Elective Pay Benefits & Considerations for Local Governments

Inflation Reduction Act - Clean Energy Tax Credits

October 25, 2023

CENTRAL PINES
REGIONAL COUNCIL

Contents

CENTRAL PINES

REGIONAL COUNCIL

Who Are We?

Ryan Murphy, Esq. is an experienced advisor with 13 years of engagement with NC's local, state, and federal government systems. As a Government Affairs Advisor for Strategics, Ryan's focus areas include energy, infrastructure, defense, veterans' affairs, and an array of other issues. A native of Fayetteville, NC, Ryan was previously a Congressional Caseworker for NC-08, a private practice business law attorney, and federal advocate for electric infrastructure and information technology industrials. He has worked on federal policy and funding initiatives for coalition partners ranging from Fortune 500 companies to rural and underserved local governments.

Strategics Consulting is a federal lobbying firm that specializes in working on behalf of local governments, including but not limited to a thorough and deep understanding of how to be most effective at winning federal competitive grants. With offices in N.C. and D.C., and seasoned professionals offering decades of experience, the Strategics team is fully prepared to help clients navigate the landscape of federal funding opportunities, legislative actions, and federal agency initiatives. Strategics provides these services to Central Pines Regional Council.

Laura Combs
Eagle Solar & Light

EAGLE SOLAR
& LIGHT

Laura Combs is a senior sales associate in Eagle Solar & Light's Durham, North Carolina office. She has a Graduate degree in Urban and Regional Planning, with a specialty in Environmental Planning. In North Carolina, Laura continues to advocate at the General Assembly to protect the environment. Since joining Eagle Solar & Light over three years ago, Laura has focused on helping nonprofits and historically marginalized communities to access solar energy. She has been recognized for her efforts by the North Carolina Sustainable Energy Association's (NCSEA) 2022 Diversity and Inclusion in Sustainable Energy Award and is a member of the NCSEA's Board of Directors.

Eagle Solar & Light (ESL) was founded in Birmingham, Alabama, in 2016 by Sam Yates, with its Durham, North Carolina, office opening in 2018 and its Asheville office opening in 2021. ESL is a commercial-focused solar installer, working in the local government, nonprofit and business sectors, with an emphases on maximizing incentives and helping underserved communities access solar energy. We have installed over 11MW of solar energy, from rooftop systems to ground mounts, with some of those installations purchased and some leased. ESL was the first company approved by the North Carolina Utilities Commission to offer solar leasing and the only company in combination with our leasing partner, Sunwealth, to have executed leases.

What is Elective Pay?

Elective pay – also commonly referred to as “direct pay” – makes certain clean energy tax credits effectively refundable. With elective pay, an eligible entity that qualifies for a clean-energy investment tax credit (ITC) can notify the IRS of their intent to claim the credit and file an annual tax return to claim elective pay for the full value of the credit. The IRS would then pay the local government the value of the credit.

Elective Pay extends clean energy tax credit benefits available to those historically excluded from claiming them, such as state and local governments, nonprofit organizations, rural electric cooperatives, public utilities, and many more. Since these tax-exempt and governmental entities are not subject to federal income tax, they could not previously claim the credits, meaning these benefits would only be available to private energy developers.

Eligible Local Governments

"States, political subdivisions, and their agencies and instrumentalities are all eligible for elective pay. This includes **cities, counties, and other political subdivisions** such as water districts, school districts, economic development agencies, and public universities and hospitals."

Combining with other government funding: As local governments seek benefits from the BIL and IRA programs, there is no prohibition on using elective pay in combination with other federal or state funds. Specifically, grants and forgivable loans would not reduce the tax basis in the investment under the proposed rule, meaning that such entities would get the full benefit of the tax credits, along with other financing, if the grants and loans do not exceed the cost of the investment.

What is the Timeline?

→ Enacted by the IRA ‘22

→ Elective Pay Notice of Proposed Rules published Jun. ‘23

→ Today

→ Final Rules and Application Guidance to be released Dec. ‘23

What Credits are Eligible for Local Governments?

Elective pay applies to 12 of the 19 clean energy tax credits that the IRA extended and restructured. They include the IRA Section 45 [Renewable Electricity Production Tax Credit] and Section 48 [Energy Investment Tax Credit], the incentives for carbon oxide sequestration, and purchases of commercial clean vehicles, such as school buses.

- The **Production Tax Credit (PTC)** provides an ongoing tax credit for the first ten years of a project based on the amount of renewable energy produced in each year and sold to an unrelated person
- The **Investment Tax Credit (ITC)** is a one-time tax credit based on a percentage of the qualifying costs of a project

12 Credits Eligible for Elective Pay

Production Tax Credits (PTC)	Investment Tax Credits (ITC)
Renewable Electricity Production Tax Credit (Section 45)	Energy Investment Tax Credit (Section 48)
Carbon Capture and Sequestration Tax Credit (45Q)	Advanced Energy Project Credit (48C)
Nuclear Power Production Tax Credit (45U)	**Clean Electricity Investment Tax Credit (48E)**
Clean Hydrogen Production Tax Credit (45V)	**Commercial Clean Vehicle Credit (45W)**
Advanced Manufacturing Production Tax Credit (45X)	Alternative Fuel Refueling Property Credit (30C)
Clean Electricity Production Tax Credit (45Y)	
Clean Fuel Production Credit (45Z)	**Bold** = New IRA Credit Red = Relevant for Local Governments

Project Examples Per Relevant Credit

PTC for Electricity from Renewables (§ 45, pre-2025) *re: Energy Generation and Carbon Capture*

- For production of electricity from eligible renewable sources, including wind, biomass, geothermal, solar, small irrigation, landfill and trash, hydropower, marine and hydrokinetic energy
- Credit Amount (for 2022): 0.55 cents/kilowatt (kW); (1/2 rate for electricity produced from open loop biomass, landfill gas, and trash); 2.75 cents/kW if Prevailing Wage and Apprenticeship (PWA) rules are met

ITC for Energy Property (§ 48, pre-2025) *re: Energy Generation and Carbon Capture*

- For investment in renewable energy projects including fuel cell, solar, geothermal, small wind, energy storage, biogas, microgrid controllers, and combined heat and power properties
- Credit Amount: 6% of qualified investment (basis); 30% if PWA requirements met

Project Examples (cont.)

Clean Electricity ITC (§ 48E, 2025 onwards) *re: Energy Generation and Carbon Capture*

- Technology-neutral tax credit for investment in facilities that generate clean electricity and qualified energy storage technologies. Replaces § 48 for facilities that begin construction and are placed in service after 2024
- Credit Amount: 6% of qualified investment (basis); 30% if PWA requirements met

Credit for Qualified Commercial Clean Vehicles (§45W) *re: Vehicles*

- For purchasers of commercial clean vehicles. Qualifying vehicles include passenger vehicles, buses, ambulances, and certain other vehicles for use on public streets, roads, and highways
- Credit Amount: Up to $40,000 (max $7,500 for vehicles <14,000 lbs)

For example, School district A receives a tax-exempt grant in the amount of $400,000 from a federal agency to purchase electric school bus B. A purchases B for $400,000. A's basis in B is $400,000. B qualifies for the maximum section 45W credit [Commercial Clean Vehicle Credit], $40,000. However, because the amount of the restricted tax-exempt grant plus the amount of the section 45W credit exceeds the cost of B, A's section 45W credit is reduced by the amount necessary so that the total amount of the section 45W credit plus the restricted tax-exempt amount equals the cost of B. A's section 45W credit is therefore reduced by $40,000 to zero.

Now assume that the grant above is in the amount of $300,000. A purchases B using the grant and $100,000 of A's unrestricted funds. A's basis in B is $400,000 and A's section 45W credit is $40,000. Since the amount of the restricted tax-exempt grant plus the amount of the section 45W credit ($340,000) is less than the cost of B, A's 45W credit under section 6417(b)(6) is not reduced.

What is the Application Process?

How do I make an elective payment election and receive an elective payment?

Before filing tax returns, owners must register their clean energy investments through an IRS online portal, which will generate a registration number that they will use in their tax forms.

Steps in making a successful elective payment election:

(1) Identify and pursue the qualifying project or activity. You will need to know the applicable credit for which you intend to earn and use elective pay.

(2) Determine your tax year, if not already known. Your tax year will determine the due date for your tax return.

Application Process (cont.)

(3) Complete pre-filing registration with the IRS. This will include providing information about applicable credits you intend to earn, each eligible project/property that will contribute to the applicable credit, among other information required. Upon completing this process, the IRS will provide you with a registration number for each applicable credit property. You will need to provide that registration number on your tax return as part of making the elective pay election.

(4) Satisfy all eligibility requirements for the tax credit and any applicable bonus credits, if applicable, for a given tax year. For example, to claim an energy credit on a solar energy generating project, you would need to place the project in service before making an elective payment election.

File the required annual tax return by the due date (or extended due date) and make a valid elective payment election.

What is the Pre-Filing Registration Process?

Pre-filing registration is a required electronic process for all entities that intend to make an elective payment election. It is designed to expedite the processing of returns and prevent improper payments.

Required Info:

- List all applicable credits you intend to claim on your income tax return
- List each applicable credit property that contributed (or will contribute) to the determination of such credits
- Provide any other specific information required for each applicable credit property

What is the result of the elective pay pre-filing registration process? After completing the process, the IRS will review the information provided and will issue a separate registration number for each applicable credit property for which the applicable entity or electing taxpayer provided sufficient verifiable information.

Application Process Overview

Login.gov
Applicant registers for Login.gov to access Applicant Portal

Applicant Registration
Applicant completes portal registration including organization details

Application for Allocation
Applicant applies for an allocation of Capacity Limitation by providing facility details and required documentation

DOE Review
DOE Review Team conducts initial review of application, requests additional information, if applicable, and provides recommendation to IRS

IRS Review and Determination
IRS reviews recommendation and makes allocation determination

Placed In Service Requirements
Once the facility that has received an allocation has been placed in service, Applicant completes the Placed in-Service step of the process.

DOE Review
DOE Review Team conducts initial review, requests additional information, if applicable, and provides eligibility recommendation to IRS

IRS Review and Determination
IRS reviews recommendation and makes eligibility determination.

How Do Local Governments Maximize Value?

IRA Solar Investment Tax Credit

- 30% Baseline
- 10% Low-Income Communities Adder (Category 1)
- 20% Low-income Residential Building or Low-income Economic Benefit Project Adder (Categories 3 and 4)
- Once Category 1, 3 and 4 adders are awarded – four years to place project in service
- 10% Energy Communities Adder
- 10% Domestic Content Adder

30% Baseline: Domestic Content Requirement

- Required for Nonprofits/Tax-Exempt Orgs to get full Direct Payment (Elective Payment)
- Waivers may be possible because requirements can't be met yet
- Visit ESL Blog for more insights: www.eaglesolarandlight.com/esl-blog

Year	% Domestic Content Requirement	Direct Payment % if Domestic Content Requirement Not Met
2023	0	30%
2024	100% Steel and Iron; 40% Manufactured Products (e.g., panels) in the US	20%
2025	100% Steel and Iron; 45% Manufactured Products (e.g., panels) in the US	15%
2026	100% Steel and Iron; 50% Manufactured Products (e.g., panels) in the US	0%
2027 – 2032	100% Steel and Iron; 55% Manufactured Products (e.g., panels) in the US	0%

Low-Income Communities 10% Adder (Cat 1)

- Available through 2024
- 2023 prime application window: October 19 – November 18
  - If oversubscribed, then lottery
  - If undersubscribed, then rolling applications after November 18
- 2024 procedures TBD
- Do not place a project in service until notified that 10% is awarded

Low-Income Adder Timeline

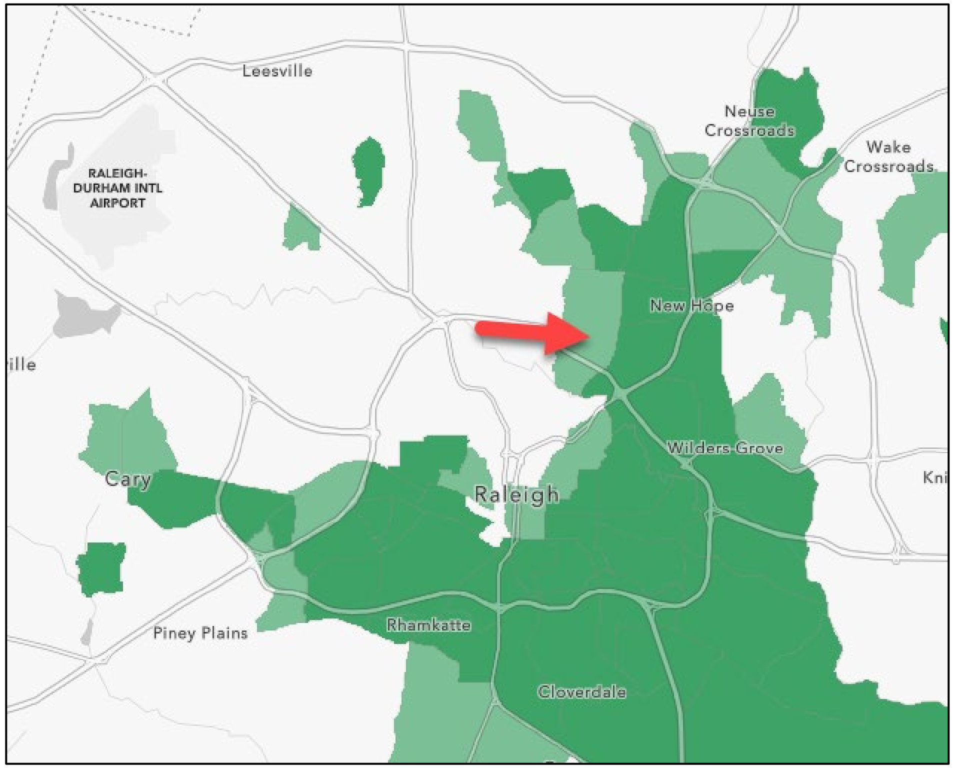
2023 Program Timeline

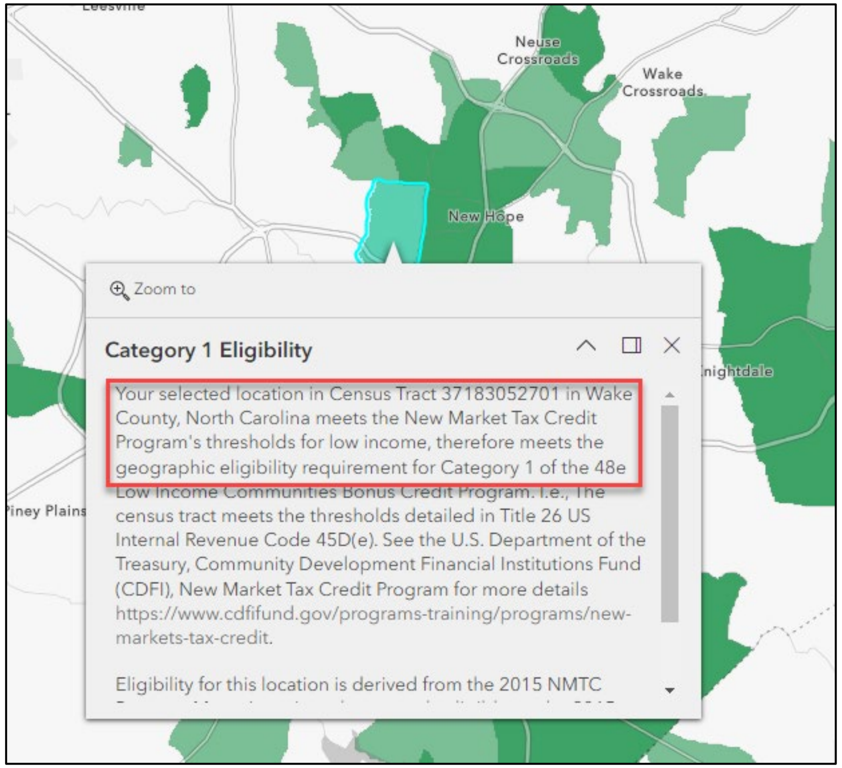
9/29	• Informational Webinar • Applicant Checklist published
9/29	• Support Desk Opens
10/10	• FAQs, User Guide, and webinar recording published
10/19	• Applicant Portal Opens • Initial 30-day application window begins
11/18	• Last day of 30-day application window • Rolling application submissions may continue
11/20	• Lotteries are conducted (if applicable) • Program Capacity Dashboard published

IRS Allocation letters will begin to be issued as soon as possible this calendar year.

Low-Income Communities 10% Adder (cont.)

- Who is eligible?
  - Eligibility is dependent upon the project location. See DOE mapping tool
  - Visit ESL blog for click-by-click instructions: www.eaglesolarandlight.com/esl-blog





U.S. DEPARTMENT OF ENERGY

Low-Income Communities Bonus Credit Program

NREL

LEGEND

Category 1 Eligibility

Tract Status

Census tracts that meet the New Market Tax Credit Program's threshold for Low Income

Additional Selection Criteria | Geographic Option 1 | CEJST Energy

Tract Status

Census tracts that meet the Climate and Economic Justice Screening Tool's threshold for disadvantage in the Energy Burden category

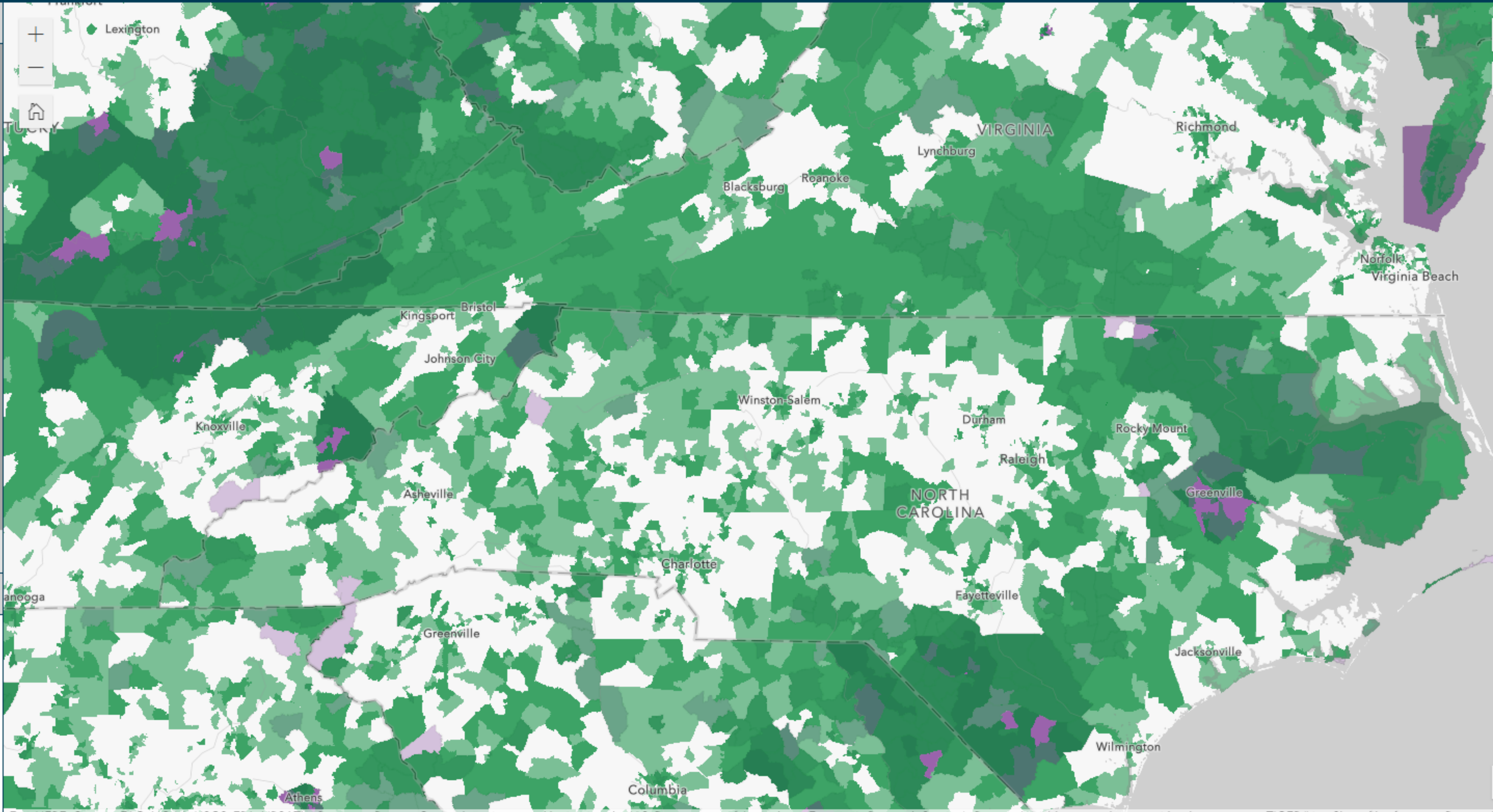
Additional Selection Criteria | Geographic Option 2 | Persistent Poverty County

County Status

Counties that meet the USDA's threshold for Persistent Poverty

MAP LAYERS

- [x] Category 1 Eligibility
- [x] Additional Selection Criteria | Geographic Option 1 | CEJST Energy
- [x] Additional Selection Criteria | Geographic Option 2 | Persistent Poverty County



Esri, HERE, Garmin, FAO, NOAA, USGS, EPA, NPS | The Persistent Poverty County layer is created by joining the U.S. Department of Agriculture, Economic Research Service's Poverty Area Measures dataset, with relevant county TIGER/Line Shapefiles from... Powered

Last Updated: September 29th, 2023
Next Update Expected: November 2023

Disclaimer
DOE Low-Income Program Landing Page
Source Data Files

Low-Income Communities Residential Building (Cat 3) and Low-Income Economic Benefit Project (Cat 4) 20% Adders

- Available through 2024
- 2023 prime application window: October 19 – November 18
  - If oversubscribed, then lottery
  - If undersubscribed, then rolling applications after November 18
- 2024 procedures TBD
- Do not place a project in service until notified that 10% is awarded

Residential Building (Cat 3) and Economic Benefit Project (Cat 4) Adders (cont.)

- Category 3
  - HUD Projects
  - USDA Projects
  - VA Projects
  - More
- Category 4
  - Based on Median Family Income
  - See DOE FAQs for more info

Coordination with Solar for All Funding and NC Clean Energy Fund (NCCEF)

- EPA's "Solar for All" program is focused on housing for low-income areas. Category 3 and 4 projects could be covered by Solar for All Funding
- Solar for All awarded late summer 2024
- NCDEQ and the NCCEF have filed a joint application to receive $250 million in funding
- Three areas of focus:
    1. Single Family Homes
    2. Multi-Family Homes
    3. Community Solar/Energy Storage Projects
- Leveraging funds is critical and includes lease options

Leasing Rules

- Lessors are approved by the North Carolina Utilities Commission (NCUC)
- NCUC can examine all leases
- Eagle Solar & Light and Sunwealth, our capital partner, have only executed leases registered with NCUC
- Helpful for organizations who do not want to allocate full funding of solar

IRA Energy Communities 10% Adder

- Brownfield Site (More than 500 in NC)
- Census tract or directly adjoining tract with Coal-fired Electric Generating Utility retired after 2009
- Solar installer must meet DOE apprenticeship and wage requirements
- Apprenticeship Requirements:
  - Construction beginning 2023: 12.5% of construction must be completed by apprentices
  - Construction after 2023: 15% of construction must be completed by apprentices

Energy Community Tax Credit Bonus

LEGEND

Coal Closure Energy Communities

Tract Status

- Census tract directly adjoining a census tract with a coal closure
- Census tract with a coal closure

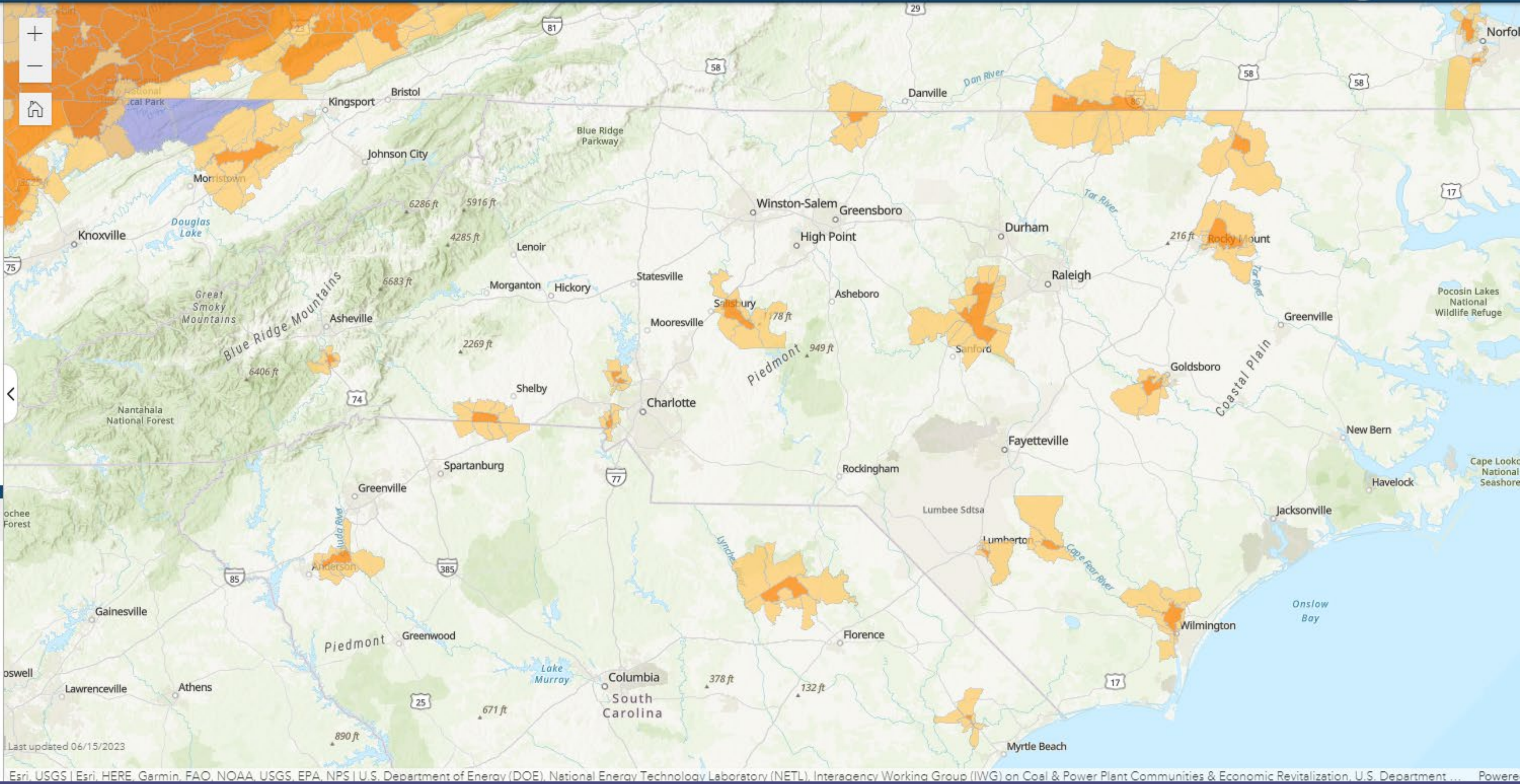
MSA/Non-MSAs that are Energy Communities

Status

- MSAs/non-MSAs that meet both the Fossil Fuel Employment (FEE) threshold and the unemployment rate requirement

MAP LAYERS

- Coal Closure Energy Communities
- MSA/Non-MSAs that are Energy Communities
- MSAs and Non-MSAs that only meet the Fossil Fuel Employment Threshold



U.S. DEPARTMENT OF ENERGY

Energy Community Tax Credit Bonus

LEGEND

Coal Closure Energy Communities

Tract Status

- Census tract directly adjoining a census tract with a coal closure
- Census tract with a coal closure

MSA/Non-MSAs that are Energy Communities

Status

- MSAs/non-MSAs that meet both the Fossil Fuel Employment (FEE) threshold and the unemployment rate requirement

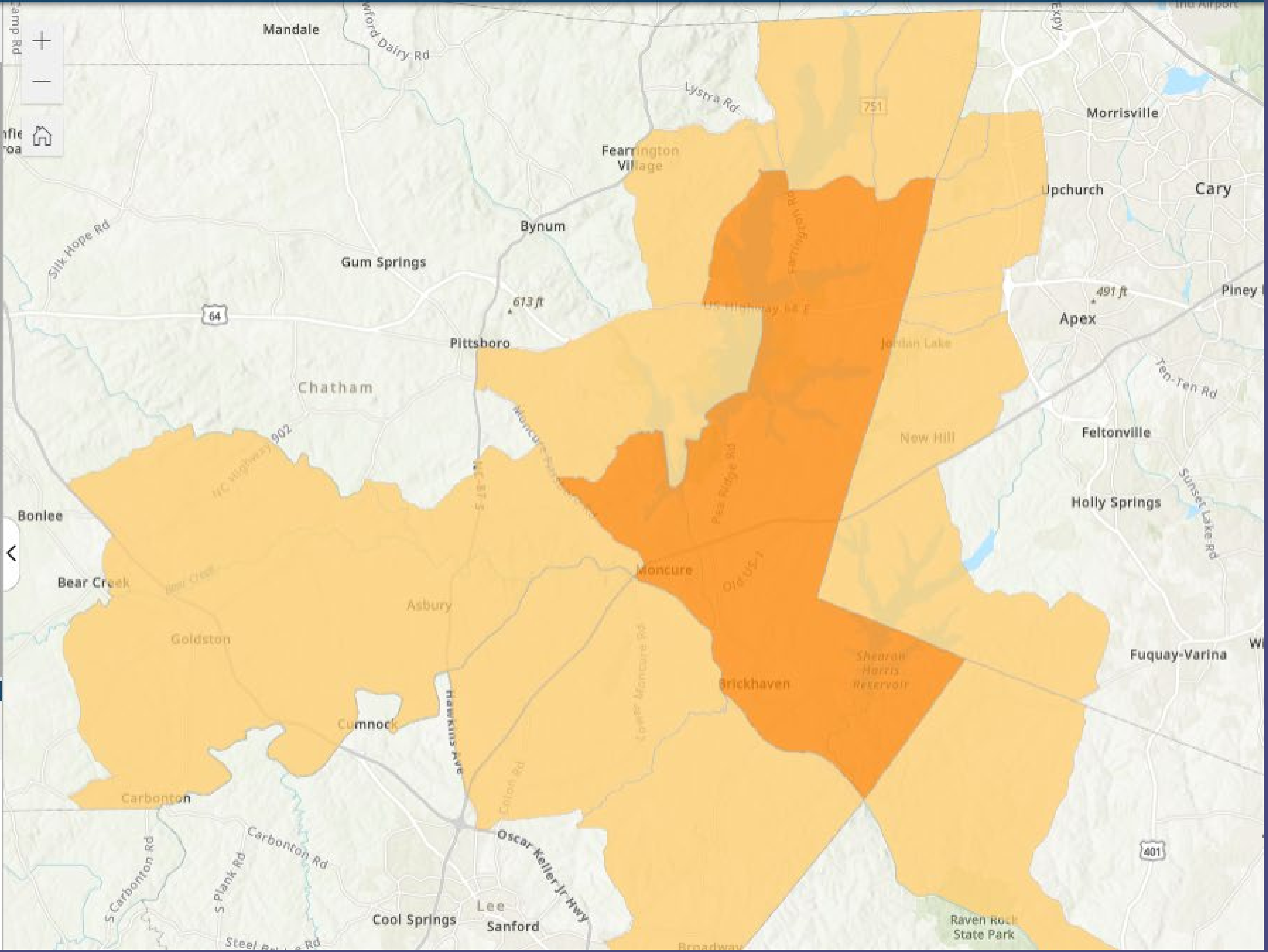
MSAs and Non-MSAs that only meet the Fossil Fuel Employment Threshold

Label_FEE

- only meets the FFE threshold (not an energy community)

MAP LAYERS

- Coal Closure Energy Communities
- MSA/Non-MSAs that are Energy Communities
- MSAs and Non-MSAs that only meet the Fossil Fuel Employment Threshold



IRA Domestic Content 10% Adder

- All steel and iron manufacturing processes must be in U.S.
- Percentage of U.S. manufacturing for components, varies by year (shown next slide)
- Full value of the adder possible if meet domestic content requirements and one of the following:
  - Less than 1 MW
  - Construction began before January 29, 2023
  - Satisfies wage and apprenticeship requirements
  - If one of the three requirements is not met, then 2% awarded

IRA Domestic Content 10% Adder (cont.)

Year	% Domestic Content Requirement	Direct Payment % if Domestic Content Requirement Not Met
2023	0	30%
2024	100% Steel and Iron; 40% Manufactured Products (e.g., panels) in the US	20%
2025	100% Steel and Iron; 45% Manufactured Products (e.g., panels) in the US	15%
2026	100% Steel and Iron; 50% Manufactured Products (e.g., panels) in the US	0%
2027 – 2032	100% Steel and Iron; 55% Manufactured Products (e.g., panels) in the US	0%

Elective Pay Calculation Example

IRA Item	Amount
Cost of 100 kW Rooftop Solar Installation (paid to installer before federal reimbursement)	$200,000
30% Elective or Direct Payment	$60,000
10% Low-Income Adder	$20,000
10% Energy Communities Adder	$20,000
Total Cost After Federal 50% Direct Payment	**$100,000**

ITC + Domestic Content: A Race Against Time

For tax year 2023, direct pay claimants can receive their full base credit amount regardless of whether they also meet domestic content criteria. In other words, the only consequence of not fulfilling domestic content criteria is that the claimant will not receive the domestic content bonus credit.

- This starts to change in tax year 2024, when direct pay claimants that do not meet domestic content criteria will be penalized with a 10% reduction in their base credit amount.
- In 2025, that reduction in base credit will increase to 15% and in 2026, the base credit amount for direct pay claimants that cannot achieve the domestic content requirements will be reduced by 100%.

This means that local governments and other nontaxpayers seeking the ITC will be required to comply with domestic content requirements starting in 2026. If they can’t, they won’t be able to claim the ITC, even though it is notionally available until 2032.

Solar Leasing vs. Purchasing

Leasing	Purchasing
About 1/3 the cost of the system up front and yearly payments over time	Full cost of system up front (over milestones during installation)
Utility savings > lease cost, meaning partial utility savings	Full utility savings immediately
Includes O&M	O&M can be purchased separately
Includes minimum production guarantee	No production guarantee unless O&M purchased
Includes cost of removal when lease ends	Pay for cost of removal at end of the system’s life

What's Next?

Areas to monitor in final rules expected in Dec. '23:

The IRS will provide more details about the **registration process**, including the online portal and registration numbering.

Allowing entities to **claim direct pay on amended tax returns** – Local governments engaging with elective pay will be new to this type of tax process. Disallowing amended returns would mean that if entities missed the deadline or caught an error on their filing, they would miss out on the entire tax credit in the case of an investment tax credit (ITC), or one year of the production tax credit (PTC).

Allowing **direct pay for partnerships made up of eligible entities –** Under the proposed rules, partnerships between two eligible entities – such as nonprofit organizations and local governments – are not allowed. If allowed, these partnerships would help increase capacity as well as aggregate knowledge and tax experience across the organizations, giving eligible entities more flexibility to develop projects and making clean energy credits more accessible.

Domestic Content Bonus – There is a phaseout date for ITC. Notice 2023-38PDF provides additional information, and we plan for future guidance to address the exceptions process included in the statute.

Key Considerations for Implementation

Timing - What are funds that local governments can receive for projects that have already started/are underway (recoup that value) vs. those that have been recently completed?

- Project must be placed in service before receiving elective pay.
- Project must NOT be placed in service before receiving authorization for a low-income 10% adder.
- Options surrounding installations' up-front costs and reimbursement (NC Clean Energy Fund for Bridge Loans).

What projects can we start to push forward now?

- Material factors in reprioritizing certain clean projects based on the new benefits, including lead time and materials.

How should local governments start to implement long-term planning, including capital investment? What budget items should we should be discussing right now?

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