

ONE HUNDRED EIGHTEENTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON ENERGY AND COMMERCE

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October 18, 2023

The Honorable Michael S. Regan
Administrator
U.S. Environmental Protection Agency
Mail Code 1101A
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Dear Administrator Regan:

We write regarding the U.S. Environmental Protection Agency's (EPA) implementation of the Greenhouse Gas Reduction Fund (GGRF), established pursuant to the Inflation Reduction Act of 2022 (IRA). The IRA authorizes the EPA to disburse \$27 billion, by September 30, 2024, in competitive grants to eligible non-profit organizations for clean energy investments, particularly those that impact low-income and disadvantaged communities.¹ With billions of dollars on the line, an unusually accelerated timeline for disbursement, and a new and complex funding structure, this program warrants close scrutiny and rigorous oversight.

Earlier this year, the EPA released its plan for implementing the GGRF.² In this announcement, the EPA announced three competitions through which it plans to administer \$27 billion in grant funding. A \$14 billion National Clean Investment Fund (NCIF) competition will fund two to three national non-profits that would partner with private capital providers to deliver financing to businesses, communities, community lenders, and others for clean energy projects.³ A \$6 billion Clean Communities Investment Accelerator (CCIA) competition will fund two to seven non-profits that will build financing capacity across specific networks of community lenders for clean technology projects.⁴ Finally, a \$7 billion Solar for All (SFA) competition aims to expand access to residential solar investment among low-income and disadvantaged communities.⁵

¹ Pub. L. No. 117-169 § 60103.

² Press Release, Env'tl. Prot. Agency, EPA Releases Framework for the Implementation of the Greenhouse Gas Reduction Fund as Part of President Biden's Investing in America Agenda, Apr. 19, 2023, <https://www.epa.gov/newsreleases/epa-releases-framework-implementation-greenhouse-gas-reduction-fund-part-president>.

³ *Id.*

⁴ *Id.*

⁵ *Id.*

This program is a completely new undertaking for the EPA.⁶ The IRA's GGRF language includes provisions associated with entities often referred to as "green banks."⁷ According to the EPA, the program will "leverage public investment with private capital" to finance clean energy projects.⁸ The EPA has no experience administering such a funding vehicle, referring to it as "a first-of-its-kind" program.⁹

The GGRF implicates many oversight concerns. For example, the EPA's Inspector General recently testified before the Committee's Subcommittee on Oversight and Investigations that newly created programs providing funding to new recipients on short timelines possess an increased vulnerability to fraud and execution errors.¹⁰

On January 3, 2023, the U.S. Environmental Financial Advisory Board (EFAB) submitted its guidance and considerations pertaining to the GGRF, including risks associated with various program structures.¹¹ In evaluating an approach in which the EPA funds four or five "lender intermediaries," which seems to reflect the approach the EPA ultimately adopted, the EFAB noted that existing intermediaries have not operated at the scale the GGRF would require.¹²

Additionally, some have flagged that the EPA could use this program to subsidize favored special interest organizations.¹³ Others have alleged that current EPA appointees have ties to potential recipients of these sizeable awards, raising ethical concerns.¹⁴

As referenced above, we are also alarmed at the speed of implementation of the GGRF.¹⁵ The SFA notice of funding opportunity (NOFO) was announced in June 2023, with an application deadline of October 12, 2023.¹⁶ According to the NOFO, the EPA anticipates notifying selectees

⁶ See *Follow the Money: Oversight of President Biden's Massive Spending Spree: Hearing Before the Subcomm. on Oversight and Investigations of the H. Comm. on Energy and Commerce*, 118th Cong. (2023) (statement of Sean O'Donnell, Inspector General, Environmental Protection Agency) (noting that this is a new funding vehicle).

⁷ See, e.g., RICHARD K. LATTANZIO, CONG. RESEARCH SERV., EPA'S GREENHOUSE GAS REDUCTION FUND (2023).

⁸ See Press Release, Env'tl. Prot. Agency, *supra* note 2.

⁹ See *id.*

¹⁰ See *Follow the Money: Oversight of President Biden's Massive Spending Spree: Hearing Before the Subcomm. on Oversight and Investigations of the H. Comm. on Energy and Commerce*, 118th Cong. (2023) (statement of Sean O'Donnell, Inspector General, Environmental Protection Agency)

¹¹ ENVTL. PROT. AGENCY, ENVTL. FIN. ADVISORY BD., *Environmental Financial Advisory Board Greenhouse Gas Reduction Fund Charge*, Jan. 3, 2023, available at <https://www.epa.gov/system/files/documents/2023-01/efab-greenhouse-gas-reduction-fund.pdf>.

¹² *Id.* at 57.

¹³ See Benjamin Zycher, Response to Request for Information from the Environmental Protection Agency: Greenhouse Gas Reduction Fund 8, Am. Enterprise Inst., Dec. 5, 2022, available at <https://www.aei.org/wp-content/uploads/2022/12/Zycher-EPA-GHG-Reduction-Fund-Info-Request-Dec-5-2022.pdf?x91208>.

¹⁴ See PROTECT THE PUBLIC'S TRUST, *Greendoggle? EPA Privately Discussed How to Spend \$20B with a Few Favorite Environmental Groups*, Sept. 21, 2023, <https://protectpublictrust.org/press-releases/greendoggle-epa-privately-discussed-how-to-spend-20b-with-a-few-favorite-environmental-groups/>.

¹⁵ See *Follow the Money: Oversight of President Biden's Massive Spending Spree: Hearing Before the Subcomm. on Oversight and Investigations of the H. Comm. on Energy and Commerce*, 118th Cong. (2023) (statement of Sean O'Donnell, Inspector General, Environmental Protection Agency) (noting the rapid implementation timelines and narrow window of availability for the significant amount of funding).

¹⁶ Env'tl. Prot. Agency, Office of the Greenhouse Gas Reduction Fund, EPA-R-HQ-SFA-23-01, Request for Applications: Solar for All (Aug. 31, 2023) (revised) [hereinafter SFA NOFO]; ENVTL. PROT. AGENCY, *Solar for All*, <https://www.epa.gov/greenhouse-gas-reduction-fund/solar-all> (last visited Oct. 4, 2023).

in March 2024 and making awards in July 2024.¹⁷ The EPA released NOFOs for the \$14 billion CCIA and the \$6 billion NCIF on July 14, 2023, with applications closing on October 12, 2023.¹⁸ For these competitions, the EPA anticipates notifying selectees in March 2024 and plans for them to start administering the funds by July 2024.¹⁹ The EPA has a statutory deadline to obligate funds by September 2024.²⁰ Under this timeline, the EPA has just over a year to obligate \$27 billion.²¹

Finally, we are also concerned about how this program will function, given the lack of domestic production for solar panels. The Department of Energy has noted that China's control of key materials in renewable energy extends "across the board."²² Similarly, the *Wall Street Journal* reported on China's dominance of the U.S. solar market, noting that China controls almost half of the U.S. solar panel market share, making it incredibly difficult to supplant Chinese producers with domestic suppliers.²³ The EPA has stated that certain projects under all three competitions are subject to the Buy America domestic sourcing requirements of the Build America, Buy America (BABA) provisions of the Infrastructure Investment and Jobs Act (IIJA).²⁴ The EPA also claims it will provide future guidance on which projects are subject to the BABA requirements.²⁵ If there will be domestic sourcing requirements through BABA on the various GGRF programs—and we know that China has a significant stranglehold on the availability of solar panels, among other green energy technologies—we are unsure how the EPA and program participants will ensure that the GGRF programs are *not* supporting Chinese products.

In order to assist with our oversight of the EPA's implementation of the GGRF and to ensure responsible stewardship of taxpayer dollars, we request that you provide answers to the following questions and requested documents no later than November 1, 2023:

1. In accordance with the IRA, all three NOFOs define an "eligible recipient" as a nonprofit organization that (a) is 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; (b) does not take deposits other than deposits from

¹⁷ *Id.*

¹⁸ Env'tl. Prot. Agency, Office of the Greenhouse Gas Reduction Fund, EPA-R-HQ-CCIA-23, Request for Applications: Clean Communities Investment Accelerator, (Aug. 11, 2023) (revised) [hereinafter CCIA NOFO]; ENVTL. PROT. AGENCY, *Clean Communities Investment Accelerator*, <https://www.epa.gov/greenhouse-gas-reduction-fund/clean-communities-investment-accelerator#info> (last visited Oct. 4, 2023); Env'tl. Prot. Agency, Office of the Greenhouse Gas Reduction Fund, EPA-R-HQ-NCIF-23, Request for Applications: National Clean Investment Fund (Aug. 11, 2023) (revised) [hereinafter NCIF NOFO]; ENVTL. PROT. AGENCY, *National Clean Investment Fund*, <https://www.epa.gov/greenhouse-gas-reduction-fund/national-clean-investment-fund> (last visited Oct. 4, 2023).

¹⁹ CCIA NOFO, *supra* note 18; NCIF NOFO, *supra* note 18.

²⁰ See, e.g., ENVTL. PROT. AGENCY, GREENHOUSE GAS REDUCTION FUND: IMPLEMENTATION FRAMEWORK SUPPORTING PRESENTATION (2023), available at https://www.epa.gov/system/files/documents/2023-05/Implementation%20Framework%20Presentation_508%20Compliant.pdf.

²¹ See *id.*

²² See DEP'T OF ENERGY, AMERICA'S STRATEGY TO SECURE THE SUPPLY CHAIN FOR A ROBUST CLEAN ENERGY TRANSITION 13 (2022), available at <https://www.energy.gov/policy/articles/americas-strategy-secure-supply-chain-robust-clean-energy-transition>.

²³ See Phred Dvorak, *China's Dominance Over U.S. Solar Market Grows Despite Efforts to Stem It*, WALL ST. J., April 26, 2023, <https://www.wsj.com/articles/china-dominates-u-s-solar-market-as-lawmakers-tussle-over-tariffs-7c2d749d>.

²⁴ CCIA NOFO, *supra* note 18, at 58; NCIA NOFO, *supra* note 18, at 56; SFA NOFO, *supra* note 16, at 64.

²⁵ CCIA NOFO, *supra* note 18, at 58-59; NCIA NOFO, *supra* note 18, at 56; SFA NOFO, *supra* note 16, at 64-65.

repayments and other revenue received from financial assistance using the grant funds; (c) is funded by public or charitable contributions, and (d) invests in or finances projects alone or in conjunction with other investors.²⁶

- a. The NOFOs for the \$14 billion CCIA and the \$6 billion NCIF state that to be an eligible recipient, an applicant must be incorporated in the United States,²⁷ and all three NOFOs state the applicant cannot be controlled by one or several entities that are not eligible recipients.
 - i. Was the “incorporated in the United States” language regarding nonprofits intentionally omitted from the SFA NOFO? If so, why?
 - ii. How is the EPA ensuring and tracking that applicants meet these requirements? Is the EPA tracking who funds these U.S. entities or who has interests in these U.S. entities?
 - iii. Will there be a tracking of the grantees and the subrecipients who have received other grants, loans, or tax credits under the IRA and/or the IIJA?
 - b. As grantees will act as intermediaries distributing funding to subrecipients, please describe the EPA’s plan for oversight once funds are released to recipients and subrecipients.
 - c. How will EPA prepare these grantees to assist subrecipients who have little or no experience with federal agencies or federal awards?
2. What fiduciary duties will exist between the EPA, the grantees, and subrecipients? Do the grantees owe fiduciary duties to the EPA? Similarly, do the entities receiving loans from grantees owe fiduciary duties to the EPA?
 3. Who will conduct the underwriting and risk analyses for any loans provided by grantees? What qualifications or experience will they have? What kind of reporting, if any, will they provide to the EPA?
 4. Please describe and list all policies, procedures, and guidance documents that EPA will provide to grantees and subrecipients regarding conflicts of interest policies and provide a copy of each.
 5. Which employees or contractors at EPA will be responsible for administering the GGRF? Please provide their names, job titles, and program office.
 6. Outside of the EPA’s Office of the Inspector General’s oversight, who at the EPA will be auditing the GGRF program internally, including ensuring it is being administered without waste, fraud and abuse, maintaining all appropriate ethics protections, and protecting taxpayer dollars? Will these EPA employees auditing the program be separate from the GGRF program?

²⁶ Pub. L. No. 117-169 § 60103; *see also* CCIA NOFO, *supra* note 18, at 58-59; NCIF NOFO, *supra* note 18, at 20; SFA NOFO, *supra* note 16, at 30.

²⁷CCIA NOFO, *supra* note 18, at 22; NCIF NOFO, *supra* note 18, at 20.

7. Do any of the GGRF programs have a limit on the maximum amount that a specific grantee can provide to one subrecipient under that particular program? If so, please provide the maximum amount for each program. If not, did the EPA consider instituting a maximum amount, and why did it ultimately decide not to do so?

Additionally, we also request that you provide a staff-level briefing on the status of the program the week of October 30, 2023.

Thank you for your cooperation with this matter. If you have any questions regarding this request, please contact Christen Harsha with the Majority Committee staff at (202) 225-3641.

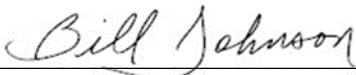
Sincerely,



Cathy McMorris Rodgers
Chair
House Committee on Energy and Commerce



H. Morgan Griffith
Chairman
Subcommittee on Oversight and
Investigations



Bill Johnson
Chairman
Subcommittee on Environment,
Manufacturing, and Critical Materials

CC: The Honorable Frank Pallone, Ranking Member, Energy and Commerce Committee
The Honorable Kathy Castor, Ranking Member, Subcommittee on Oversight and Investigations
The Honorable Paul Tonko, Ranking Member, Subcommittee on Environment, Manufacturing, and Critical Materials