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October 18, 2024

Chief Lynn Malerba
Treasurer
U.S. Department of the Treasury
1500 Pennsylvania Ave NW
Washington, D.C. 20220
Via email: tribal.consult@treasury.gov

Re: Comments on the Clean Electricity Low-income Communities Bonus Credit Program, 26 USC § 48E(h)

Dear Treasurer Malerba,

On behalf of United South and Eastern Tribes Sovereignty Protection Fund (USET SPF) we write in response to the Department of Treasury's (Treasury or the Department) "Dear Tribal Leader" letter initiating Tribal consultation on a Notice of Proposed Rulemaking (NPRM) entitled, "Guidance on Clean Electricity Low-Income Communities Bonus Credit Amount Program," which would provide guidance under section 48E(h) of the Internal Revenue Code (Code), added by the Inflation Reduction Act of 2022 (IRA). The Clean Electricity Low Income Communities Bonus Credit Amount Program (Program) provides an allocated "bonus" or increase in the amount of credit (not a separate bonus credit) for eligible projects "placed in service" by Tribal governments and Tribal entities.

USET Sovereignty Protection Fund (USET SPF) is a non-profit, inter-tribal organization advocating on behalf of thirty-three (33) federally recognized Tribal Nations from the Northeastern Woodlands to the Everglades and across the Gulf of Mexico.¹ USET SPF is dedicated to promoting, protecting, and advancing the inherent sovereign rights and authorities of Tribal Nations and in assisting its membership in dealing effectively with public policy issues.

¹ USET SPF member Tribal Nations include: Alabama-Coushatta Tribe of Texas (TX), Catawba Indian Nation (SC), Cayuga Nation (NY), Chickahominy Indian Tribe (VA), Chickahominy Indian Tribe—Eastern Division (VA), Chitimacha Tribe of Louisiana (LA), Coushatta Tribe of Louisiana (LA), Eastern Band of Cherokee Indians (NC), Houlton Band of Maliseet Indians (ME), Jena Band of Choctaw Indians (LA), Mashantucket Pequot Indian Tribe (CT), Mashpee Wampanoag Tribe (MA), Miccosukee Tribe of Indians of Florida (FL), , Mi'kmaq Nation (ME), Mississippi Band of Choctaw Indians (MS), Mohegan Tribe of Indians of Connecticut (CT), Monacan Indian Nation (VA), Nansemond Indian Nation (VA), Narragansett Indian Tribe (RI), Oneida Indian Nation (NY), Pamunkey Indian Tribe (VA), Passamaquoddy Tribe at Indian Township (ME), Passamaquoddy Tribe at Pleasant Point (ME), Penobscot Indian Nation (ME), Poarch Band of Creek Indians (AL), Rappahannock Tribe (VA), Saint Regis Mohawk Tribe (NY), Seminole Tribe of Florida (FL), Seneca Nation of Indians (NY), Shinnecock Indian Nation (NY), Tunica-Biloxi Tribe of Louisiana (LA), Upper Mattaponi Indian Tribe (VA) and the Wampanoag Tribe of Gay Head (Aquinnah) (MA).

Because there is Strength in Unity

I. **Comments on Proposed Implementation of 26 U.S.C. § 48E(h), the Clean Electricity Low-Income Communities Bonus Credit Program**

A. ***Federal Trust & Treaty Obligations***

Prior to European contact, Tribal Nations, including USET SPF members, had a long history of dynamic economies and governance structures. Robust trade networks connected Tribal Nations and the goods we produced. As with other aspects of Tribal governance and infrastructure, the removal, termination, and assimilation policies of the United States government negatively impacted our traditional economic trade. Over the course of centuries, Tribal Nations ceded millions of acres of land and extensive resources to the U.S.—oftentimes by force—in exchange for which it is legally and morally obligated to provide benefits and services in perpetuity. Because of this historic and ongoing diplomatic relationship, the federal government has trust and treaty obligations to support Tribal self-governance and self-determination, and to help rebuild Tribal Nations and economies. Unfortunately, at no point has the federal government fully delivered upon and upheld these obligations.

In addition to being relegated to fractions of our original homelands, which can be in remote areas, Tribal Nations lack governmental parity in economic development opportunities and treatment under the Internal Revenue Code. All Tribal Nations, including USET SPF member Tribal Nations, vary in levels of economic activity, capacity, and development. Some Tribal Nations have decades of experience and familiarity with economic development initiatives, while some are just starting to pursue these initiatives. This diversity demands that federal policy not adopt a one-size fits all approach to supporting Tribal Nations and businesses to pursue economic development initiatives to support our communities and engage in Nation rebuilding. With nearly every aspect of economic development regulated by the federal government, economic progress in Indian Country is often stymied by burdens placed on Tribal Nations and businesses. These burdens have contributed to a perpetual cycle of social and economic hardship in our communities and are a remnant of paternalism that continues to exist today. They are at cross purposes with the federal government's evolution away from past policies of termination and assimilation toward greater Tribal self-determination and self-governance.

In 2012, the Federal Reserve Board of Governors issued a report entitled *Growing Economies in Indian Country* that outlined eight fundamental challenges to realizing economic growth in Indian Country. USET SPF's member Tribal Nations, with few exceptions, still disproportionately contend with these same challenges, such as:

1. Insufficient access to capital;
2. Capacity and capital constraints of small business;
3. Insufficient workforce development, financial management training, and business education;
4. Tribal governance constraints;
5. Regulatory constraints on land held in trust and land designated as restricted use;
6. Underdeveloped physical infrastructure;
7. Insufficient research and data; and
8. Lack of regional collaboration.

Though this report is over a decade old, it remains a relevant assessment of the current state of economic challenges in Indian Country. Congress and the Administration must work to free Tribal Nations from over-burdensome laws and regulations that impede our social and economic success. This is especially important in an environment pervasively influenced by the federal government's failures to uphold trust and treaty obligations to fully fund programs and services for Indian Country. Similar to other governments, Tribal Nations provide vital economic, social, health, and public safety services to our people. As it is for

any other sovereign, economic sovereignty is essential to our ability to be self-determining and self-sufficient. While economic success in no way diminishes the United States' moral and legal obligations to Tribal Nations, it remains critical to our continued nation rebuilding. Building strong, vibrant, and mature economies is more than just business development. It requires comprehensive planning to ensure that our economies have the necessary infrastructure, services, and opportunities for our citizens to thrive. And when Tribal Nations and our citizens have economic success, surrounding communities and their citizens share in the benefits. This results in stronger Tribal Nations and a stronger America.

B. Requested Input

The Department of the Treasury ("Treasury") and the Internal Revenue Service ("IRS") have posed numerous questions to Tribal Leaders and the public regarding the Notice of Proposed Rulemaking ("NPRM") to implementation of 26 U.S.C. § 48E(h), the Clean Electricity Low-Income Communities Bonus Credit Program. We address the questions below. Before we do, however, we provide a handful of overarching principles and recommendations for Treasury and IRS to keep in mind as they are integral to and interwoven with our answers to the various questions posed below:

- Treasury and IRS must respect and protect Tribal sovereignty. The agencies must resist the urge to treat Tribal Nations and Tribal entities as akin to nonprofits and other non-Tribal entities for ease of program administration. The agencies must respect and accept at face value the application and attestation materials of Tribal Nations and Tribal entities participating in this program.
- Treasury and IRS must reduce the administrative burden placed on Tribal Nations and Tribal entities. This should include, at a minimum, streamlining the reporting process. This also includes reducing barriers to entry for Tribal Nations and Tribal entities. Tribal economic development is chilled by requirements to meet "shovel-ready" standards for other federal projects. And, particularly for small Tribal Nations and Tribal entities, the burden of proving readiness and proper administration is a distraction from the project itself, drawing capital and human resources away from the actual work that needs to be done.
- Treasury and IRS must strive for equitable distribution of funding. The agencies must continue to consider the chronic historic underfunding of Indian Country projects as a major impetus for expansive opportunities for Indian Country under this project.
- Treasury and IRS must administer the program to maximize flexibility of operation for Tribal Nations and Tribal entities. Operationalizing this guiding principle will take many forms and will vary from applicant to applicant. For some, it may be as simple as shifting deadlines to better accommodate Tribal governmental operations. For others, flexibility requests may be more specialized and complicated. The agencies must work with Tribal Nations and Tribal entities to maximize access to the benefits of a program that was designed with Tribal beneficiaries in mind.
- Treasury and IRS (and the Department of Energy) must liberally and generously provide technical assistance to Tribal Nations and Tribal entities applying for and participating in this program. The NPRM acknowledges that Tribal Nations and Tribal entities are a target population for program participation. However, many Tribal Nations do not have the capacity to navigate complex administrative processes required to apply for a Capacity Limitation allocation and obtain a tax

credit while implementing a costly clean energy project. Treasury and IRS must guarantee accessible technical assistance to facilitate Tribal participation in the program.

II. Questions Posed to Tribal Leaders:

1. The 48(e) program contained a 200 MW set aside for Category 2-Indian Lands. As explained above, this NPRM does not propose set asides for any eligible categories, including for Indian lands. Do Tribes seek a specific set aside for the Indian Lands category for the 48E(h) program in future sub-regulatory guidance and, if so, what should that amount be?

We urge Treasury and IRS to maintain the 200 MW set-aside for projects sited on Indian Lands. In the 48(e) program, the Indian Lands category was underutilized compared to other categories.² In fact, in Program Year 2024, the Indian Lands category was the only category that did not receive a carryover allocation from Program Year 2023.³ This is a disappointing outcome, but the takeaway from the 48(e) program should not be to remove capacity from Category 2 in favor of other categories. Rather, Treasury and IRS must work with Tribal Nations to identify and dismantle barriers that result in underapplication of the program to Indian lands, in accordance with trust and treaty obligations. The transition from the 48(e) program to 48E(h) provides Treasury and IRS a unique opportunity to identify lessons learned and troubleshoot issues arising out of prior implementation to improve program participation going forward in accordance with the directives of Executive Order 14112. We encourage Treasury and IRS to engage in listening sessions, seek direct communication with Tribal leaders and Tribal energy enterprises, and take concrete steps to increase access to Category 2 capacity limitation. Additionally, demand for projects on Indian Lands under the 48E(h) program may exceed previous demand in the first two years of Inflation Reduction Act implementation. For these reasons, we suggest Treasury and IRS maintain the Category 2-Indian Lands set aside of at least 200MW.

Maintaining the set-aside for projects in Indian Country advances Treasury's twin goals of (1) encouraging new market participants and (2) providing social and economic benefits to communities that have been historically overburdened with pollution, adverse human health or environmental effects, and marginalized from economic opportunities.⁴

Indian Country energy projects are classic examples of new market potential.⁵ In the first place, many Tribal Nations are only recently venturing forward to establish Tribal utilities capable of owning and

² See Theodore Lee & Anisha Steephan, *Analysis of the First Year of the Low-Income Communities Bonus Credit Program: Building an Inclusive and Affordable Clean Energy Economy* tbl. 1, U.S. Dep't of the Treasury (Sept. 4, 2024), <https://home.treasury.gov/news/featured-stories/analysis-of-the-first-year-of-the-low-income-communities-bonus-credit-program-building-an-inclusive-and-affordable-clean-energy-economy> (hereinafter "First Year Report") (identifying only 40.53 MW of allocated capacity to Category 2 facilities in Program Year 2023 out of a maximum 200 MW).

³ Off. of Assoc. Chief Couns., Internal Rev. Serv., Announcement 2024-25, *Low-Income Communities Bonus Credit Program Unallocated Environmental Justice Solar and Wind Capacity Limitation Carryover from the 2023 Program Year to the 2024 Program Year* (2024), <https://www.irs.gov/pub/irs-drop/a-24-25.pdf>.

⁴ First Year Report.

⁵ See e.g. *Emerging Market Economy: Definition, How it Works, and Examples*, Investopedia (July 8, 2024), <https://www.investopedia.com/terms/e/emergingmarketeconomy.asp> ("An emerging market economy is the economy of a developing nation that's becoming more engaged with global markets as it grows.").

operating energy projects, though some Tribal utilities have been around for a number of years.⁶ Tribal capacity to enter the market continues to improve and solidify. Tribal land contains the potential for an estimated 5% of all renewable energy resources.⁷ Thus, not only do Indian Country projects have the potential to serve Tribal citizens and communities, which is a goal in and of itself, but some may be able to serve an even broader population and pay forward benefits beyond the immediate community.

In addition, Tribal communities have not only been historically overburdened with pollution and subjected to adverse human health and environmental effects, but research indicates that Tribal communities remain overburdened today. Over four hundred thousand Native people live within three miles of a Superfund site—sites that contaminate local air, water, and natural resources.⁸ Though air pollution in the United States has, on the whole, declined for the last two decades, these environmental benefits have not been felt equitably Tribal Nations—that is, Tribal communities are bearing an increasing burden of air pollution.⁹ Moreover, Tribal Nations' lands are specifically targeted for unwanted land uses, including dump sites, nuclear and weapons testing facilities, and resource extraction.¹⁰

2. The NPRM describes a list of clean energy facility categories that qualify for the Program under section 48E(h) and provides a process for addition of more facility categories. What questions or comments do Tribes have regarding the list and/or the process for adding further facility categories?

We request the addition of biomass facilities to the list. Some of our member Tribal Nations have already explored and engaged with biomass energy technology.

3. The NPRM describes Treasury's intent to deprioritize review of applications for an applicable facility that together with other qualified facilities (1) share a point of interconnection, (2) produce electricity using the same technology, (3) are owned by the same taxpayer, and (4) have an aggregate total maximum net output equal to or greater than five megawatts (alternating current). What questions or recommendations do Tribes have regarding this requirement?

We suggest the agencies clarify the intended meaning of the “and” before the fourth element. In other words, as currently drafted, it is not clear whether a facility that meets *any one* of the four criteria is automatically deprioritized or whether only a facility that meets *all four* of the criteria is deprioritized. For some Tribal Nations, the applicant could be the same for multiple projects (particularly on Indian Lands) and, because the type of energy resources available is often dictated by the local environment, we are

⁶ See W. Area Power Admin. Renewable Res. Program, *Tribal Authority Process Case Studies: The Conversation of On-Reservation Electric Utilities to Tribal Ownership and Operation* (2010), https://www.energy.gov/sites/prod/files/2016/04/f30/tribal_authority_case_studies_report.pdf. Some Tribal Nations have previously tried to develop energy utilities but have met insurmountable obstacles, usually regulatory hurdles imposed by the federal government.

⁷ U.S. Dep't of Energy Off. of Indian Energy, *Developing Clean Energy Projects on Tribal Lands: Data and Resources for Tribes* (2013), <https://www.nrel.gov/docs/fy13osti/57748.pdf>.

⁸ Ashwin Telang, *Denormalizing Air Pollution and Uplifting Indigenous Groups*, N.Y.U. Env. L. Rev. Syndicate (2023), <https://nyuelj.org/2023/04/denormalizing-air-pollution-and-uplifting-indigenous-groups/>.

⁹ Linda Poon, *As Air Pollution Declined, Tribal Nations Got Left Out*, Bloomberg (Mar. 23, 2022), <https://www.bloomberg.com/news/articles/2022-03-23/study-documents-air-pollution-burden-on-tribal-lands>.

¹⁰ Jamie Vickery & Lori M. Hunter, *Native Americans: Where in Environmental Justice Research?*, 29 Soc'y & Nat. Res. Int'l J. 36 (2015).

concerned a de-prioritization strategy founded on meeting any one criteria may negatively affect some Tribal energy development projects that share applicants or technologies, for example.

Because of this concern, we also recommend that applicable facilities that are either (1) owned by Tribal Nations or Tribal entities or (2) located on Indian lands be exempt from any de-prioritization criteria. As indicated in our response to Question 1, we are gravely concerned that the 48E(h) program will not be implemented in a way that facilitates program participation by a high-priority community—Tribal Nations. Thus, any de-prioritization mechanism should recognize the need to eliminate all barriers to access for Tribal entities and exempt Tribally-owned facilities or facilities located on Indian land from the criteria.

4. To establish project viability, the NPRM proposes to require applicants to submit certain information, documentation, and attestations that are similar to the section 48(e) program. Are modifications necessary with respect to any of the application requirements used for the 2023 and 2024 program years to ensure access by Tribes and Tribal entities with viable projects? Can certain facility categories, such as those on Indian lands, demonstrate project viability with other types of documentation? If so, please share your recommended documentation.

We urge Treasury and IRS to respect Tribal sovereignty and implement the principles of Executive Order 14112 by accepting Tribal resolutions providing attestations or certifications for documentation requirements, including project viability. For example, with respect to verifying household eligibility for Category 4 facilities, that the NPRM would authorize state agencies to verify household participation in the state's own needs-based programs.¹¹ We request that Treasury and the IRS provide similar treatment to Tribal Nations; *i.e.*, Tribal Nations should be able to attest or certify that the households involved in a Category 4 project are qualifying households. This and other documentation requirements should not require extensive documentation or burdensome data collection other than a simple attestation submitted by the Tribal Nation or Tribal entity. Although the agencies' concern about self-attestations exposing the program to quality control and program fraud challenges may be well-founded across the general population of corporate entities seeking tax reductions under this program, the same fears are not founded as to Tribal Nation governments. Federally recognized Tribal Nations have a government-to-government relationship with the United States and, like the states and territories, our word is that of a sovereign and is to be respected. If the agencies decide to proceed with plans to generally disallow attestation as an acceptable form of documentation, we strongly urge the agencies to establish an exemption for Tribal Nations and Tribal entities to provide attestations.

5. The NPRM addresses the filing process for disregarded entities and clarifies that Tribal enterprises that are federally chartered may continue to file as a Tribal enterprise. What questions or recommendations do you have regarding these proposed rules?

We urge Treasury and IRS to finalize its recently released proposed regulations on entities chartered and wholly owned by a Tribal Nation.¹² The recently released guidance treats entities wholly owned Tribal Nation as an agency or instrumentality for purposes of claiming energy credits using the elective pay process. This treatment will allow for the wholly owned entity to make an election and file a return avoiding

¹¹ Guidance on Clean Electricity Low-Income Communities Bonus Credit Amount Program, 89 Fed. Reg. 71,193, 71,200 (Sept. 3, 2024). Lest we be misunderstood, we strongly urge the agencies to avoid implementing a state pass-through verification system for Tribes and Tribal entities. First, Tribal Nations' relationships are with the federal government, not the states. Second, federal-state-Tribal pass-through mechanisms are notorious for processing delays, administrative burdens, fraught state-Tribal relationships, and other negative externalities for Tribal Nations.

¹² 89 Fed. Reg. 81871 (Oct. 9, 2024).

some of the potential challenges of mixing enterprises and Tribal administration. We need the regulations to become final, so there is certainty, and we need the NPRM to comport with this new rule.

6. A Category 3 facility would not need to be installed directly on the building to be considered installed on a Qualified Residential Property (QRP) if the facility is installed on the same or an adjacent parcel of land as the QRP and the other requirements to be a Category 3 facility are satisfied. What questions or comments do Tribes have regarding these installation parameters for eligible single-family projects? If customization of the installation requirements is suggested for single-family projects, what parameters do you recommend?

We are concerned that the agencies' proposed requirement that a facility be installed on, at a minimum, land adjacent to the qualified residential property is too restrictive. Specifically, we recommend that the agencies loosen this requirement on Indian lands. A legacy of harmful federal policies has led to "checkerboarding" of Indian land, meaning that Indian land across the United States is divided up into parcels that could be owned by private individuals, held in trust by the United States for individual Indians, owned by a Tribal Nation, held in trust by the United States for a Tribal Nation, and even other forms of ownership. Because of checkerboarding, an adjacency requirement may not be feasible for some locations. We urge the agencies to take a more expansive approach to the siting of facilities on Indian Country lands. The determination of reasonable proximity is an assessment the agencies should make on a case-by-case basis, and a standard that they should consider waiving for Indian lands.

7. For Category 3 projects, the NPRM proposes a discount rate of 30%, up from 20% in the previous program to establish financial benefits for low-income residential building projects. What questions or recommendations do Tribes have regarding these proposed rules?

We urge Treasury and IRS to consider alternative methods of establishing financial benefits for low-income residential building projects owned by Tribal Nations or Tribal entities or located on Indian land. We recommend that Tribal Nation/entity projects especially, a presumption of financial benefit be applied, given the aforementioned historic treatment of Tribal Nations and the agencies' trust and treaty obligations. This is yet another situation in which the directives of E.O. 14112 should be applied, so that Tribal Nations are accessing maximum benefits under this program

8. What other questions or recommendations, if any, do Tribes have regarding the NPRM?

Template Benefits Sharing Agreement: Proposed § 1.48E(h)-1(e)(6)(i) would require Category 3 facility owners to prepare a Benefits Sharing Agreement. With respect to the Benefits Sharing Agreement and any other legal and/or contractual documents the agencies might require between applicants and beneficiaries, we urge the agencies to draft and supply template agreements for applicants to use. Some Tribal Nations have limited capacity to retain the legal counsel necessary to produce these materials. Agencies must provide the vital technical assistance of demonstrating how to present the sought information, rather than asking applicants to guess and risk losing out on the tax credit.

Relatedly, the agencies must consider whether additional streamlining can be offered to Tribal Nations in this space, such as waiving certain requirements and/or shortening/simplifying required documents.

Greenhouse Gas Emissions: Among projects not serving Indian Country, we urge the agencies to prioritize projects with greater negative greenhouse gas (GHG) footprints, if any such projects currently exist. As the agencies certainly already know, a GHG footprint indicates that the project is removing more GHG from the atmosphere than it is contributing. This is imperative development to slow the pollution of our atmosphere and to lessen the severity of global warming. Because Tribal Nations are some of the most climate

change-exposed demographics, our communities are (and will continue to be) the first and hardest hit by atmospheric change.¹³ As such, the federal government must take action to lessen these impacts. However, we urge the agencies to prioritize Indian Country economic development ahead of any prioritization of negative GHG footprints. Tribal sovereignty must always be honored and our communities first, and more urgently, need to achieve a state of economic resiliency before we can prioritize projects directed at climate-resiliency.

III. Other Questions Posed in the NPRM

The Treasury Department and the IRS request comment on (1) whether a 30-percent bill credit discount rate would be feasible for Category 4 facilities, (2) whether a rate of 30 percent or greater would be feasible if transitioned in over time (that is, an increase in the minimum bill credit discount for each subsequent program year) and, if so, what would be an appropriate rate of transition, (3) how would this discount rate impact different eligible technologies, and (4) the impact of a minimum bill discount credit rate for Category 4 facilities that is different from benefit requirements for existing or planned state programs (for example, state-level community solar programs supported by the U.S. Environmental Protection Agency's Greenhouse Gas Reduction Fund).

We support the maximization of individual household benefits for those included in qualified low-income economic benefit projects, particularly in those scenarios in which Tribal households are included in participating projects administered by non-Tribal entities. We do, however, encourage Treasury and IRS to consider, on a case-by-case basis, proposals from Tribal entities for alternative methods of meeting the financial benefits requirement for Category 4 facilities or whether this requirement can be waived entirely for Tribal entities.

The Treasury Department and the IRS request comments on (1) what alternative methods for delivering financial benefits should be considered to provide equivalent financial benefits in cases in which bill credit discounts are not available or are not feasible for covered technologies; (2) how these alternative mechanisms should be verified to ensure they provide the required financial benefits to Qualifying Households; (3) whether these alternative mechanisms are feasible for multiple technologies; and (4) what requirements can be put in place to address any uncertainties related to the potential treatment of financial benefits as income for Federal income tax purposes or the potential impact on eligibility for public assistance benefits.

Although we appreciate the agencies' clear language in the proposed rule that electricity savings to individual households will not adversely affect those households' eligibility for income-defined housing programs, we are concerned that the realization of certain projects, particularly in Category 3, may nevertheless expose individual households to adverse income determinations in the calculation of their federal income tax liability and eligibility for other income-defined benefit programs such as Supplemental Nutrition Assistance Program (SNAP), Medicaid, Temporary Assistance of Needy Families (TANF), Social Security Income (SSI), the Low-Income Home Energy Assistance Program (LIHEAP), and the Earned Income Tax Credit, to name but a few. In the case of Category 3 projects for which electricity bill savings cannot be applied directly at the household level, presumably the facilities could provide cash to those households to satisfy the benefit sharing requirements of the program. It is this receipt of cash that we are concerned will count as income for personal income liability ("gross income means all income from whatever source derived") and for (dis)qualification from the programs mentioned above. The agencies

¹³ See generally Kathryn Norton-Smith et al., *Climate Change and Indigenous Peoples: A Synthesis of Current Impacts and Experiences* (2016), https://www.fs.usda.gov/pnw/pubs/pnw_qtr944.pdf.

should clarify that electricity bill benefits received at the household level shall not be treated as income by the agencies for purposes of personal income liability determinations or for any income-defined program over which the agencies have authority.

With respect to the agencies' questions about verifying household receipt of these benefits, we again urge the agencies to minimize administrative burden for Tribal Nations and Tribal entities. Self-attestation should suffice.

The Treasury Department and the IRS request comment on whether other affordable housing programs should be added to the list of eligible programs, and specifically request comment on whether and under what conditions certain state programs should be added to the list.

The only Tribal-specific housing programs included on the list of affordable housing programs for purposes of meeting the requirements of a Category 3 facility are those administered pursuant to the Native American Housing Assistance and Self-Determination Act. We urge Treasury and IRS to add other Tribal-specific affordable housing programs to the list, such as the Tribal HUD-VA Supportive Housing program, as well as affordable housing programs administered by Tribal governments, which may or may not be federally funded.

Conclusion

We appreciate the opportunity to provide comment on this NPRM. As we continue our pursuits of Nation rebuilding, we look forward to continued dialogue and engagement with Treasury to ensure that Tribal Nations can fully utilize this opportunity to elect direct payment of tax credits to offset the costs of constructing clean energy projects on our lands. These actions are necessary to ensure the success of the direct payment of these credits to Tribal Nations and fulfill the intent of the IRA and the economic and clean energy development goals of this Administration. Should you have any questions or require further information, please contact Ms. Liz Malerba, USET SPF Director of Policy and Legislative Affairs, at LMalerba@usetinc.org or 615-838-5906.

Sincerely,



Chief Kirk Francis
President



Kitcki A. Carroll
Executive Director