.[51] We also appreciate Treasury and the IRS's stated commitments to ensuring the IRA supports good-paying jobs in the clean energy industry, expands workforce training pathways into these jobs, and lowers costs for American families.[52] The Initial Guidance, however, does not comprehensively address many issues that need to be resolved for Treasury and the IRS to meet those commitments in implementing the IRA's prevailing wage and apprenticeship requirements.

As enforcers of worker protection laws, including state prevailing wage requirements, our State and Local Governments have first-hand experience with complex schemes employers use to attempt to circumvent worker protections. It is all too common for employers and contractors to submit certified payroll records that, on their face, appear to comply with prevailing wage requirements while hiding the fact that workers were paid off the books at non-prevailing rates of pay or were required to return to their employers the difference between their regular wages and the prevailing wage.[53] To ensure that workers receive the benefit of

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[50] *See* IRS Notices 2022-46, 2022-56.

[51] U.S. Dep't of the Treasury, Notice 2022-61: Prevailing Wage and Apprenticeship Initial Guidance under Section 45(b)(6)(B)(ii), 87 Fed. Reg. 73,580 (Nov. 30, 2022).

[52] Press Release, U.S. Dep't of the Treasury, Treasury Announces Guidance on Inflation Reduction Act's Strong Labor Protections (Nov. 29, 2022), https://tinyurl.com/2uscy32k.

[53] For example, the New York Attorney General's Office in 2014 obtained a guilty plea from a contractor who created false business records and issued checks to workers to demonstrate compliance with the prevailing wage law while requiring workers to cash the checks at his bank and kick back, or return, most of the cash to him. *See* Press Release, N.Y. Off. of the Att'y Gen., A.G. Schneiderman Announces Conviction Of Construction Boss For Underpaying Workers On Project At JFK Airport (Nov. 20, 2014), https://tinyurl.com/2kt3hz9p.

prevailing wages and apprenticeships promised by the IRA, Treasury and the IRS should (1) publish additional guidance incorporating stakeholder feedback regarding prevailing wage and apprenticeship requirements; (2) require robust documentation from taxpayers claiming benefits; (3) bolster accountability and enforcement; and (4) design proactive policies to foster job creation.

First, while we commend Treasury and the IRS for issuing prompt Initial Guidance, we urge them to issue further guidance, in consultation with the U.S. Department of Labor (DOL), to incorporate additional stakeholder feedback regarding effective and transparent implementation. Such stakeholder-informed guidance will help ensure that those claiming enhanced credits or deductions under the prevailing wage provisions do so with the appropriate information, which will increase efficiency and decrease the need for compliance enforcement. Additionally, Treasury and the IRS should clarify that any project funded in part or in whole by the IRA must comply with the provisions of *both* the Davis-Bacon Act and the applicable state prevailing wage laws.

Second, we urge Treasury and the IRS to require robust documentation substantiating compliance with prevailing wage and apprenticeship requirements. Beyond requiring taxpayers simply *to maintain* records material to compliance, as the Initial Guidance provides, Treasury and the IRS should require all contractors and taxpayers intending to seek prevailing wage and apprenticeship enhancements *to file* with DOL a notice of intention to seek a tax credit prior to commencing work, certified payroll records covering each week of the time period for which they intend to claim enhanced benefits, and a signed statement certifying under the penalty of perjury that the information contained within the certified payroll records is accurate.[54] And all solicitations, contracts, and subcontracts that form the basis of a request for IRA tax benefits should explicitly require that certified payrolls be submitted to DOL on at least a monthly basis with wage determinations attached. Moreover, all solicitations, contracts, and subcontracts that form the basis of a request for IRA tax benefits should explicitly require compliance with Davis-Bacon and state prevailing wage requirements and should state that compliance with such requirements is a prerequisite to eligibility for any tax credit under the IRA. For apprenticeships, specifically, we also suggest requiring contractors to include apprentice identification cards from a registered apprentice program alongside certified payroll records to deter contractors from claiming new or inexperienced workers as qualified apprentices.[55] Additionally, before a project commences, taxpayers claiming the good faith effort exception for apprenticeship enhancements should be required to file with DOL all records establishing that they requested qualified apprentices from a registered apprenticeship program and were denied or

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[54] The Federal Acquisition Regulation contains such a requirement. *See* FAR 52.222-8(b)(4). The Massachusetts law governing entities engaged in state or local public works projects may also serve as a useful example. *See* Mass. Gen. Laws ch. 149, §27B.

[55] As an example, see Mass. Gen. Laws ch. 149, §§ 27, 27B.

did not receive a timely response. We also urge Treasury and the IRS to require contractors to provide notice to workers on a qualifying project of their right to earn prevailing wages and to provide DOL a signed statement certifying under the penalty of perjury that such notice was provided to obtain a tax credit related to that qualifying project.

Third, Treasury and the IRS also should consider new accountability and enforcement measures specifically designed to ensure wage-related compliance. Importantly, Treasury and the IRS should pursue not only technological measures to identify prevailing wage and apprenticeship violations, but also on-the-ground verification for many types of violations that cannot be readily identified through file reviews. In addition to being filed with DOL, as urged above, all notices of intent to claim a tax credit, statements of compliance, and certified payroll records should be made publicly available and accessible to any interested party—including workers and state and local wage enforcement officers—to enable interested parties to report possible violations. Allowing the public to view disclosures submitted to DOL would not violate tax confidentiality because such information would not be "received by, recorded by, prepared by, furnished to, or collected by the Secretary." 26 U.S.C. § 6103(b)(2).[56] We also urge Treasury and the IRS to require entities receiving enhanced credits to comply with related audit and investigation requests by the IRS and federal and state wage authorities and to devote significant resources to prevailing-wage- and apprenticeship-related auditing and enforcement. Treasury and the IRS also should explore ways to enter into agreements with State and local enforcement agencies to collaborate on enforcement of prevailing wage and apprenticeship provisions of the IRA.

Finally, we recommend that Treasury and the IRS design proactive policies and programs to deliver on the IRA's job-creation promise. For example, Treasury and the IRS should consider collaborating with DOL to access existing funding dedicated to apprenticeship expansion and compliance and incorporating or coordinating with established pre-apprenticeship programs to quickly reach a wider and more diverse group of workers and to incentivize local hires.

ii. Energy Community Recommendations

The State and Local Governments also have relevant experience relating to brownfields that may assist Treasury and the IRS in implementing the energy community credit enhancement in § 45(b)(11)(A). The incorporated definition of a brownfield site (set forth in the Comprehensive Environmental Response,

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[56] *See Lomont v. O'Neill*, 285 F.3d 9, 15 (D.C. Cir. 2002) (holding that disclosure of tax-related information obtained directly from a taxpayer, as opposed to the IRS, does not fall within the definition of "return" or "return information" in § 6103); *Stokwitz v. United States*, 831 F.2d 893, 895-96 (9th Cir. 1987) ("[T]he statutory definitions of 'return' and 'return information' to which the entire statute relates, confine the statute's coverage to information that is passed through the IRS.").

Compensation, and Liability Act of 1980 (CERCLA), 42 U.S.C. § 9601(39)(A), (B), and (D)(ii)(III)) includes "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." Treasury and the IRS should require taxpayers claiming eligibility for property as a brownfield to provide documentation substantiating its status as a brownfield within the definition, including information on any brownfield grants received and relevant development and remediation plans.

We also urge Treasury and the IRS to verify claims of brownfield eligibility by collaborating with EPA, which implements CERCLA and maintains an extensive, though not exhaustive, database of known brownfields[57] and tools to identify sites that have received EPA brownfield grants for assessment or cleanup.[58] State and Tribal brownfield response programs also often maintain information on brownfields within their jurisdictions.[59] For example, Massachusetts maintains a Brownfields List identifying brownfields that have received Massachusetts grants.[60] The District of Columbia's brownfield program also maintains a map of current and remediated sites with the District.[61]

e. Comments on Energy Generation Incentives in IRA § 13202, IRS Notice 2022-49

In Notice 2022-49, the IRS seeks comment on implementing tax credits for energy generation and storage projects. For the purpose of determining eligibility for the clean electricity production credit, Treasury and the IRS should consult with EPA and DOE to promptly publish and timely update the facility greenhouse gas emissions rates in the table of facility emissions rates required to be published annually under § 45Y(b)(2)(C)(i). Additionally, Treasury and the IRS should establish a transparent process for reviewing and responding to petitions to determine the emissions rate for facilities for which an emissions rate has not been established, including procedures for consultation with EPA and DOE on each petition.

Additionally, as Treasury and the IRS consider how to implement energy production tax credits to promote equity and environmental justice, New York's distributed solar energy program, NY-Sun, provides a good example. NY-Sun includes the Solar Energy Equity Framework (SEEF), which aims to improve access

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[57] EPA, EnviroAtlas, http://bit.ly/3gd05ld (last visited Nov. 29, 2022).

[58] EPA, Cleanups in My Community, http://bit.ly/3GlJPZL (last visited Nov. 29, 2022).

[59] EPA, State and Tribal Brownfields Response Programs, http://bit.ly/3Xf8mFG (last visited Nov. 29, 2022).

[60] Mass. Dep't of Env't Prot., Find Brownfields Sites, http://bit.ly/3tJFfwE (last visited Nov. 29, 2022).

[61] D.C. Dep't of Energy & Env't, Brownfields and DC's Voluntary Cleanup Program, https://doee.dc.gov/node/1542566 (last visited Nov. 29, 2022).

to solar electric energy for low- to moderate-income customers, regulated affordable housing, environmental justice communities, and disadvantaged communities.[62] The SEEF, which has approximately $400 million in funding, provides technical assistance grants to community groups and local governments, adder incentives for low- and moderate-income residential installations, adder incentives for projects serving affordable housing, and funding for two initiatives based on community solar models.[63] As discussed in the comments submitted by the New York State Energy Research and Development Authority (NYSERDA), the authority that administers NY-Sun, Treasury and the IRS should clarify that a community solar project can qualify for the tax credit available for a "qualified low-income economic benefit project" if it is serving a low-income community, regardless of whether it is actually located within that community.[64]

f. Comments on Energy Efficiency Incentives in IRA § 13302 & 13303, IRS Notice 2022-48

Home energy audits are a cornerstone of effective energy efficiency investment. As such, many states with robust and successful energy efficiency programs already cover the cost of home energy efficiency audits. For example, the Mass Save program provides for a free home energy audit, serving as the gateway into the Mass Save residential and small business initiatives.[65] Similarly, the NYSERDA Residential Energy Assessment Program provides no-cost residential energy audits with subsequent opportunities to make low- or no-cost energy efficiency improvements.[66] Customers in these jurisdictions are unlikely to seek federal incentives for energy efficiency home audits. But to ensure consistency across jurisdictions and incentivize effective home energy audits nationwide, Treasury and the IRS should require that energy efficiency auditors eligible for IRA credits either be certified with auditor certification programs used in states with existing programs or provide minimum standards based on existing programs. For example, the Building Performance Institute is a national standards development organization for energy efficiency and has provided certification and standards for home performance professionals for over twenty-five years.[67] Energy Star, too,

[62] Luke Forster, New York State Energy Research and Development Authority (NYSERDA) Program Updates 12 (Feb. 16, 2022), https://tinyurl.com/mvp5skyj.

[63] NY-Sun, 2020 – 2030 Operating Plan 5 (May 31, 2022), https://tinyurl.com/ycxu5dfn.

[64] NYSERDA, Comments on U.S. Treasury and IRS Notices 2022-47, 2022-48, 2022-49, and 2022-51, at 6 (Nov. 4, 2022), https://www.regulations.gov/comment/IRS-2022-0022-0220.

[65] *See* Mass Save, Take an Online Home Energy Assessment, http://bit.ly/3TMohs4 (last visited Nov. 29, 2022).

[66] *See* NYSERDA, Residential Energy Assessment Programs, http://bit.ly/3UNy56x (last visited Nov. 29, 2022).

[67] *See* Building Performance Inst., Inc., Certified Professionals, http://bit.ly/3EJ9yKk (last visited Nov. 29, 2022) (providing certification requirements).

maintains databases of credentialed contractors qualified to perform home energy assessments.[68]

We also recommend that Treasury and the IRS interpret the term "qualified energy property" in § 25C as broadly as possible to defray the costs of upgrades needed to electrify homes across our states. Treasury and the IRS should also permit eligible costs for qualified energy property to be incurred within five years of a panelboard installation or upgrade. Incurring the investment in qualifying energy efficiency improvements, as well as attendant necessary upgrades (e.g., panelboard upgrades), may be cost-prohibitive for many of our State and Local Governments' disadvantaged and low-wealth residents over a short time period. Allowing a five-year window would alleviate this financial pressure and encourage broader, more equitable energy efficiency investments.

With respect to § 25C's biomass provisions, we urge Treasury and the IRS to strictly enforce energy efficiency tiers to verify qualification for biomass stoves and boilers. Per British thermal unit (BTU), wood has about the same carbon content as coal,[69] and, according to EPA, wood contains about 75% more CO_2 per BTU than natural gas.[70] As a result, wood that is harvested and burned for energy immediately increases greenhouse gas emissions—even where it is displacing fossil fuels.[71] Biomass combustion also emits other harmful air pollutants, like particulate matter, which is connected to a multitude of adverse health consequences including premature death, cardiovascular effects, asthma, bronchitis, pneumonia, chronic obstructive pulmonary disease.[72] To avoid inadvertently *increasing* greenhouse gas and other harmful pollutant emissions through biomass incentives, Treasury and the IRS should comprehensively evaluate lifecycle greenhouse gas emissions in calculating the efficiency rating of eligible biomass. If, however, Treasury and the IRS elect to rely on EPA wood stove certifications to demonstrate efficiency ratings, they should not allow certification based on test

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[68] *See* Energy Star, Find Credentialed Contractors, http://bit.ly/3UJYYZ6 (last visited Nov. 29, 2022).

[69] *See* John D. Sterman et al., *Does Replacing Coal with Wood Lower CO_2 Emissions? Dynamic Lifecycle Analysis of Wood Bioenergy*, 13 Env't Res. Letters 1, 2 (2018), http://bit.ly/3Eaxxk0.

[70] U.S. EPA, *Emission Factors for Greenhouse Gas Inventories* (Mar. 26, 2020), http://bit.ly/3EBVUHV.

[71] *See* Sterman, *supra* n.69, at 2 ("Burning wood instead of coal creates a carbon debt—an immediate increase in atmospheric CO_2 compared to fossil energy."); Philippe Leturcq, *GHG Displacement Factors of Harvested Wood Products: The Myth of Substitution*, 10 Sci. Rep. 20752, 4 (Nov. 27, 2020), http://bit.ly/3X9X6dL ("The combustion emission of wood is clearly higher than that of other fuels."); Mary S. Booth, *Not Carbon Neutral: Assessing the Net Emissions Impact of Residues Burned for Bioenergy*, 13 Env't Res. Letters 035001, 1 (Feb. 21, 2018), http://bit.ly/3EciyGq ("Biomass power plants tend to emit more CO2 than fossil fueled plants per MWh, and as shown by a number of studies, net emissions from bioenergy can exceed emissions from fossil fuels for decades.").

[72] *See* U.S. Glob. Change Rsch. Prog., *Impacts, Risks, and Adaptation in the United States: Fourth National Climate Assessment, Volume II*, at 517-19 (2018, rev. 2020), https://tinyurl.com/2p9amj8d; Luke P. Naeher et al., *Woodsmoke Health Effects: A Review*, 19 Inhalation Toxicology 1, 67 (2007).

methods 125 and 127 (relying on ASTM 3053), which allow too much variability and manufacturer and laboratory manipulation.[73]

Finally, we recommend defining "substantial reconstruction and rehabilitation" for purposes of the new energy efficient home credit in § 45L to include any existing building that can achieve Energy Star or Zero Energy Ready Homes certification. Utilizing a broader definition will signal the importance of developing a housing stock that is energy efficient and aligned with our state climate objectives.

g. Comments on Energy Security Tax Credits for Manufacturing in IRA § 50265, IRS Notice 2022-47

In implementing the § 45X advanced manufacturing production credit, Treasury and the IRS should develop guidance and regulations, in consultation with EPA on an expedited basis, that seeks to prevent the realization of tax benefits by producers that have a history of environmental noncompliance, particularly in disadvantaged and low wealth communities. Additionally, for purposes of determining eligibility for the qualifying advanced energy credit under § 45C, the Secretary of Treasury is directed to identify projects designed to produce "other advanced energy property designed to reduce greenhouse gas emissions as may be determined by the Secretary" and projects retrofitted with "other technology designed to reduce greenhouse gas emissions, as determined by the Secretary." Treasury should develop detailed guidance and regulations explaining how the Secretary will identify property and technology "designed to reduce greenhouse gas emissions" and providing for consultation with EPA and DOE in such processes.

h. Comments on Credits for Clean Vehicles in IRA § 13401, IRS Notice 2022-46

The State and Local Governments appreciate Treasury and the IRS's commitment to prompt implementation of the IRA's clean vehicles credits, including its early guidance on the IRA's new final assembly requirement.[74] It is critical that electric vehicle incentives get into the hands of consumers now to make electric vehicles more affordable and reduce transportation-related emissions of greenhouse gases and other harmful pollutants along transportation corridors. The State and Local Governments recognize, however, that the IRA's clean vehicles provisions raise numerous complex, technical issues that may not be able to be resolved immediately, including, for example, supply chain tracking for § 30D(e)'s sourcing

[73] *See* Northeast States for Coordinated Air Use Mgmt., Assessment of EPA's Residential Wood Heater Certification Program (2021), http://bit.ly/3gfTOFi.

[74] Press Release, U.S. Dep't of the Treasury, Treasury Releases Initial Information on Electric Vehicle Tax Credit Under Newly Enacted Inflation Reduction Act (Aug. 16, 2022), https://home.treasury.gov/news/press-releases/jy0923.

and manufacturing requirements. Accordingly, we urge Treasury and the IRS to quickly issue transitional guidance making clean vehicle credits widely available, with clear step-by-step instructions for car buyers and dealers to follow. But Treasury and the IRS must also commit to a schedule for further stakeholder engagement, *see supra* Section II, and updated guidance implementing these provisions on an ongoing basis.

IV. Conclusion

We appreciate the opportunity to provide these recommendations to ensure effective and equitable implementation of the IRA.

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