Tax Credits and Direct Pay (Elective Pay) for Clean Energy

Chfa**reach** – *Colorado Housing and Finance Authority*
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Discussion Agenda

- What are clean energy credits?
- How is the value of the credits determined?
- What is direct pay (elective pay) of tax credits?
- What types of entities are eligible for elective pay?
- What types of projects are eligible?
- Who is involved in claiming elective payments?
- How are elective payments claimed?
- Combining elective payment projects with tax-exempt financing?

What are clean energy credits?

- Tax credits relating to projects that generate energy, capture carbon emissions, improve efficient energy use in manufacturing, promote clean and alternative fuel vehicles, and assist with production of clean fuels. Examples:
  - Production Tax Credit (PTC) for Electricity from Renewables (I.R.C. § 45) (*pre-2025*)
    - 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: Generally, 0.55 cents/kilowatt; 2.75 cents/kW if prevailing wage and apprenticeship (PWA) rules are met
  - Clean Electricity Production Tax Credit (I.R.C. § 45Y) (*2025 onwards*)
    - Same general purpose as PTC, but intended to be technology neutral, for production of clean electricity. Replaces the PTC for facilities that begin construction and are placed in service after 2024.
    - Credit amount: Generally, the same as for PTC

What are clean energy credits? (Cont'd)

- Investment Tax Credit (ITC) for Energy Property (I.R.C. § 48) (*pre-2025*)
  - For investment in renewable energy projects including fuel cell, solar, geothermal, small wind, energy storage, biogas, microgrid controllers, combined heat and power properties.
  - Credit amount: Generally, 6% of qualified investment (basis); 30% if PWA rules are met
- Clean Electricity Investment Tax Credit (EITC) (I.R.C. § 48E) (*2025 onwards*)
  - Technology-neutral tax credit for investment in facilities that generate clean electricity and qualified energy storage technologies. Replaces ITC for facilities that begin construction and are placed in service after 2024.
  - Credit amount: Generally 6% of qualified investment (basis); 30% if PWA rules are met
- Low-Income Communities Bonus Credit (I.R.C. §§ 48(e) and 48E(h))
  - Additional investment tax credit for small-scale solar and wind or clean electricity facilities (<5MW net output) on Indian land, federally subsidized housing, in low-income communities, and benefit low-income households. Allocated through application.

What are clean energy credits? (Cont'd)

- Other applicable credits:
  - Credit for Carbon Oxide Sequestration (I.R.C. § 45Q)
  - Zero-Emission Nuclear Power Production Credit (I.R.C. § 45C)
  - Advanced Energy Production Credit (I.R.C. § 48C)
  - Advanced Manufacturing Production Credit (I.R.C. § 45X)
  - Credit for Qualified Commercial Clean Vehicles (I.R.C. § 45W)
  - Alternative Fuel Vehicle Refueling Property Credit (I.R.C. § 30C)
  - Clean Hydrogen Production Tax Credits (I.R.C. § 45V)
  - Clean Fuel Production Credit (I.R.C. § 45Z) (*2025 onwards*)
- See the following IRS source for a useful summary chart: https://www.irs.gov/pub/irs-pdf/p5817g.pdf

How is value of credits determined?

Each credit type has its own credit formula. For the Investment Tax Credit under I.R.C. § 48 and the Clean Electricity Investment Tax Credit under I.R.C. § 48E, the credit is equal to:

“Applicable Percentage”

×

“Qualified Investment”

Maximum Credit

Low-Income Community: 20%

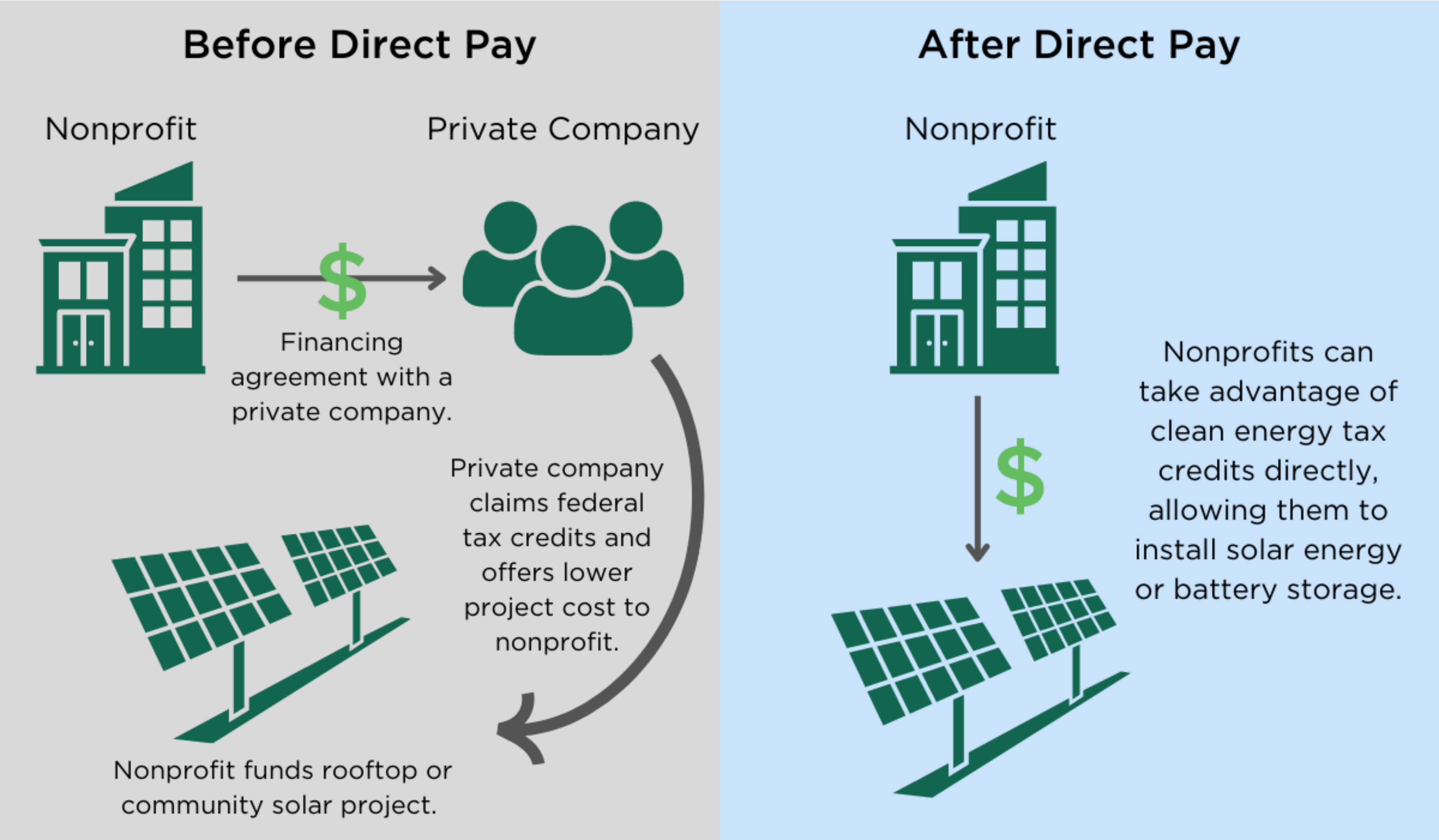
Energy Communities: 10%

Domestic Content: 10%

Base rate: 30%
(if PWA rules met, or maximum
net output < 1MW)

Credit percentage up to 70%, but base rate reduced to 6% (from 30%) and energy communities and domestic content rates reduced to 2% (from 10%) if prevailing wage and apprenticeship (PWA) rules not met

What is direct pay (elective pay)?



Source: Environmental and Energy Study Institute (EESI) at https://www.eesi.org/papers/view/fact-sheet-direct-pay-for-nonprofits

What types of entities are eligible?

- Federally tax-exempt organizations
- States and political subdivisions thereof
- Indian tribal governments and their subdivisions
- Alaska Native Corporations
- Tennessee Valley Authority
- Rural electric cooperatives
- U.S. territories and their political subdivisions
- Agencies and instrumentalities of state, local, tribal and U.S. territories

What types of projects are eligible?

- For investment tax credits and production tax credits claimed as elective payments, the project must satisfy the following requirements, in addition to the other requirements under the applicable tax credit provisions:
  - Located in the United States or U.S. territories
  - Use new and limited previously used equipment
  - Be owned by the eligible entity (leases to, or ownership by, for profit entities does not qualify)

Who is involved in claiming elective payments?

- Renewable energy accounting firms
- Financial advisors
- Energy credit attorneys
- Public finance attorneys

How are elective payments claimed?

- Negotiate project contracts and address prevailing wage and apprenticeship, domestic content and energy communities rules.
- Once project is completed:
  - Prepare cost segregation reports and cost studies to determine eligible investment (basis) for credit amount.
  - Complete pre-filing registration with the Internal Revenue Service.
  - File Form 990-T and supporting forms to claim elective payment of credit for the tax year in which the project was placed in service.

How are elective payments claimed? (Cont’d)

- Tax forms must be filed by the entity’s regular due date (including extensions). For most tax-exempt entities, this date is the 15th day of the fifth month after the end of the entity’s tax year (May 15 for a calendar year taxpayer).
- Currently, a paperless extension of 6 months is allowed.
- Entities that do not currently file federal tax returns (cities, school districts, etc.) may adopt the calendar year for purposes of claiming the elective payment, regardless of fiscal year.
- Elective payments of the credit is paid by the federal government after receipt of the Form 990-T filing and after the end of the related tax year.

Can credit projects be combined with tax-exempt financing?

- Yes, but the elective pay credit amount is reduced by lesser of 15% or percentage equal to: (a) proceeds of tax-exempt financing under I.R.C. § 103 which is used to provide the facility *divided by* (b) total capital cost of the facility.
- What if tax-exempt financing proceeds are specifically targeted to portions of the facility that do not contribute to the elective pay credit? Credit reduction of 15% may still apply. No regulatory guidance exists yet.

Help? Contact Us!

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