Hon. Edward H. Chu,
Designated Federal Officer
Environmental Financial Advisory Board
U.S. Environmental Protection Agency

Hon. Kerry O'Neill,
Chair
Environmental Financial Advisory Board
U.S. Environmental Protection Agency
RE: Greenhouse Gas Reduction Fund

Dear Mr. Chu, Ms. O'Neill, and Members of the U.S. Environmental Protection Agency's Environmental Financial Advisory Board-

On behalf of the Coalition for Green Capital, I want to commend the Environmental Financial Advisory Board for the considerable amount of work that has been done since the Board accepted the Greenhouse Gas Reduction Fund ("GHGRF") charges from EPA in October. The slides for the December 1, 2022, public meeting are evidence of that work, as well as the expertise of the members of the Board. The Coalition for Green Capital submits the following information for the Board's consideration as you finalize your analysis.

The Role of Clean Air Act § 134

When submitting the charge to the EFAB, EPA encouraged the Board to construe its assignment broadly, and the slides outlining the workgroups' analysis to date is consistent with that request. When EPA receives the EFAB's report and makes decisions regarding how to structure the GHGRF, however, the agency will be bound by the language in Section 134 of the Clean Air Act. The statutory text defines key terms such as "eligible recipient" and creates obligations that every eligible recipient that receives a grant must be able to fulfill. For example, an "eligible recipient" of a grant under the $8B Low-income and Disadvantaged Communities Fund ("LIDC Fund") and the $11.97B General Assistance Fund ("GA Fund") must be a national non-profit "designed to provide capital, leverage private capital, and provide other forms of financial assistance for the rapid deployment of low- and zero-emission products, technologies, and services." CAA § 134(c)(1)(A). Entities that were designed for another purpose, such as to provide credit or housing to underserved communities, cannot become eligible recipients simply because of their interest in expanding their mission to include green financing.

The statute creates obligations that every "eligible recipient" that receives funding must be able to fulfill – such as direct investment in qualified projects at the national level and indirect investment through funding and technical assistance provided to other institutions that invest in qualified projects at the regional, state, and community levels. By mandating that any eligible recipient both invest in qualified projects at the national level and to provide funding and technical support for other entities at all other levels reflects Congress's intent to have the money awarded under the LIDC and GA Funds be used to establish a national, nonprofit finance institution. Entities that are limited to operating within a limited geographic area or that intend to use the grant solely to benefit its members would not be capable of fulfilling those obligations would not be eligible recipient. They would remain eligible to be the beneficiary of indirect investment of GHGRF money by the national nonprofit green bank.

The direct investing must be prioritized to provide financing the private sector would not otherwise provide. EPA describes this concept as that of "additionality," and has stated a clear preference for proposals that maximize the amount of funds that will provide additional, necessary financing. While it may be difficult to identify a precise way to confirm the additionality of a use of funds, by definition uses of funds that are designed to compete with available commercial financing by providing a more attractive interest rate or lower costs of financing fall outside of what could be considered additional.

The statute also requires an eligible recipient to manage its direct investments at the national level to ensure continued operability of the GHGRF. As a result, an eligible recipient must have a viable business plan that ensures continued operations for many years to come. To achieve the primary goals of §134, the business plan also must show how it will help EPA fulfill *both* the goals of greenhouse gas emissions and other air pollution reduction and advancing environmental justice, with the majority of the investment under the two funds in "low-income and disadvantaged communities." EPA should define such communities in a unique, precise way to give guidance to all "eligible recipients," or alternatively should require applicants to provide precise definitions that will allow EPA to evaluate the communities in which the money will be spent.

The statute also contains a definition of "qualified projects" that will impact which entities could be considered eligible recipients and which projects can be funded. "Qualified projects" include "any project, activity, or technology" that falls within two carefully defined categories:

"(A) reduces or avoids greenhouse gas emissions and other forms of air pollution in partnership with, and by leveraging investment from, the private sector, or

(B) assists communities in the efforts of those communities to reduce or avoid greenhouse gas emissions and other forms of air pollution."

The statutory definition of qualified projects cannot be read to allow GHGRF grants to be used to fund general economic development or affordable housing projects. Including technologies that directly reduce or avoid greenhouse gas emissions or other forms of air pollution in a larger development or housing project would not make the entire project eligible for funding. If the grantee can demonstrate that commercial financing was not available for those technologies, however, it may be possible for an eligible recipient or an indirect recipient to provide funding for the cost of adding them to a project.

When viewed together, these provisions undoubtedly constrain the universe of entities that are potential eligible recipients, and do so in ways that would impact the options EPA has regarding the structure of the program. The EFAB should be clear that its final report provides EPA with information on a range of finance entities that could – as a technical matter – be used to provide green financing based on the Board's experience and expertise, but is not an attempt by the Board to define the scope of EPA's authority or discretion under Section 134. Despite the fact that such an interpretation would go beyond the specific GHGRF charge questions before the Board and fall outside the role of the EFAB as specified in its charter, the potential for the EFAB's report to be misunderstood as EFAB's interpretation of Section 134 is significant and clear statements to the contrary are warranted.

The attachment to this letter contains additional information prepared by the Coalition for Green Capital regarding the reasons why Congress intended the GHGRF to be used to capitalize a national green bank, how all other interested entities would then be able to receive funding as indirect recipients, and other issues relevant to your final evaluation.

Thank you for your consideration of this information.

Sincerely,

Kevin S. Minoli

Counsel for the Coalition for Green Capital

Enclosure

Attachment

Why did Congress write the statute written to require a national green bank?

Congress directed EPA to create a national green bank as the most effective use of public dollars to impact greenhouse gas emissions and address environmental injustice. In particular, a national green bank will:

1. Set **national priorities** for investing in "qualified projects" in partnership with EPA, recognizing that both direct and indirect investing goals will change over time.

2. **Manage risk** over a broad portfolio of indirect and direct investments, maximizing the total amount of investment but guaranteeing total positive return as required by statute.

3. Partner **efficiently** with EPA in order to manage risk to the very low levels historically achieved by American Green Bank Consortium members. In effect the national entity is an extension of EPA, enabling financial functions the agency cannot conduct but giving effect to agency goals in a fiscally efficient manner.

4. Create **open network** of indirect recipients, not limited only to those prepared to make investments in "qualified projects" at the present time. Successful deployment of capital would unlock additional capital for high performing intermediaries.

5. **Standardize.** While local green banks and financing institutions have local advantages, a national green bank, working in partnership with local green banks and financing institutions can help standardize a range of documents and procedures (credit, for example), as well as provide asset management and back-office services. These activities would significantly reduce the "soft costs" of financing. In smaller projects, sometimes the legal costs alone can overwhelm the economics of the project.

6. Provide product support (a product for financing heat pumps, for example) and capacity building that will enable these lenders to expand their offering to clean energy and energy efficiency projects. A national green bank would have the scale to provide capacity building at local green banks, the ability to develop and disseminate new financial products, and the buying power to negotiate the best pricing from vendors.

7. Accelerate the **recycling** of funds. Most clean energy project loans have long maturities (since the projects have long asset lives). Through standardization of contracts and underwriting standards, these loans can be aggregated and sold to bond investors. In so doing, the proceeds can be re-lent to new projects. This recycling increases the amount of money that can be lent. In addition to establishing these standards, a national green bank can act as warehouse and agent in acquiring loans from local green banks and selling them.

8. Lead effort for collection of data which provides for an ability to better analyze risk and hence permit private sector participants to feel more comfortable with these clean energy-related investment opportunities. In addition to credit and energy-related data, a national green bank can work with health care partners to better establish the benefits of clean energy and health. Scale matters in data collection.

9. Negotiate directly with national suppliers. Supporting bulk negotiation with critical clean energy equipment manufacturers creating consistent availability for local projects and more favorable terms for participating contractors.

10. The larger the capitalization of the national green bank, the larger its debt capacity relative to the debt capacity created if the EPA were to split the capital among many recipients. The NCB would therefore be able to more appropriately leverage its own balance sheet than available in the case of multiple recipients.

11. Simplify oversight and reduce administrative expenses. A national green bank would limit the amount of oversight and administrative expenses required, as the bank would manage reporting and oversight for all of the intermediary participants, simplifying the oversight burden for EPA and reducing the overall admin expense required to support federal contracting requirements.

What are the risks of dilution?

As EFAB considers the most effective models for the Greenhouse Gas Reduction Fund, several of the proposed alternatives would significantly dilute the pool of capital available for capitalization. In particular, the proposed alternatives, such as regional or sectoral recipients, in addition to not complying with the statute, also pose the following risks:

1. Reduce debt capacity, thus lowering total investment
2. As the number of "eligible recipients" increases, the difficulty for EPA to manage risk among all of them increases, and the difficulty for them in creating a broad net positive portfolio increases, given that each must invest both directly and indirectly
3. Competition among indirect recipients for support from multiple national green banks will lead to reduced standards at both levels
4. Failure to establish common standardization, efficient securitization, thereby reducing leverage
5. Inability to negotiate favorable transactions with OEMs and distributors of critical products
6. Limits ability to reduce "backoffice" costs to indirect recipients since scale advantages are reduced
7. Cannot allocate capital where most needed to achieve "additional" public-private investment and to focus on "low-income and disadvantaged communities" as circumstances and needs change over time; instead locked into initial allocation
8. Cannot move capital from one sector to another over time as sectoral needs change due to lock-in of initial funding

9. Unable to balance risk over broad portfolio; the smaller are discrete portfolios, the greater the risk, or alternatively the more the EPA has to manage risk itself as to all investing, which is not a desirable role for the agency
10. Increase administration and transaction costs for EPA
11. Create confusion and redundancy among indirect recipients seeking to participate in on-lending by multiply direct recipients.

National Green Bank / Fund Strengths and Weaknesses

The Consortium offers the following comments on slide 24:

1. The competition is not only "inter-state" but inter-sectoral, inter-product, and between recipients to encourage higher performance over time
2. The country wants to drive more public private investment into the sectors that **maximize** the reduction and avoidance of greenhouse gas emissions and other forms of air pollution in low income and disadvantaged communities **per public dollar.** This objective will cause sectoral allocation to change over time.
3. The specific physical and financial products that implement a strategic decision will change over time and therefore capital allocation also should change over time. This observation is not theoretical but based upon the experience of existing green banks. The key role for the eligible and indirect recipients is to fill in market gaps where traditional finance institutions do not lend. By "incubating" financial structures and building a portfolio of credit-worthy loans, green banks demonstrate the attractiveness of new areas for traditional lenders so that green banks can step out of the way, letting the market take over. Because there is an evolution of combinations of technologies, credit counterparties, and business models, there is an ever-evolving frontier of market gaps. The very reason the law required an independent entity is to give it the flexibility to respond to these changing market gaps.
4. The sectoral requirements of DOE's Loan Program Office gives a clear example of the perils of establishing industry "silos." Because of these sectoral requirements, authority could not be transferred from one area where there was inadequate demand for loans (nuclear, as one example) to renewable energy projects where there was strong demand. Markets and technologies change.
5. It is likely that most nonprofits that could become indirect recipients are not yet formed or not yet ready to invest heavily in the physical and financial products that are "qualified projects." The national green bank should support the development of new participants, particularly in low income and disadvantaged communities that are not currently served by a sustainable finance institution, welcome all future participants and not be locked exclusively into supporting only those presently seeking funds.

6. In addition to reducing the burden to EPA, the efficiencies of reduced administration, national monitoring, partnership with EPA, are tremendous cost savings and efficiency benefits of capitalizing a national green bank.
7. The scale of capitalization directly correlates to more leverage with private sector investing and greater recycling, producing substantially more total investment over a reasonable relevant time.
8. The asserted weaknesses/challenges are not likely to be realized
    - The management challenge of creating a single fully capitalized green bank is far easier than creating many different management teams doing the same or similar jobs or redirecting multiple existing organizations from their current purpose
    - The "ramp-up time to operationalize" is much faster when capitalizing an existing consortium with billions of dollars of backlog in qualified projects, existing know-how, and go-to-market plans ready to roll out right now
    - The costs of capitalizing many "eligible recipients" directly from EPA will be much higher than the costs of capitalizing one
    - One entity distributing to many indirect recipients is by far the most efficient model for on-lending
    - The "concentration of funds in one entity" does not "elevate financial management and political risks." To the contrary, the funds are not concentrated but largely distributed through indirect investing to many regional and local investors, while at the national level the agency and national green bank manage the portfolio via contract to reduce risk and achieve net positive return. It would seem beyond the scope of the EFAB to evaluate political risk.
    - A "broad scope" does not "create challenges in planning." To the contrary, if we want a national strategy, with local implementation, then it follows we should want a national green bank. And a national strategy for the reduction and avoidance of emissions of greenhouse gases and other pollutants in low income and disadvantaged communities is what the president and innumerable others have called for. The real challenge is lack of coordination of strategies when they are delegated to regions, states, or localities with no means to coordinate across state lines, across affected sectors, and for all low income and disadvantaged communities.
    - Capitalizing a national green bank is said to require "new capacity/entity to address the broad remit and requirements, which could delay timely distribution of funds." It is true that being ready to go is an important aspect of the merits of any application for funding.

What is the best administrative structure to get funds to communities?

Every green bank is a community organization, but every community organization is not a green bank. A national strategy must be developed to ensure disadvantaged communities across the United States have access to funds to lower greenhouse gas emissions and address climate injustices through the GHGRF.

A National Climate Strategy was intended to be published with the passage of the Build Back Better Act. This national roadmap of reducing GHG emissions across the supply chain is vital to accomplishing the administration's goals. As that national strategy is being developed and published, EPA must move forward and require the recipient to develop a comprehensive plan rooted in local, state, and national community engagement.

The national green bank will design a multi-tiered engagement process to ensure the national strategy is inclusive, funds are reaching the local level, and there's a mechanism of accountability. In our RFI comments, we discussed that a national green bank would develop a thorough mapping process to identify priority communities nationwide for initial investment. Following that process, we engage in a participatory planning process with partners on the ground and execute community benefits agreements. For example, partners on the ground can be environmental groups, elected officials, and municipal staff from towns, cities, and states that have developed extensive planning processes to address climate change (i.e., climate action plans, green new deals, and resiliency plans). These plans are naturally aligned with the mission and objectives of the national green banks. We want to build upon the work of these existing planning processes to align financing with the greatest needs across the country. This participatory planning process will bring together the various planning initiatives and identify capital needs and opportunities to develop markets for clean energy deployment.

To continue using this example, the result of the participatory planning process will be a community benefits agreement (CBA). The CBA will define the needs and solutions identified during the planning process. This document will also specify the partners and determine the roles of the involved parties. It will document the process providing transparency and accountability. Our priority with the CBA is to align the benefits from the GHGRF with the statute and work with EPA to determine what other benefits could be attributed to the funds. The signatories of the community benefit agreements will be the involved parties, and it will be legally binding.

There is no national strategy to address the climate crisis. And there is no precedent for conducting a national engagement strategy to address the climate crisis. It is in the best interest of the National Green Bank and EPA to commit to developing a national strategy to deploy the GHGRF. There needs to be a mechanism to monitor and track progress at both a local and national level.

EPA EFAB Charge Questions

In addition, we submit the following comments in response to the EFAB Charge Questions:

Objectives

- **Charge Question I.a.i: What considerations should EPA take into account in defining "low-income" and/or "disadvantaged" communities in order to ensure fair access/that the funding benefits disadvantaged communities?**

To aid eligible recipients and give itself a more manageable task in awarding funds, EPA should provide a clear, consistent, and transparent definition of "low-income and disadvantaged communities." We recognize that several agencies and other entities within the federal government have already published definitions or standards for designating a community as "low-income" or "disadvantaged" under programs they administer and that many of those entities have built robust screening tools designed to help identify which communities are considered low-income or disadvantaged under the office's particular definitions. Definitions of "low-income" or "disadvantaged" that are generated for use in other federal programs or for different purposes are unlikely to be equally effective at identifying the communities that should be prioritized by an eligible recipient that receives funding under the GHGRF for investments, funding, and technical assistance. As a result, we do not recommend EPA wholly adopt any "off-the-shelf" definitions for these key terms. In particular, EPA should not use definitions—or the resulting classifications—used in the context of determining the geographic boundary in which a community-based financial institution may operate, as those definitions do not include any consideration of environmental burdens. There is no basis in Section 134 for eliminating consideration of environmental impacts when identifying those communities that should be prioritized for investment under the GHGRF.

At the same time, EPA need not launch a time-consuming effort to "recreate the wheel." Rather, EPA should define the subject geographic and demographic markets by combining those components or aspects of existing definitions that are particularly relevant to the GHGRF's purpose. For example, EPA should not adopt the entire definition of "disadvantaged community" relied on by the CEQ because it covers at least some communities that are not burdened by emissions of greenhouse gases, other forms of air pollution, or the production or combustion of fossil fuels. However, some aspects of the CEQ definition focus on identifying communities that are burdened by emissions of greenhouse gases, other forms of air pollution, or the production or combustion of fossil fuels. EPA can also incorporate relevant aspects of the agency's EJ Screen tool, and the Department of Energy's ("DOE") Priority Energy Communities methods.4 These existing efforts to define environmental damage, low income, and historic underinvestment can serve EPA in deciding the direction of grant funds.

- **Charge Question I.a.ii: How can EPA ensure that communities and organizations who have received little or no funds in the past receive priority consideration for funding? How could EPA identify the low-income and disadvantaged communities it should prioritize for greenhouse gas and other air pollution reduction investments?**

How EPA defines "low-income and disadvantaged communities" is critical to shaping the business plans of eligible recipients for grants and for achieving the statutory purposes. As discussed in more detail below, that definition must include considerations of the pollution burden historically imposed on communities and the disproportionate energy burden low-income communities have borne and will continue to face. We urge EPA to require eligible recipients to show in detail how they will cause both direct and indirect investment in such communities for the majority of the GHGRF awards.

For direct investment as defined in Section 134(b)(1), Congress required that the eligible recipient "prioritize investment in qualified projects that would otherwise lack access to financing." Historically, the financial sector has not provided fair and equal access to financing for racial minorities and low-income communities. Therefore, EPA should direct applicants to identify how they will determine what "qualified projects" should be prioritized on the grounds that financing is lacking. In that explanation, an applicant should specify the obstacles to conventional financing that must be overcome, such as ownership by or location in a low-income or disadvantaged community, and how to overcome those challenges.

The Biden Administration has repeatedly established a strong commitment to ensuring the prioritization of historically disadvantaged communities as a key factor in transitioning to a clean economy. In Section 219 of Executive Order 14008: Tackling the Climate Crisis at Home and Abroad, the Administration acknowledges: “To secure an equitable economic future, the United States must ensure that environmental and economic justice are key considerations in how we govern. That means investing and building a clean energy economy that creates well-paying union jobs, turning disadvantaged communities—historically marginalized and overburdened— into healthy, thriving communities, and undertaking robust actions to mitigate climate change while preparing for the impacts of climate change across rural, urban, and Tribal areas.”

Additionally, in the Interim Implementation Guidance for the Justice40 Initiative Memo, the Administration outlines direction by the President for the Director of the Office of Management and Budget (“OMB”), the Chair of the Council on Environmental Quality (“CEQ”), and the National Climate Advisor in consultation with the White House Environmental Justice Advisory Council (“WHEJAC”) to jointly publish guidance on how certain federal investments might be made toward a goal that 40% of the overall benefits of such investments flow to disadvantaged communities—the Justice40 Initiative. The Justice40 Initiative is acknowledged as a critical part of the Administration’s whole-of-government approach to advancing environmental justice.

Finally, in September 2021, the Environmental Protection Agency released the report Climate Change and Social Vulnerability in the United States , which provided critical data-based context towards the urgency of ensuring that climate investments are prioritized for disadvantaged.

Definitions or tools that are not based on environmental considerations—and more precisely not based on consideration of impacts from greenhouse gases; other forms of air pollution; or the production, delivery, and use of energy from fossil fuels—will generate results that are not tailored to addressing the GHGRF’s purpose. For example, Census tracts can misdirect investments pursuant to Section 134 because this measurement divides larger communities into multiple Census tracts and combines smaller communities with neighboring communities. Both these features can obscure the location of “low-income and disadvantaged communities.” Nor should EPA define the boundaries of communities solely using constructs such as an investment area or targeted population as the criteria used by the Department of Treasury’s Community Development Financial Institutions Fund (“CDFI Fund”) to determine if a CDFI will serve a “Target Market.” As noted above, income and financial metrics alone also will miss the mark, because they do not consider the energy and environmental burdens faced by communities.

If EPA decides not to identify precisely the geographic and demographic markets meeting the definition of “low-income and disadvantaged communities,” then the agency must require eligible recipients to identify with specificity the “communities” where they propose to provide directly “financial assistance” and indirectly “funding and technical assistance” consistent with Section 134(b) of the CAA (Use of Funds) or the precise measures and metrics that the eligible recipient will use to identify those communities when implementing the grant. Great specificity will permit EPA to discern the differences among competing applications. It then can give greater value to applications that serve the statutory purposes to the maximum degree. Specifically, in the event EPA depends on eligible recipients for the definitions, then it should require them to address the following:

- **Definitions of disadvantaged communities they will target and the reasoning behind their definitions**

EPA should require each applicant to identify the variables it will use to define and prioritize disadvantaged communities. In making these definitions, eligible recipients must simultaneously consider environmental, economic, and social factors and how these factors relate to one another and the purpose of the GHGRF. Definitions that prioritize only one type of variable (economic, social, or environmental) without addressing the needs created by the others should be rejected.

- **Specific priority geographies and reasoning behind those priorities**

In many environmental justice hotspots and frontline areas, communities have been and are disproportionately impacted by local factors such as particulate air pollution from industrial processes, vehicles, or fossil fuel production and combustion. Eligible recipients should identify the characteristics of hotspots they plan to address through their investment strategy. They should explain how their strategy will both remedy the specific environmental problems and support the economic development of surrounding communities.

- **Anticipated environmental, health, and energy impacts in target communities**

Eligible recipients should identify the specific environmental and energy benefits they plan to deliver in discrete geographic and demographic markets. For example, when addressing energy burdens, eligible recipients should assess the specific sources of energy burden in the communities and explain how their business plan will benefit members of the community. Eligible recipients should identify specific health issues arising from greenhouse gas emissions and air pollution and then show how they mitigate adverse experiences currently suffered in the relevant communities.

- **Intended GHG and air pollution reductions**

Eligible recipients should explain the specific sources of greenhouse gas emissions and other forms of air pollution in the selected communities they intend to address and how they intend to abate them by means of "rapid deployment of low- and zero-emission products, technologies, and services." EPA should reject applications that fail to articulate a well-thought-through strategy identifying the specific "products, technologies, and services"—a requirement that specifically means all three measures must be utilized for the purpose of Section 134 to be realized.

- **Second-order GHG emissions impacts**

EPA will be aware that investment may reduce GHG emissions in one location but redistribute them elsewhere. For example, a building electrification project might reduce GHG emissions onsite but cause a new electrical load at a nearby fossil fuel-fired electric generating unit that emits GHGs and other forms of air pollution for the surrounding community. Eligible recipients should explain to EPA where their activities might create new electrical loads, the impacts of such loads on greenhouse gas emissions and air pollution, and how they plan to address both potential increases in emissions and air pollution in those areas. They should also explain how they plan to protect communities that could suffer harm from increased electricity production expected to result from their investment strategies.

- **Justice40**

EPA should apply Justice40 goals to its assessment of the merits of applications under the GA Fund. To this end, the same definition of "community" used for the LIDC Fund should be applied to the GA Fund.

- **Charge Question I.a.iii: What kinds of technical and/or financial assistance should GHGRF funding recipients provide to ensure that low-income and disadvantaged communities are able to be direct or indirect beneficiaries of GHGRF funding? Please identify supports that could help communities with project implementation.**

First, any grant made under either the General Assistance (GA) Fund or the Low-Income and Disadvantaged Communities (LIDC) Fund must facilitate both direct and indirect investment into qualified projects, as Congress used mandatory language in both Sections 134(b)(1) and (b)(2). In addition, grants made under the LIDC Fund must facilitate both the direct and the indirect investment into qualified projects in low income and disadvantaged communities only.

Second, both direct "financial assistance" and indirect "funding and technical assistance" must be made in the context of a "qualified project." Section 134(b)(1)(A) requires an eligible recipient to provide financial assistance to "qualified projects" at the national, regional, State, and local levels," while Section 134(b)(2) requires an eligible recipient to provide funding and technical assistance to "entities that provide financial assistance to qualified projects at the State, local, territorial, or Tribal level or in the District of Columbia."

As a threshold matter, all "qualified projects" must be a "project, activity, or technology." While those terms are broad, they are not limitless. Paying off an entity's pre-existing operational debts, for example, is unlikely to be a qualified project because it does not appear to be a "project, activity, or technology."

From the broad range of types of assistance that could constitute "any project, activity or technology," Congress authorized the use of grants made under the GHGRF for just two types. Section 134(c)(3) specifies that a qualified project must be a "project, activity, or technology" that:

- "(A) reduces or avoids greenhouse gas emissions and other forms of air pollution in partnership with, and by leveraging investment from, the private sector; or
- (B) assists communities in the efforts of those communities to reduce or avoid greenhouse gas emissions and other forms of air pollution."

Ideally, an "eligible recipient" would demonstrate to EPA that its business plan integrates both types of "qualified projects." Considering the requirement that an "eligible recipient" invest both directly and indirectly, support new and existing intermediaries, recycle funds, "ensure continued operability," and otherwise meet all the statutory mandates, it is difficult to imagine an applicant presenting a coherent business plan that does not integrate and aim at both types of "qualified project."

In any event, the community assistance category requires an applicant to show exactly how it proposes to aid communities "in the efforts of those communities to reduce or avoid greenhouse gas emissions and other forms of air pollution" Section 134(c)(3)(B) (emphasis added). As drafted by Congress, this provision empowers communities to be the ones to decide what efforts they want to take to reduce emissions, and it requires an eligible recipient to support the efforts chosen by the community. By drafting it this way, Congress was clear that the obligation on eligible recipients is not simply to spend money in low-income and disadvantaged communities but to use grant funds to invest in the communities themselves.

To ensure that low-income and disadvantaged communities are able to fully participate in and benefit from the GHGRF, EPA should rely on Section 134(c)(3)(B) to distinguish between applications that propose to use grant funds to increase the amount of business the applicant or members of its network will do within low-income and disadvantaged communities that they already serve and applications that propose to increase the amount of funding available for low-income and disadvantaged communities to expand their businesses. EPA should require applicants to demonstrate how their proposal will ensure that the long-term value of the investment of GHGRF Funds will remain in and belong to the community and not the eligible recipient or its members. Other laudable assistance or worthwhile community efforts—such as general economic development projects—do not fulfill the requirements of Section 134.

In connection with all financial assistance, the applicant should be obliged to show how it will:

- "prioritize investment in qualified projects that would otherwise lack access to financing" (Section 134(b)(1)(B));
- "recycle and monetize" the "fees, interest, repaid loans" and other revenue generated from qualified projects (Section 134 (b)(1)(C)); and
- "ensure continued operability" (Section 134(b)(1)(C)).

In short, the LIDC recipient cannot primarily or even mostly engage in non-remunerative "financial assistance and technical assistance" without violating the conditions of Section 134(b)(1). To comply with this law, EPA must require eligible recipients for awards from the GA Fund and the LIDC Fund to show how their business model serves the relevant communities, leverages the private sector, promotes only "qualified projects" (and not some other product or service, however laudable), and will be self-sustaining economically over time.

- **Charge Question I.b.i: How can the GHGRF grant competition be designed so that funding is highly leveraged (i.e., each dollar of federal funding mobilizes multiple dollars of private funding)? How can the funding be used to maximize "additionality" (i.e., the extent to which funding catalyzes new projects that would not otherwise occur)? How can EPA balance the need for grants for capacity building and short-term results with financial structures that will allow capital to be recycled over time? Where (if at all) is it appropriate to impose sustainability requirements on direct or indirect beneficiaries of GHGRF funding?**

EPA correctly identifies the importance of using the GHGRF grant funds to increase total investment. We estimate that to meet President Biden's emissions goal at least $1 trillion must be invested in the next decade in addition to what the private sector otherwise will cause. We estimate further that "low-income and disadvantaged communities" need at least $200 billion of this additional investment. EPA should call for eligible recipients to explain in detail how they will fill these investment gaps. That is why the objective of "high private-sector leverage" is absolutely required in the design of the program and the requirements imposed by EPA on eligible recipients.

In championing the GHGRF, the sponsors of the legislation have explained publicly that they envision the capitalization of a national green bank as the purpose of the legislation. Therefore, EPA should require eligible recipients to show how either through a national green bank or in some other way they will utilize efficiently conventional, prudent banking tools. These must include at least the following across a portfolio of investments:

- "Mobilize" private sector investors to partner in financing specific qualified projects,
- Cause the private sector to purchase debt and other assets aggregated by the "eligible recipient,"
- Obtain loans from the private sector at favorable rates, and
- Attract new private sector financing into the relevant product and geographic markets.

Eligible recipients that do not propose to capitalize, organize, manage, and execute with such tools through a national green bank should explain in detail how they will operate otherwise to 'facilitate high private-sector leverage."

Here follows a summary of questions relating to "leverage" that we suggest EPA require eligible recipients to answer in detail:

- **<u>Explain financing competence and plans</u>**: Eligible recipients should specify how they will safely and effectively leverage funds and obtain lines of credit to comply with Section 134(b)(1)(C). In this regard, eligible recipients should show in detail how they have and how they will in the future recycle funds, and how they will partner with the private sector in investing in low and zero emission projects and products.

- **<u>Show how "leverage" will be limited to statutory purpose</u>**. GHGRF funds can be used only for "qualified projects." To this end, eligible recipients with organizational or institutional objectives that lie outside the scope of "qualified projects" should show how they would separately track the GHGRF Funds through recycling, partnering, and other financing to the statutory purpose. EPA should require eligible recipients that have balance sheets derived from other investment activity to demonstrate that they will not commingle or otherwise use GHGRF capital directly or indirectly to support investing in anything other than "qualified projects." For example, an applicant may not deposit GHGRF capital on its balance sheet, borrow against that capital, and then use anything less than all that capital to invest in "qualified projects." This restriction applies to investing by indirect recipients as well. Section 134 is aimed exclusively at increasing (and then monitoring) investing to "qualified projects."

- **<u>Demonstrate a plan for positive returns overall</u>**. Positive returns on an entire portfolio are essential for an "eligible recipient" to maintain continued operability over time as required by Section 134. Therefore, EPA should ask eligible recipients to explain how they will obtain net positive returns, whether they intend to grow capital, and how they will maximize "leverage" generally and in "low-income and disadvantaged communities" over at least a 10year period. In this explanation, they should address in detail how they intend to balance any nonremunerative provision of services and grants to indirect recipients and communities with the imperative to be operationally sustainable and to grow capital to achieve the greenhouse gas and pollution reduction generally and specifically in low-income and disadvantaged communities. This is particularly important to enable entities that are not yet ready to receive before September 30, 2024 (when all funds must be obligated) to become indirect recipients in the future. Section 134(b)(2) requires the "eligible recipient" to "provide funding and technical assistance to establish new or existing" members of an indirect investing network. Eligible recipients will be unable to expand that network to "new" members or continue to support "existing" members in future years if they do not "ensure continued operability."

- **<u>Provide details on public-private investing</u>**: EPA should require that eligible recipients explain in detail existing and proposed future plans to partner with private sector investors. In doing so, they should identify, to the extent possible, the specific physical products and projects that they believe will involve partners, based on their capabilities and future business plans.

- **<u>Show competence in recycling and partnering</u>**: EPA should ask eligible recipients to show how their board and management team have recycled funds for investments that fall within the scope of "qualified projects" and how they partnered with private sector investors for such specific projects. EPA should not rely on recycling and partnering for other types of projects as satisfactory evidence of track record or future plans suitable for receiving funds as an "eligible recipient." Investing in "qualified projects" is the relevant expertise. In this connection, to the extent available, eligible recipients should report on historical default rate, average interest rates, and rates of adoption of "qualified projects" ("any project, activity, or technology that (A) reduces or avoids greenhouse gas emissions and other forms of air pollution in partnership with, and by leveraging investment from, the private sector"). Eligible recipients with scant experience in driving the adoption of "qualified projects" should explain how they propose to gain the skills necessary to invest at optimal speed and volume in the projects and products composing the clean power platform. Eligible recipients that wish to focus only on assisting "communities in the efforts of those communities to reduce or avoid greenhouse gas emissions and other forms of air pollution" will fail to show that they can meet the other requirements of the definition of "eligible recipient" such as the three direct investing activities under Use of Funds (b)(1) or the imperative of supporting an indirect network.

- **Speed Matters**: EPA should require eligible recipients to show how they intend to expedite private sector "leveraging." All else being equal, it is better to reduce emissions and pollution sooner rather than later from a global warming, pollution, and socio-economic point of view.

Therefore, eligible recipients should explain their Day 1 and Year 1 plans for "mobilizing private funding."

- **Charge Question I.b.ii: Are there programs/structures at the federal or state level that could effectively complement the GHGRF? How can EPA best leverage the GHGRF to support lasting, long-term (beyond 2024) transformation of the clean energy and climate finance ecosystem, especially for disadvantaged communities, and greenhouse gas and other air pollution reductions?**

We suggest EPA require details on how the applicant will ensure its operability for at least one decade. The one-time capitalization of one or more "eligible recipient[s]" is meant to launch a prudently investing, long-term successful, national non-profit investing entity that can address the dual mission of avoiding climate crisis and causing a beneficial clean energy transition in "low-income and disadvantaged communities."

Pursuant to Section 134, an "eligible recipient" also must invest directly on "national, regional, State and local levels." It cannot, therefore, focus only on the "State and local levels." This requirement comports with the need to reduce greenhouse gas emissions and other pollutants everywhere in the country and with the need to focus on "low-income and disadvantaged communities" that are found in all states and regions.

In presenting a strategic plan for such mandatory national and regional direct investing, the "eligible recipient" should discuss a sectoral approach to investing. It must achieve a positive return on its entire portfolio, partner with private sector investors, recycle funds, and seek to avoid doing what the private sector would do on its own. Given these constraints, the applicant should explain on a national and regional level the sectors—including both product and geographic markets—in which it initially intends to invest.

EPA should require that eligible recipients show how they will align investments with at least the following programs and projects:

Inflation Reduction Act Additional Related Programs

- The ZET Fund, $7 billion, to make grants to states, municipalities, and Tribal governments to deploy or benefit from zero-emission technologies.
- Clean Energy Incentives for Individuals, Section 13302, extends tax credits for capital costs of qualified residential clean energy property expenditures, including a variety of zero emission technologies.
- Energy Community Reinvestment, Section 50144, $5billion: To "retool, repower, repurpose, or replace energy infrastructure" or "enable operating energy infrastructure to avoid, reduce, utilize, or sequester air pollutants or anthropogenic emissions of greenhouse gases."
- Clean Heavy-Duty Vehicles, Section 60101, $1billion: Granting mechanism "to help replace dirty medium and heavy-duty vehicles with zero-emitting vehicles."

- Funding to Address Air Pollution at Schools, Section 60106, $50million: Granting mechanism "to monitor and reduce air pollution and greenhouse gas emissions at schools."
- Low Emissions Electricity Program, Section 60107, $87 million: Technical assistance and education programs for consumer-related groups, low-income, and disadvantaged communities, and others to reduce greenhouse gas emissions from electricity generation.
- Climate Pollution Reduction Grants, Section 60114, $5 billion: For a competitive grant program for state planning and implementation of greenhouse gas reduction programs.
- Environmental and Climate Justice Block Grants, Section 60201, $3 billion: To award grants "for environmentally-related activities that benefit disadvantaged communities."
- Energy Infrastructure Reinvestment Program, Section 50144, $5 billion and $250 billion in loan guarantees to "(1) retool, repower, repurpose, or replace energy infrastructure that has ceased operations; or (2) enable operating energy infrastructure to avoid, reduce, utilize, or sequester air pollutants or anthropogenic emissions of greenhouse gases."

Bipartisan Infrastructure Law

- Electric and Reduced Carbon Buses: $5 billion. State and local government entities and nonprofit entities that can arrange financing for sales eligible under this program are eligible receiving entities.
- Pollution Prevention: $100 million for the Pollution Prevention Program.

- **Charge Question II.a.i: Who could be eligible entities and/or indirect recipients under the GHGRF? What should the thresholds for deployment be – both amount and timing – for GHGRF funding by these entities? Please provide references regarding the total capital deployed by these entities into clean energy and climate projects**

The requirements for meeting the definition of "eligible recipient" each can be satisfied only by appropriate "governance structures, reporting requirements and audit requirements." These requirements are ongoing. An applicant cannot merely be in compliance at the time of the application but instead must remain continuously in compliance during the entire term of the grant it seeks. Here are the four requirements that require governance, reporting, and auditing:

- To be "eligible," the nonprofit must be "designed" to "provide capital, leverage private capital, and provide other forms of financial assistance for the rapid deployment of low- and zero-emission products, technologies, and services." To comply with this provision, an applicant must show the EPA that it is "designed" by charter, history, organization structure, management expertise, and board composition to fulfill these mandatory functions. A nonprofit "designed" for some other purpose, however laudable and consistent with other statutory authorities, does not meet this requirement. For example, a nonprofit with the primary purpose of investing in general economic development is not an "eligible recipient" under Section 134, although it can be an indirect recipient of "funding and technical support." Governance structures must be disclosed to assess whether an applicant complies with this provision.

- Nonprofits that take deposits are excluded from the definition of "eligible recipient." This provision bars credit unions, or organizations that derive their funds from credit unions, from applying directly. EPA should not permit as an "eligible recipient" the creation of a mere paperwork construct that is in effect a front for an entity that cannot qualify as an "eligible recipient." An "eligible recipient" must have a board, charter, by-laws, proposed management team, business plan, financial plan and capability to fulfill all the requirements of Section 134. No mere paper shell of a nonprofit founded and controlled by entities ineligible to apply or unqualified to deserve a grant can be advanced as an appropriate "eligible recipient."

- To be "eligible," the nonprofit can be funded only by "public or charitable contributions." It cannot be funded, therefore, by the private sector to any degree. Section 134 clearly calls for the "eligible recipient" to partner with the private sector as opposed to being a subsidiary, affiliate, or entity in any way supported by the private sector. To comply with this provision, eligible recipients should explain to EPA how they are currently funded. If they claim to rely on "charitable contributions," then they must also prove their status as 501(c)(3) certified charitable organizations. Governance and reporting must comply with the regulations concerning such status.

- A nonprofit seeking to be deemed "eligible" must explain to EPA how its governance, reporting and auditing practices and processes will enable it to "invest[s] in or finance[s] projects alone or in conjunction with other investors." EPA should interpret the word "projects" to mean "qualified projects." Governance, reporting, and auditing suitable, for example, to small business lending in general will not necessarily serve the carefully defined purposes of Section 134.

- **Charge Question II.a.ii: What eligible entities and/or indirect recipients would best enable funds to reach disadvantaged communities? What are their challenges and opportunities and how can EPA maximize the use of these channels?**

A viable national green bank can not only sustain but actually multiply the initial one-time capitalization under GA and LIDC Fund grants many times over during the years and decades required to avoid or reduce GHG emissions and other forms of air pollution at scale.

Given the magnitude of the challenge, it is essential that to ensure scale, scope, and cost-reducing efficiency, it is best to fully capitalize a national green bank. By contrast, making multiple grants to smaller entities will inevitably reduce the total amount of investment needed to redress environmental injustice and emissions and air pollution reduction.

A purpose-built national green bank is ideal for full capitalization because its board, management, and skill sets will be focused on the mission of Section 134 as opposed to some other objective. Changing the direction and capability of an existing institution is one of the most difficult of all organizational challenges. Instead of hoping for such a transformation by an applicant seeking to be an "eligible recipient," EPA would be far more likely to achieve the goals of Section 134 by requiring a fully capitalized national green bank to support additional green investing by existing nonprofits that can add to their other objectives a component of investing in "qualified projects." To that end, eligible recipients should be required to show how grants, technical support, and other assistance can enable existing nonprofits to enter into green investing.

Execution, Reporting, and Accountability

- **Charge Question III.a – Given the tight timeline for implementation of the funds, what are key steps that EPA could take in the short- (next 180 days), medium- (next two years before funds expire in 2024), and long-term (beyond 2024)?**

EPA has correctly identified the need to "reduce burdens on applicants, grantees, and/or subrecipients." Eligible recipients should be required to identify such burdens and show how they will reduce them. They include at least the following measures that any applicant should be required to address. First, it should show how it will bear to the maximum degree feasible the costs to comply with necessary data-gathering, audits, and other monitoring of performance. Second, to support indirect investing, it should engage in efforts on national, regional, and local levels to increase efficiencies and lower costs for supply chains of "qualified projects." Third, it should address the myriad impediments to financing and deployment in energy markets, such as the soft costs of permitting and financing. EPA should require eligible recipients to explain in detail their plans for reducing all these "burdens."

A national green bank should be able to satisfy the most stringent of EPA monitoring and reporting requirements, not only as to its own direct investment but also on behalf of all members of the network of indirect lenders to which it has extended funding and technical support. Imposing that burden on each of the members of this network directly would multiply overhead costs. It would open the door to divergent methods of accounting, measuring, and reporting, which in turn would cause a lack of clarity and the inability to respond quickly to market changes. Any applicant that proposes to decentralize such systems should be required to explain how it can avoid multiplying the costs of such activities.

Second, EPA should request that any eligible recipients explain how they would negotiate with original equipment manufacturers and distributors for the lowest unit cost supply contracts, timely delivery, and other supply chain efficiencies.

Third, product adoption and project formation have in the past occurred too slowly given the urgency of addressing both climate change and the greenhouse gas and pollution reduction in low-income and disadvantaged communities, namely, emissions and pollution reduction and investment in low-income and disadvantaged "low-income and disadvantaged communities." Project implementation delay is a burden that reduces leverage in all its dimensions and contributes to increased social and environmental damage. Eligible recipients therefore should be asked how they would expedite product marketing and adoption and project formation without incurring inappropriate risks or engendering possible waste, fraud, and abuse of funds.

In connection with all three activities, EPA should require eligible recipients to show how "technical assistance" for indirect investors will reduce burdens. It is critical that an "eligible recipient" not foster a network of indirect investors that are burdened by redundant, proliferating expenses among all members.

In addition, EPA should adopt a term and condition for any grant award made under the GHGRF that provides grant recipients with the same flexibilities regarding use of Program Income that are provided to recipients of EPA funding for revolving loan fund programs contained in 2 C.F.R. § 1500.8(d).

- **Charge Question III.b – What types of requirements could EPA establish to ensure the responsible implementation and oversight of the funding?**

– AND –

- **Charge Question III.c – What mechanisms could eligible recipients adopt, including governance as well as other mechanisms, to ensure that their applications and subsequent implementation efforts ensure: (1) accountability to low-income and disadvantaged communities; (2) greenhouse gas emission reductions; and (3) the leveraging and recycling of the grants?**

The EPA has rightly identified governance as critical to determining whether an applicant is an "eligible recipient" and, if it is, whether its application is meritorious. Governance must be substantively established as opposed to being merely a matter of form.

Section 134 excludes any for-profit, deposit-taking, or not-for-profit entities from the scope of "eligible recipient." In order to give full meaning to the Congressional intent, EPA should also bar such excluded entities from creating mere paperwork fronts of nonprofits that are created to pass funds through to the excluded entities.

The "Use of Funds" strictures of Section 134 require a unique set of skills and experiences for the board, advisory boards, and management teams. The EPA should require eligible recipients to explain in detail how the use of the funds, national scope, the mandate of directly and indirectly investing, the imperative of addressing "low-income and disadvantaged communities," and the narrow focus of "qualified projects" all will be reflected in its detailed operating plan. An applicant that has historically pursued investing for other purposes, no matter how worthy, should be obliged to explain how it proposes to meet the obligations that the GHGRF imposes on any "eligible recipient."

EPA should require any applicant to demonstrate in its "governance structures" and its "reporting" compliance with diversity goals in the dimensions of race, ethnicity, national origin, gender, regional location, partisan affiliation, and skill set, at a minimum.

Congress wanted to guarantee, and the EPA should confirm, that the applicant for direct receipt of a GHGRF grant is truly independent of government. The applicant's "governance structures" must manifest such independence. For this reason, eligible recipients are not "eligible" if their regulation or governance indicates support by any other government funding program or implies a guarantee that government would fulfill its obligations in the event of default. Independence from the federal government assures that the national direct recipient is not backed by the full faith and credit of the United States either explicitly or by an implication perceived in the market.

EPA should state the reporting and audit requirements that will be required of direct and indirect recipients and call for eligible recipients to provide adequate detail demonstrating how they will comply with the requirements. Eligible recipients should explain their safety and soundness policies for asset management – including at least credit underwriting, portfolio diversification, loss reserve requirements, internal controls, cybersecurity and other necessary functions suitable to managing substantial capital.

EPA can incorporate reporting and auditing requirements established by some other federal agency or department, but it should not delegate responsibility for implementing and overseeing operation of the GHGRF to some other agency. No other agency has the experience or the continuing role of assuring that the eligible recipients for funds are committed to combatting climate change and redressing environmental injustice.

We urge that EPA either dictate its requirements or ask eligible recipients to propose how they would address the following issues through reporting and auditing:

- Showing how direct and indirect investing is confined to "qualified projects"
- Providing for contractual relationships between the direct recipient and indirect recipients of "funding and technical assistance"
- Reporting the status of creating "new" indirect recipients
- Reporting on standardization, securitization, and recycling
- Reporting on partnerships with private sector investors
- Demonstrating "operability" on an ongoing basis
- Tracking "funding and technical assistance" to indirect recipients
- Accounting for community assistance
- Managing risk
- Monitoring and reporting on reductions and avoidance of "greenhouse gas emissions and other forms of air pollution" through both direct and indirect investing
- Reporting on overhead, including compensation and benefits for employees
- Assessing performance against objectives for "rapid deployment of low- and zero-emission products, technologies and services"
- Reporting on job creation, health benefits, training results, and other benefits for "low-income and disadvantaged communities"
- Producing beneficial impact on wages

- Allowing for changes in strategy and tactics as circumstances change • Ensuring mitigation of conflicts of interest