

Summary of EPA's Proposed Regulations for the Clean Energy Incentive Program (CEIP)

On June 16, 2016, the Environmental Protection Agency (EPA) released a proposed rule for the Clean Energy Incentive Program (CEIP), part of the Clean Power Plan (CPP). The CEIP is a voluntary "matching fund" program that states can use to encourage early investment in eligible renewable energy, as well as investments in demand-side energy efficiency and solar projects that are implemented in low-income communities. A state or tribe that chooses to opt-in to the CEIP may allocate early action emission allowances (in states that choose a mass-based plan) or emission rate credits (ERCs) (in states that choose a rate-based plan) to eligible CEIP projects for the electricity saved or the renewable power produced in 2020 and 2021. Following an award of early action allowances or ERCs by a state or tribe, EPA will provide matching awards (of allowances or ERCs) up to a national limit equal to 300 million short tons of CO₂ emissions.

The proposed rule differs from EPA's earlier CEIP proposal in several significant ways including, but not limited to:

- Solar projects serving low-income communities would be eligible for double allowances or ERCs, in addition to demand-side energy efficiency projects implemented in low-income communities;
- Separate reserves of allowances or ERCs for renewable energy and low-income community projects would be created and states would be prohibited from transferring allowances or ERCs from one reserve to the other; and
- EPA would not create a new definition, nor provide a single definition of low-income community. Rather, states would have flexibility to choose and apply existing definitions used by federal, state, or local governments. For example, EPA proposes four federal low-income standards that would be presumptively approvable if included in state plans: New Market Tax Credits; HUD Qualified Census Tracts; Department of Energy's Weatherization Assistance Program (WAP) Income Guidelines; and Federal Poverty Level Guidelines.



TAKE ACTION ON THE CEIP

EPA is requesting feedback on many critical elements of the Clean Energy Incentive Program. This document is intended to distill some of the key issues contained in the proposed rule and highlight opportunities for stakeholders to provide feedback. **Comments are due on August 29th.**

For questions about the proposed rule or for additional information about how to provide feedback, visit EPA's website <https://www.epa.gov/cleanpowerplan/clean-energy-incentive-program> or contact:

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Division of Matching Allowances and ERCs Between RE and Low-Income Reserves

Proposed Regulation

The matching pool will be divided evenly between a Renewable Energy (RE) reserve and a Low-Income Community reserve, with 50 percent of the matching pool (150 million allowances, or 187.5 million ERCs) made available for eligible CEIP RE projects and 50 percent of the matching pool (150 million allowances, or 187.5 million ERCs) made available for eligible CEIP low-income community projects.

Allowances or ERCs that are designated for one reserve may not be re-designated for the other reserve, (e.g., allowances that are reserved for low-income community projects may not be reallocated to the RE reserve or vice versa). In other words, should one reserve become fully subscribed, the state would not be permitted to move matching allowances or ERCs from the other reserve.



Summary of EPA's Justification For The Proposed Regulation and Request for Comments

The proposal for the 50 percent/50 percent apportionment is based in part upon the EPA's analysis of the potential MWh that may be achieved by wind, solar, geothermal, hydropower, and low-income EE projects in 2020 and 2021. EPA estimates that energy savings from potentially eligible CEIP low-income demand-side EE projects could reach up to 39 million MWh in 2020 and 2021 combined, thus absorbing approximately ten percent of the matching allowances or ERCs provided by the EPA in the matching pool. The EPA estimates that generation from solar projects implemented to serve low-income communities could reach up to 15 million MWh in 2020 and 2021 combined, thus absorbing approximately an additional five percent of the matching allowances or ERCs provided by the EPA in the matching pool.

EPA's analyses do not support the need for a reserve for low-income community projects larger than 150 million allowances/187.5 million ERCs in order to meet demand during the CEIP period, even with the two-to-one award for such projects.

REQUEST FOR COMMENTS:



- EPA seeks comment on all aspects of the proposed 50 percent/50 percent division of the 300 million short ton matching pool into a reserve for RE projects and a reserve for low-income community projects.
- EPA requests information and data that may support a larger reserve for low-income community projects.
- EPA is also seeking comment on an alternative apportionment of the reserves, which would set a "floor" on the portion of the matching pool that would be available for RE projects and low-income community projects and leave a portion of the matching pool available to be apportioned at the states' discretion. For example, 40 percent of every state's pro rata share could be reserved for RE projects and 40 percent could be reserved for low-income community projects, with the remaining 20 percent to be awarded at the state's discretion to any CEIP-eligible project type.

Definition of "Project" for Purposes of the CEIP

Proposed Regulation

The EPA is proposing to clarify that the current term "project" also encompasses programs that result in the deployment of CEIP-eligible solar, wind, geothermal or hydropower generating capacity and the implementation of CEIP-eligible EE or solar programs in low-income communities (i.e., programs that deploy eligible projects).

Summary of EPA's Justification For The Proposed Regulation and Request for Comments

The term "project" as it refers to projects eligible under the CEIP, also refers to programs that implement such projects. Consistent with the final emissions guidelines provisions for ERC issuance, an eligibility application submitted by a project provider under the CEIP may represent either an individual EE/RE project or multiple projects implemented as part of program (i.e., it is not necessary for each project implemented as part of a larger program to submit its own eligibility application).

Eligible CEIP Low-Income Community Projects

Proposed Regulation

EPA is proposing that states have flexibility to determine the types of demand-side EE projects they may deem eligible for CEIP awards, so long as they are implemented in communities that meet the state's approved definition(s) for "low-income community."

States may deem residential and commercial projects to be eligible for CEIP awards, as well as transmission and distribution improvements that reduce electricity consumption on the customer side of the meter (such as conservation voltage reduction).

The EPA is proposing to include solar projects implemented to serve low-income communities that provide direct electricity bill benefits to low-income community ratepayers as eligible for the two-to-one matching award from the reserve established for low-income EE projects.

Summary of EPA's Justification For The Proposed Regulation and Request for Comments

EPA notes that in some instances multi-family housing, group homes, shelters or other temporary housing may be considered commercial entities for utility billing purposes. Excluding these commercial entities from CEIP could keep these residential ratepayers from being eligible under CEIP. Additionally, EPA's experience has been that small businesses, organizations and institutions that work with low-income residents often face similar energy risks (e.g., large bills, disproportionate energy spending, shutoff threats) and experience the same barriers (e.g., lack of capital, lack of expertise, split incentives for renters) as the residential sector. High energy expenses hamper their ability to provide clients with energy, health, educational, housing, legal and other services. Thus, the EPA believes all of these types of EE projects can be designed to benefit low-income communities and ratepayers, and all have the potential to encourage investment in demand-side energy efficiency projects.

For residential projects, the EPA recommends that the state consider projects that adhere to the health and safety standards established by the Department of Energy's Weatherization Assistance Program or comparable standards. For commercial EE projects, the EPA recommends that a state consider projects that reduce electricity demand in buildings and institutions that provide critical services (e.g., community centers, street lighting, health clinics, etc.) within or to low-income communities and/or households. For transmission and distribution improvement projects that reduce energy consumption on the customer side of the meter, the EPA recommends that a state consider improvements that significantly reduce consumer electricity demand within the boundaries of a low-income community or within low-income households.



EPA believes that solar technology — particularly distributed, rooftop, or community solar — is particularly well suited among zero-emitting RE resources to implementation in low-income communities, as it is relatively affordable compared to other distributed RE technologies, it is already widely available for installation, and the primary barriers to deployment are economic rather than technical. Enabling such projects to receive the two-to-one match would serve the same basic purpose of improving cost impacts and expanding compliance opportunities for affected electric generating units under the Clean Power Plan.

REQUEST FOR COMMENTS:



- EPA requests comments on the inclusion of commercial and transmission and distribution projects, and on whether there should be any restrictions on the types of commercial and/or transmission and distribution projects that may qualify.
- The EPA solicits comments on the types of solar technologies and programs that could be eligible for the low-income community reserve of the matching pool, and how states may be able to determine benefits delivered to low-income community ratepayers.
- EPA also solicits comments on whether wind generation, geothermal, or hydropower may provide similar ratepayer benefits to low-income communities.
- EPA is also requesting comments on restrictions or safeguards that may be needed to ensure that projects receiving incentives from the low-income community reserve are limited to those that benefit low-income communities.

Requirement to Establish a Definition of “Low-Income Community”

Proposed Regulation

EPA is proposing that it will neither create a new definition nor provide a single definition of low-income community that it will require states to use. Rather, the EPA proposes to provide states with the flexibility to use existing state or federal definitions that best suit their specific economic and demographic conditions while ensuring that eligible projects and programs receiving incentives are benefitting low-income communities.

Local, state or federal definitions are considered existing if they were established prior to the publication of the final Clean Power Plan regulations on October 23, 2015. Routine updates of underlying federal or state data do not constitute a new definition for the purposes of this action.

If a state includes more than one definition, it must have clear and consistent criteria for applying the multiple definitions. For instance, a state may use one definition for one type of program and another definition for another type of program, but it should not choose between the definitions for a specific program in such a way that would allow for arbitrary inclusion or exclusion of individual projects.

The following existing federal definitions are considered presumptively approvable:

- New Market Tax Credits;
- HUD Qualified Census Tracts;
- Department of Energy’s Weatherization Assistance Program (WAP) Income Guidelines; and
- Federal Poverty Level Guidelines

Summary of EPA’s Justification For The Proposed Regulation and Request for Comments

In establishing requirements for a definition of “low-income community,” the EPA considered several key principles. One principle is a desire to establish requirements that are clear and easy for states to implement as they develop their plans. The EPA believes that use of existing federal and state definitions will provide the most clarity and ease of implementation. Another principle for the Agency is that a state’s definition should provide transparency and consistency for all stakeholders with an interest in the CEIP, including project providers and communities that may benefit from implementation of CEIP-eligible projects. To further these principles, the EPA emphasizes that, by establishing clear definitions for a “low-income community” in the state plan, a state can make the process easier to implement and more transparent for all parties.

EPA agrees with commenters who supported enabling states to use existing low-income definitions, allowing both geographic and household-based definitions, allowing flexibility to address rural and urban areas of each state, and recognizing the existing public benefit programs being run by states and utilities.

EPA states that it is reasonable to enable a state to include more than one definition of “low-income” in its state plan, to allow eligibility for a range of different types of programs (e.g., housing vs. commercial) and geographic scale (e.g., household vs. geographic boundary). Requiring a state to use only one could exclude projects that would be entirely consistent with the purposes of the Clean Power Plan.

At the state level, definitions may include established utility program definitions that have public utility commission (PUC) or state energy office (SEO) approval, eligibility requirements for state tax credits or incentives, or qualification for state administered benefit programs, among others. At the local level, definitions may include established utility program definitions administered by a municipality, a public power entity, a rural electric cooperative or other analogous utility provider not subject to state oversight.

As a state contemplates possible definitions of “low-income community” it may be appropriate to consider the range of factors specific to the state that impact the energy burden on low income ratepayers (e.g., disparities in median income across the state, utility prices, EJ concerns, or state median income in comparison with national median income). This can help states select a definition that maximizes inclusion of communities and households in which there are significant energy burdens and barriers to energy efficiency programs.

REQUEST FOR COMMENTS:



- EPA is requesting further comment on concerns expressed by stakeholders about the appropriateness of using state-based definitions and potential remedies to address those concerns. Specifically, some commenters stated that some state-specific definitions may either exclude some low-income electricity consumers or be overly inclusive of higher-income households or institutions that do not serve low-income residents.
- EPA requests comments on the suitability for a federal plan of the existing federal definitions listed (specifically: NMTTC, HUD Qualified Census Tracts, WAP, and the FPLG), as well as any existing state or local definitions for programs in that state.
- The EPA is requesting comment on other federal level definitions that could be included as presumptively approvable.

Definition of “Commence Commercial Operations” for Purposes of CEIP-Eligible RE Projects

Proposed Regulation

EPA is proposing to replace the term “commence construction” for CEIP-eligible RE projects with the term “commence commercial operation,” i.e. when electricity is available for sale or to generate electricity that receives financial credit through net metering or equivalent policies.

EPA is proposing to revise the date for eligible CEIP RE projects (including those implemented in low-income communities) to commence commercial operation to January 1, 2020.

Summary of EPA’s Justification For The Proposed Regulation and Request for Comments

According to EPA, the change is necessary because “Commence construction” could be understood to encompass such activities as entering into contracts for eligible RE projects. If this were the Agency’s intent, then the effect would be to render many RE projects ineligible as a result of early project development activities that may have occurred prior to the start date of eligibility.

In the case of RE projects looking to become eligible CEIP projects, the date of January 1, 2020 for eligibility for projects that have commenced commercial operations reflects the initial intent of the timing finalized in the Clean Power Plan regulations.

REQUEST FOR COMMENT:

- EPA seeks comment on whether the new proposed approach described, the approach included in the final Clean Power Plan regulations, or a combination of the two approaches, would best serve the goals of the CEIP.



Definition of “Commence Operations” for Purposes of CEIP-Eligible Demand-Side EE Projects

Proposed Regulation

The date of eligibility is no longer tied to the state’s submittal of its CPP plan. CEIP-eligible low-income demand-side EE projects must commence operation on or after September 6, 2018.

EPA is proposing that the term “commence operations” be defined as the date that a CEIP-eligible low-income community demand-side EE project is delivering quantifiable and verifiable electricity savings, i.e. when

the eligible CEIP low-income community demand-side EE project’s electricity savings begin and are measurable is the date when the project commenced operation for the purpose of CEIP eligibility.

Summary of EPA’s Justification For The Proposed Regulation and Request for Comments

The EPA states that the proposal to no longer use the date of final state plan submittal as a potential eligibility start-date would remove a source of uncertainty given the Supreme Court’s stay of the Clean Power Plan.

EPA agrees that while energy efficiency programs can be deployed quickly, adequate ramp-up time must be allowed to thoughtfully design and target programs, and to achieve desired levels of volume. The additional time needed for adequate design and targeting of eligible CEIP low-income community demand-side EE projects is reflected in the eligibility date of September 6, 2018.

REQUEST FOR COMMENT:

- EPA seeks comment on whether the new proposed approach described, the approach included in the final Clean Power Plan regulations, or a combination of the two approaches, would best serve the goals of the CEIP.



Methodology to Determine State's Pro Rata Share of Matching Allowances or ERCs

Proposed Regulation

The 300 million ton matching pool will be apportioned among states based on the amount of reductions from 2012 levels the affected EGUs in the state are required to achieve relative to those in other participating states.

Summary of EPA's Justification For The Proposed Regulation and Request for Comments

Unchanged from EPA's pre-proposal.

According to EPA, the majority of commenters felt that the pro-rata distribution method identified in the final Clean Power Plan regulations, whereby each state's share is based on the amount of reductions from 2012 levels the affected EGUs in the state are required to achieve relative to those in the other CEIP-participating states (80 FR 64830; October 23, 2015), was the appropriate apportionment method.

Provisions for Reapportioning Matching Allowances and ERCs among CEIP-Participating States

Proposed Regulation

EPA is not including reapportionment provisions in the CEIP. In lieu of reapportioning matching allowances or matching ERCs that are not claimed by a state that chooses not to opt-in to the CEIP, the EPA would simply retire these unclaimed matching allowances with all other unused credits on January 1, 2023.

Summary of EPA's Justification For The Proposed Regulation and Request for Comments

Stakeholders and the EPA expressed concerns about reapportionment of allowances and ERCs among states. According to EPA, uncertainty around when EPA would know that additional matching allowances or ERCs are available for reapportionment and whether a later reapportionment would be capable of addressing remaining unmet-demand for eligible CEIP projects makes reapportionment among states inappropriate.

According to EPA, reapportionment of matching allowances/ERCs may also influence a state's decision to opt-in to the CEIP, based on considerations that neighboring states could receive additional matching allowances/ERCs if the state chooses not to opt-in to the program, creating a perverse incentive for a state to opt-in to the program in an effort to shield their original share of the matching pool from reapportionment, but not follow through on program implementation.

EPA expects that most states will opt to take advantage of the benefits provided by the CEIP, and therefore as such, do not expect a large pool of remaining matching allowances or ERCs would be available for reapportionment.

REQUEST FOR COMMENTS:



- The EPA requests comment on whether to include reapportionment provisions, and the methodology that should be used for reapportioning matching allowances or ERCs.

CEIP Participation for States, Tribes, and Territories for which the EPA has not Established Goals

Proposed Regulation

EPA clarifies that an eligible project that is located in Indian country within the borders of a state, solely for the purposes of the CEIP, is considered to be "located" in the state, in order to facilitate such projects' eligibility to voluntarily seek early action allowances or early action ERCs under the CEIP.

Eligible projects developed in contiguous U.S. states without affected EGUs may apply for and receive early action allowances or ERCs from another state that has chosen to participate in the CEIP.

Projects in non-contiguous jurisdictions are not connected to the contiguous U.S. electrical grid and cannot be said to be located in or benefit a CEIP state, and are thus ineligible to generate either ERCs or early action ERCs or early action allowances under the final Rule and this proposal.

Summary of EPA's Justification For The Proposed Regulation and Request for Comments

Developers of eligible RE and low-income community projects may receive early action allowances or ERCs from another state, so long as the project benefits the state providing the award and that state has submitted a final plan that includes requirements establishing its participation in the CEIP. EPA proposes that "benefit" a state means that electricity is generated or saved by an eligible CEIP project located in the CEIP-participating State (or located in Indian country within the CEIP-participating State's borders), or that the electricity is generated or saved with the intention to meet or reduce electricity demand in the CEIP participating State.

EPA anticipates making available CEIP participation for non-contiguous jurisdictions with affected EGUs when the

Agency finalizes emission guidelines for fossil-fuel fired EGUs in these states and territories. The EPA anticipates that matching allowances or ERCs for noncontiguous states and territories would be apportioned from the existing matching pool of 300 million short tons of CO2 emissions. Therefore, the total amount of CEIP matching allowances or ERCs apportioned among the rest of the states would be reduced accordingly by a small percentage, likely no more than 5 percent.

REQUEST FOR COMMENTS:



- The EPA is taking comment on how to determine the appropriate portion of the matching pool that should be apportioned to the non-contiguous states and territories, if they choose to participate in the CEIP.

ABOUT THE ENERGY EFFICIENCY FOR ALL PROJECT

The mission of the Energy Efficiency for All (EEFA) project is to bring together the energy and housing sectors to tap the benefits of energy efficiency for millions of Americans living on limited incomes. We work with a range of partners in 12 states to promote effective utility energy efficiency programs for affordable building owners and healthy and affordable housing for residents. We blend expertise in affordable housing, energy efficiency, building ownership, and utility engagement. We work to support local groups by providing tools and resources that can help them increase energy efficiency opportunities for underserved tenants in their states.



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