

A. Ownership and Control by Equity Eligible Persons

The agency is right to be concerned about large corporations working to set up an EEC structure. This effectively circumnavigates the purpose of the EEC category wherein companies that should only be eligible for the TCS category are creating a structure to technically qualify for the EEC category, but without meeting the true spirit and purpose of the EEC. The taking of EEC capacity by large, established solar corporations effectively limits (or outright prevents) true EECs from developing their business and reserving capacity in the EEC block.

To address these concerns, EECs should be required to disclose who the entity/entities is that is doing the development work on behalf of the EEC and what the compensation structure is.

I believe the best way to monitor and prevent gaming in the EEC category is not necessarily to tighten certification, but to require EECs to disclose who they are working with, what the EEP/EEC's responsibilities are in the development process, and what the EEP/EEC's compensation structure is in the development process. Follow the money. Learning the compensation structure for EEP/EECs will be the most telling component of this analysis, because EECs as figureheads or passthroughs, who are not meaningfully involved in projects and/or do not have progressive responsibilities, will be making nominal amounts.

Tightening certification is tricky. It will only make it more difficult for true EECs, who tend to have less resources, to prove their EEC status and may result excluding some EECs that should really be included. More established corporations will always have the resources to set up a regulatory structure to comply with whatever certification requirements exist.

B. Verifying the Socio-Economic Status of Majority-Owner EEPs

This proposal seems very effective in theory but very difficult to implement in practice. Realistically, an EEP who is operating an EEC is going to need some resources in order to start a business. Additionally, it must be remembered that there are several different ways that CEJA is measuring disadvantage, including historical exposure to high levels of pollution and poor public health outcomes.

Most genuine EECs I have talked to who are not established businesses have started their business while still working another career. This makes sense statistically: most new businesses operate at a loss for several years prior to turning a profit. This necessitates start-up business owners to work multiple jobs. And if an income cut-off is going to be established, then there need to be several considerations in establishing such a cut-off:

- What is the personal debt level of the EEP?
- Is the EEP's spouse's income going to be considered?
- Does the EEP have children to support?
- Does the EEP have other unique personal financial considerations?

This process would not only be time-consuming and burdensome to EEPs, but also invasive and every EEPs financial situation is going to be different. While an EEP may have historically had higher income than average, that EEP may have also had difficult financial circumstances to address and/or simply worked multiple jobs to make ends meet. In short, it will be difficult to set an income cut-off without doing a thorough exploration of the EEPs entire financial circumstances.

Alternatively, the IPA can and should focus on ensuring that the EEC is a genuine start-up business looking to enter the solar industry. If an EEC is a start-up business and the EEP owner qualifies under CEJA, then that is enough, or there should at least be a presumption that that EEP/EEC is meeting the spirit and intent of the program. (After all, it does not make sense to bar an EEP/EEC from the program who has not meaningfully engaged with it yet—that would not address the IPA's potential concerns about EEC gaming.) If, on the other hand, an EEC is an established business in the solar industry, then there should be further scrutiny on the business profits and business operations of the EEC, including analysis of the compensation structure set up for the EEP/EEC.

D. Other Enhancements to the EEC Certification Process

I do not believe it is the EEC certification process that is causing the problems in the EEC category that the IPA has identified. Inevitably, any attempt to change the EEC certification process is going to exclude well-meaning, genuine EECs. The problems that the IPA has identified have their root in non-EEC players operating in the EEC category with minimal to no EEC involvement. So policing EEC certification is not really getting to the heart of the problem, but rather the IPA should turn its focus to asking the EECs to disclose their business and compensation arrangements with non-EEC partners in order to demonstrate meaningful involvement by the EEP/EEC.