

**RESPONSE TO ILLINOIS POWER AGENCY REQUEST FOR COMMENTS ON  
BEHALF OF THE SOLAR ENERGY INDUSTRIES ASSOCIATION, THE COALITION  
OF COMMUNITY SOLAR ACCESS, AND THE ILLINOIS SOLAR ENERGY ASSOCIATION**

**November 4, 2021**

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The Solar Energy Industries Association, the Coalition of Community Solar Access, and the Illinois Solar Energy Association (collectively the “Joint Solar Parties” or “JSP”) appreciate the opportunity to respond to the Illinois Power Agency’s most recent solicitation for comments for the proposed process for Collection of Demographic and Geographic Data.

As an initial matter, the Joint Solar Parties appreciate that the IPA is soliciting comments by necessity following the passage of the omnibus energy legislation. The significant changes to the Illinois Power Agency Act includes an overhaul of certain elements of the Adjustable Block Program and requires opening of new blocks very soon after the effective date of the legislation. The Joint Solar Parties are thus providing feedback with the understanding that some of the issues in this Request for Stakeholder Feedback will be addressed in the next LTRRPP and potentially litigated before the Commission during the approval process.

In specific response to questions about collection of demonstrate and geographic data, the Joint Solar Parties encourage coordination between the Illinois Power Agency and the Illinois Department of Labor. In Public Act 102-0662, the Illinois Department of Labor is directed to create the Bureau on Apprenticeship Programs and Clean Energy Jobs (the “Bureau”).

The Bureau is directed to compile racial and gender workforce diversity information from certified transcripts of payroll reports (“CPTs”). Additionally, Public Act 102-0662 directs the Bureau to “work with the Department of Commerce and Economic Opportunity, the Illinois Power Agency, the Illinois Commerce Commission, and other agencies, as necessary to receive and share data and reporting on racial and gender workforce diversity, demographic data, and any other data necessary to achieve the goals of this section.” (20 ILCS 1505/1505-215(d).) Taken together, the CPT review and interagency coordination requirements mean that Approved Vendors will already be filing demographic and geographic data with the Illinois Department of Labor and the Illinois Department of Labor will be contextualizing that data with information from other agencies.

The Joint Solar Parties support these reporting requirements but would support and recommend that the IPA consider an interagency agreement between IPA and Illinois Department of Labor to receive access to these report filings and analysis. The Joint Solar Parties strongly suggest that there should not be two parallel but not identical collections of demographic reporting requirements or filings from two agencies, and rather there should be a simplification of sharing these required reports between agencies to meet goals of the legislation.

Additionally, Approved Vendors will need to draft and submit a report describing how the Approved Vendor will meet minimum equity standards and provide annual reporting (with a check-in at six months) to ensure the Approved Vendors continue to meet these standards. (*See* 20 ILCS 3855/1-75(c-10)(1)(A)-(C).) Similar questions may be requested as part of that process.

Joint Solar Parties suggest that the IPA work to minimize duplication of reporting, and to match any reporting periods to the equity standard requirements.

Further, as background to the responses below, the Joint Solar Parties note that as part of the annual report the IPA currently requires substantial workforce and vendor diversity disclosures that appear to address many, if not all, of the requirements of the new statute. So the Joint Solar Parties would first support sharing of the annual Department of Labor filing, or in the alternative, we encourage IPA adapt its annual reporting process to match the new required equity standards reporting. With the possible exception of EPCs and O&M providers of community solar (which are not currently considered a “designee” because they are not customer-facing), designees must register and could be subject to disclosure requirements independently of Approved Vendors.

If the IPA decides to develop its own demographic or geographic reporting requirements, or adjust its annual reporting disclosures, the Joint Solar Parties make the following specific recommendations to the questions posted by IPA:

A. Data Collection

1. Are there demographic categories or classifications that the above proposed list fails to capture? Please provide specific examples and reasons for their inclusion.

**JSP RESPONSE:** Please see the response to questions A.2 and A.3 below.

2. Are there any proposed demographic categories or classifications as proposed above that should be altered? Please provide specific examples and reasons for proposed changes.

**JSP RESPONSE:** The Joint Solar Parties recommend a few tweaks to the list of options available:

- For questions 1 and 2 in particular but with regard to all of the IPA’s proposed questions, an Approved Vendor may be a project company with no employees, or it may be a substantial entity with hundreds (or more) employees. In addition, over time, the Approved Vendor for a large number of systems is expected to change at least once—whether from early-stage developer to a long-term owner/operator, from an EPC to a customer/site host, or from a long-term owner/operator to a tax financing vehicle. Specifically with respect to tax equity financing vehicles, most structures with which the Joint Solar Parties are familiar lead to ultimate majority ownership of the Approved Vendor by the financing party(-ies) as opposed to the developer or owner/operator. As a result, the Joint Solar Parties suggest that the question be modified to include “(if any).” It appears to the Joint Solar Parties that the IPA’s demographic questions are primarily if not almost exclusively geared toward the development, sale, and installation of systems rather than ongoing administration and O&M. The IPA should consider whether the disclosures should focus on system development, sales, and construction rather than being an Approved Vendor disclosure.
- For question 8, the Joint Solar Parties do not believe the question is appropriate for IPA given the Illinois Department of Labor filings that provide exact payroll and benefit information. However, if IPA includes this or a similar question, the

question should address the overall compensation package (to be in line with DOL filings), which considers salary and benefits. Additionally, the question should be about the income (or a good faith estimate thereof) from the Approved Vendor. Some employees or contractors are compensated on a commission or other non-salaried basis. Some employees are either part time or shared with affiliated interests that may not touch the Adjustable Block Program.

- For question 10, employers or entities that retain contract workers may not be aware of the criminal history of all employees or contractors. Among other reasons, the Joint Solar Parties understand that juvenile records may be expunged or sealed even if the juvenile was incarcerated. The Joint Solar Parties thus recommend that the question allow but not require self-reporting of employees or contractors who were formerly incarcerated.
- For questions 4-6 and 11-14, employees and contractors generally speaking have the right to refuse to answer employer questions as part of applications or onboarding with regard to these classifications (with limited exceptions including asking about race/ethnicity for CPTs<sup>1</sup>). The Joint Solar Parties thus recommend that these categories be conditioned as “employees or contractors that self-identified as.” That language also serves the additional purpose that employers may not—and in many cases should not be encouraged to—conduct independent investigations into the accuracy of the employee or contractor’s self-identification.

The Joint Solar Parties further note that while some employees may choose to self-identify certain status or history (for instance as alumni of the foster care system or as a formerly incarcerated individual), the Joint Solar Parties oppose any requirement that Approved Vendors actively investigate an employee or contractor’s status. At minimum, such an investigation is likely to be seen by some employees and contractors as invasive and hostile and may trigger legal issues for employers. The Joint Solar Parties do not believe that attempts to compel disclosure will have a positive effect on the workplace or working environment.

3. Are there any proposed demographic categories or classifications that should be removed? Please provide specific examples and reasons for removal.

**JSP RESPONSE:** The Joint Solar Parties note that race and location are information required by statute and that some additional self-reported information (such as former incarceration or status as an alum of the foster-care system) is potentially relevant to other goals and mandates. However, other disclosures such as salary or wages to employees, employee/contractor age, and education level do not appear when reported in the aggregate to be targeted to the goals of the statute.

4. The Agency seeks feedback on the process for the submission of data collected by Approved Vendors from subcontractors. One possible approach would be for Approved

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<sup>1</sup> See, e.g., Illinois Department of Labor CPT Q&A (available at: <https://www2.illinois.gov/idol/Laws-Rules/CONMED/SiteAssets/Pages/certifiedtranscriptofpayroll/Certified Payroll Q A.pdf> (accessed 11/3/21).) The Joint Solar Parties note that the CPT requirement to ask about race and ethnicity is yet another reason that CPTs rather than separate reports should be relied on by the IPA.

Vendors to submit subcontractor information on a project-by-project basis. Another approach would be for Approved Vendors to submit subcontractor information on a quarterly basis. The Agency is also open to alternative proposals; for each proposal, please provide an explanation as to why a particular approach may or may not be preferable.

**JSP RESPONSE: Must be annual reporting.** Submitting information on a quarterly basis for all subcontractors is very burdensome to both the subcontractors and the Approved Vendors. Furthermore, because (unlike the diversity reporting already collected by the IPA as part of the annual report) the information is not limited to individuals in Illinois that are working on the Adjustable Block Program, larger contractors will have a massive reporting obligation and Approved Vendors working with multiple contractors across projects are going to have a large volume of paperwork.

A better approach would be to require disclosures by designees as part of the annual designee registration. By definition, subcontractors are designees or sub-designees with the exception of EPCs and O&M contractors of community solar.

5. For purposes of subcontractor reporting, should Approved Vendors be required to report demographic and geographic data on each subcontractor with whom the Approved Vendor worked on a project in the Program during the reporting period? Should the subcontractors from which this data is collected be limited to those with a direct role in project development, such as sales/marketing and installation? Are there other categories of subcontractors to be included (or excluded) and if so, why?

**JSP RESPONSE:** The Joint Solar Parties note that the IPA already collects this information as part of the Approved Vendor annual reports. The Joint Solar Parties are unclear why what appears to be the exact same information needs to be collected in a separate process from the Approved Vendor.

6. New Section 1-75(c-20) refers to collecting data on “program participants.” Might this be understood as referring to customers or hosts? If so, how should the IPA seek to obtain demographic information about customers, and what sensitivities apply to making such inquiries of customers? Who is the right entity to collect that information and how, and how should that information then be reported back to the IPA?

**JSP RESPONSE:** The Joint Solar Parties note that the Program Administrator has name and contact information (including an address) for every customer and subscriber because of the IPA’s requirement that a signed disclosure form be uploaded. The Joint Solar Parties adamantly oppose collection of further demographic information from site hosts and customers and would be gravely concerned with attempts to compel Approved Vendors to collect racial, ethnic, gender identification, or other personal information (to the extent that the subscriber or host is a natural person) of customers or hosts.

#### B. Reporting & Accuracy of Data

1. For the purposes of determining an Approved Vendor’s geographic location, the Approved Vendor may be headquartered outside of Illinois or may have more than one branch office.

Is the main office of an Approved Vendor an accurate reflection of that Approved Vendor's geographic location? Alternatively, should the branch office which runs the Approved Vendor's ABP participation be used or is there a better representation of an Approved Vendor's geographic location?

**JSP RESPONSE:** The Joint Solar Parties note that a branch office is a substantial commitment to a market and provides a local economic and employment impact. While the Joint Solar Parties would not necessarily object asking whether an Illinois office is a branch office or the main office of an Approved Vendor (which, again, may be a project company), if an Approved Vendor has an office in Illinois, it should be reflected as being located in Illinois.

2. What measures should the Agency consider to facilitate the collection of accurate data from Approved Vendors?

**JSP RESPONSE:** The IPA's current approach of requiring an attestation—or, in the alternative, a certification and electronic signature—is sufficient. The Joint Solar Parties note that the Program Administrator has been active on several matters in the past in terms of following up with questions on submissions and the Joint Solar Parties anticipate that the Program Administrator will continue to do so.