



Illinois Shines & ILSFA

## Stakeholder Feedback Request:

Solar Restitution Program

September 16, 2024

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In the 2024 Long-Term Renewable Resources Procurement Plan (“2024 Long-Term Plan”), the Illinois Power Agency proposed the creation of a solar restitution program (“Restitution Program”) for customers harmed through their participation in Illinois Shines or Illinois Solar for All. The Agency is now providing additional detail and seeking stakeholder feedback on all aspects of the below proposal.

Stakeholders may comment on as many or as few of the items outlined within this document as they would like. Stakeholders should not feel limited by the questions offered below and may provide comments on these proposals beyond the scope of these specific questions.

**Please provide comments via email attachment to [IPA.Solar@illinois.gov](mailto:IPA.Solar@illinois.gov) with the subject “[Responder’s Name] – Stakeholder Feedback on CP Proposals” by October 7, 2024.**

In general, responses will be made public and published on the IPA’s website. Should a commenter seek to designate any portion of its response as confidential and proprietary, that commenter should provide both public and redacted versions of its comments. Independent of that designation, if the Agency determines that a response contains confidential information that should not be disclosed, the Agency reserves the right to provide its own redactions.

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### **Background**

The [2024 Long-Term Renewable Resources Procurement Plan](#) (“2024 Long-Term Plan”) provides the following background and context on the institution of a restitution program:

*The IPA plans to develop a solar restitution program to provide economic assistance to customers who have been harmed through their participation in Illinois Shines or Illinois Solar for All. While most customers have a positive experience in connection with the IPA’s programs, there are unfortunately still some bad actors. For example, one Illinois Shines Approved Vendor promised customers that it would pass through thousands of dollars in REC incentive payments, and then failed to do so.*

*As explained previously, the IPA does not have plenary regulatory authority over companies operating in the solar market. Even when it comes to Approved Vendors and Designees participating in the IPA’s programs, the IPA cannot compel solar companies to take specific action to remedy harm to customers. While the Program Administrators can discipline Approved Vendors and Designees, up to and including suspension from the Program, the threat of discipline does not always lead Approved Vendors and*

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*Designees to make customers whole. This is especially true when the company is in financial distress.*

*Other states have implemented restitution programs for customers harmed by solar contractors or other contractors. For example, California launched a Solar Energy System Restitution Program in July 2021, for “consumers who were financially harmed by the installation of a solar energy system on a single-family home after January 1, 2016.”<sup>1</sup> Funded by a one-time appropriation of \$5 million, the program is no longer accepting new claims in order to ensure that funding is available for claims already received.<sup>2</sup>*

*The California restitution fund was modeled after Nevada’s Residential Recovery Fund, which is not limited to solar-related harms. The Nevada fund “under certain conditions, provides limited monetary compensation to single-family homeowners, in the event that they have been damaged by a licensed contractor’s failure to appropriately execute a contract and have exhausted all other means of recovery.”<sup>3</sup> Other examples of restitution funds for customers harmed by contractors include Florida’s Homeowner Construction Recovery Fund<sup>4</sup> and Virginia’s Contractor Recovery Fund.<sup>5</sup>*

## **Funding**

The 2024 Long-Term Plan provides the following information on the funding source for the restitution program:

***Funding:*** *The restitution payments will be made from the general RPS collections fund held by the public utilities. The Agency plans to account for forfeited collateral from solar projects that fail to satisfy REC Contract requirements separately in the Renewable Resources Budget, and will use this money first to make restitution payments to customers.<sup>6</sup>*

The Agency estimates that the total forfeited collateral from Illinois Shines projects is approximately \$3 million, the total forfeited collateral from Illinois Solar for All projects is about \$620,000, and the total forfeited collateral from utility-scale solar procurements administered by the Agency is approximately \$12 million. The Agency intends that restitution payments for harm arising from participation in the Illinois Shines program will draw from Illinois Shines forfeited collateral, and that payments for harm arising from participation in the Illinois Solar for All will draw from ILSFA forfeited collateral. Forfeited collateral from utility-scale solar will be available to both Illinois Shines

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<sup>1</sup> California Contractors State License Board, Announcement, [https://www.cslb.ca.gov/Resources/GuidesAndPublications/2022/Solar\\_Energy\\_System\\_Restitution\\_Program.pdf](https://www.cslb.ca.gov/Resources/GuidesAndPublications/2022/Solar_Energy_System_Restitution_Program.pdf); see also California Contractors State License Board, News Release (May 11, 2022), [https://www.cslb.ca.gov/Resources/PressReleases/2022/Solar\\_Energy\\_System\\_Restitution\\_Program.pdf](https://www.cslb.ca.gov/Resources/PressReleases/2022/Solar_Energy_System_Restitution_Program.pdf).

<sup>2</sup> California Contractors State License Board, Solar Smart, [https://www.cslb.ca.gov/consumers/solar\\_smart/](https://www.cslb.ca.gov/consumers/solar_smart/).

<sup>3</sup> Nevada State Contractors Board, Residential Recovery Fund Overview, [http://www.nvcontractorsboard.com/res\\_fund\\_overview.html](http://www.nvcontractorsboard.com/res_fund_overview.html).

<sup>4</sup> Fla. Stat. § 489.140 et seq.

<sup>5</sup> Va. Code Ann. § 54.1-1118 et seq.

<sup>6</sup> The Agency is interested in exploring legislative opportunities for additional funding sources.

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and ILSFA restitution claims. The Agency believes that the amount of forfeited collateral will be sufficient to fund the Restitution Program at least until the next Long-Term Plan, at which time the Agency will consider funding again and appropriate actions if forfeited collateral is at some point exhausted.

**Eligibility**

The 2024 Long-Term Plan provides the following with respect to which customers will be eligible for restitution:

***Customer Eligibility:*** *Customers will be required to submit a complaint to the Program Administrator and cooperate with the normal complaint investigation procedure. At minimum, the following determinations will be required for customer eligibility:*

- *The customer was financially harmed by an Approved Vendor's or Designee's violation of Program requirements; and*
- *There is no reasonable likelihood that the Approved Vendor or Designee will make the customer whole.*

*The customer will also have to assign their rights to any legal claim against the Approved Vendor or Designee in the same amount that the customer receives in a restitution payment. For example, if an Approved Vendor failed to pass through \$8,000 in a REC incentive payment, and the customer received \$8,000 from the restitution program, if the Approved Vendor later actually made the \$8,000 payment to the customer, the customer would be required to repay that money to the restitution program.*

*The Agency will not require customers to pursue private litigation or obtain a court judgment in order to be eligible for assistance from the restitution program. The Agency believes that such a requirement would create an unreasonable barrier, and that restitution payments should be available without the customer having to spend potentially thousands of dollars to bring a civil lawsuit against a company that, in many situations, may be unable to pay damages even if the court decided in the customer's favor.*

*Restitution payments will generally not be available to customers who are harmed by entities that are not registered Approved Vendors or Designees in the Illinois Shines or Illinois Solar for All programs, regardless of whether the entity's marketing claims referenced the incentive programs. This could also preclude claims based on harm from third-party financing entities, such as those that offer loans for solar purchases, if they are not registered with the Program.*

*A limited exception to this general rule would be available if the entity the customer contracted with was a registered Approved Vendor or Designee, even if that Approved Vendor or Designee used an unregistered subcontractor on the project (who caused harm to the customer). To use two hypotheticals: SolarCorp is not registered with the Program. If the customer bought a solar project from SolarCorp, and SolarCorp harmed the customer by improperly installing the project, the customer would not be eligible for*

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*a restitution payment. Alternately, if the customer bought a solar project from Approved Vendor A, and Approved Vendor A hired SolarCorp to do the installation (in violation of Program requirements, since SolarCorp is not registered as a Designee), the customer would be eligible a restitution payment for harm caused by SolarCorp.*

The 2024 Long-Term Plan goes on to explain:

*The amount of the restitution payment would be limited to actual economic damages. The amount of actual damages would be discounted if a customer did not take reasonable actions to limit the harm. Restitution payments would be capped at \$30,000 per project. Other state consumer restitution funds have a similar cap. For example, California's Solar Energy System Restitution Program caps individual claims at \$40,000<sup>7</sup> and the Virginia Contractor Transaction Recovery Fund caps individual claims at \$20,000.<sup>8</sup> The Agency will also have a cap of \$200,000 for restitution payments based on a single Approved Vendor's or Designee's conduct. This is also a common element of restitution programs.<sup>9</sup> The Agency has not yet determined whether the cap per Approved Vendor or Designee will be on a "first come, first served" basis or whether there would be a pro rata distribution amongst claims filed within a certain time period.*

Upon the submission of a restitution claim, the Program Administrator would investigate the claim and make an initial determination regarding customer eligibility and, if eligible, the amount of payment, as well as whether the customer failed to take reasonable actions to limit the harm. This information and any proposed reduction in payment amount would be included in the recommendation submitted to the Agency for a final determination.

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<sup>7</sup> Cal. Bus. & Prof. Code § 7086.8.

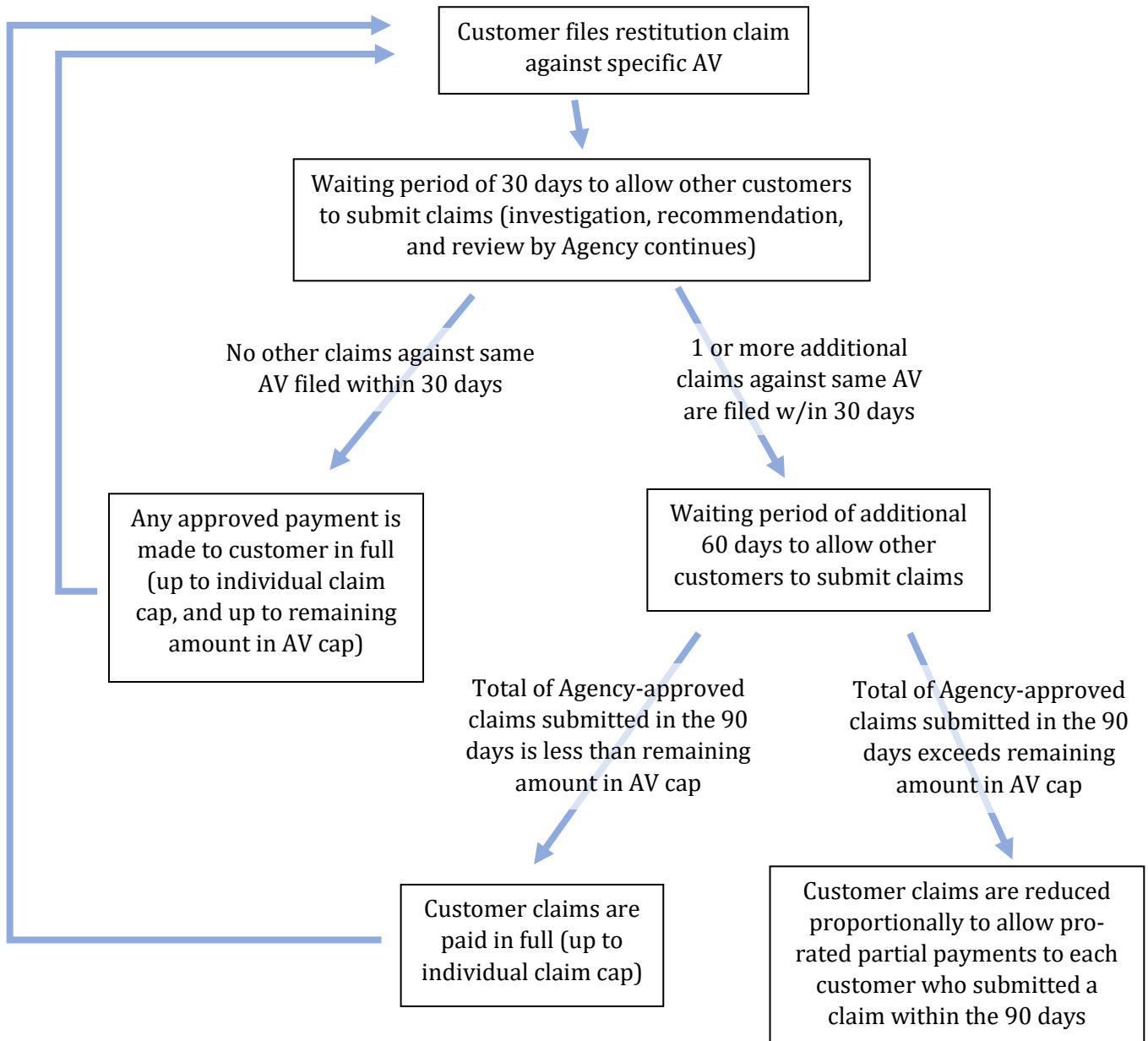
<sup>8</sup> Va. Code Ann. § 54.1-1123.

<sup>9</sup> For example, the Nevada Residential Recovery Fund limits claims against a single contractor to "\$750,000, or 20% of the account balance, whichever is less." [http://www.nvcontractorsboard.com/res\\_fund\\_overview.html](http://www.nvcontractorsboard.com/res_fund_overview.html). The Virginia Contractor Transaction Recovery Fund has a cap of \$40,000 per regulated entity per biennium. Va. Code Ann. § 54.1-1123. A presentation on California's Solar Energy System Restitution Program noted that "[a] cap is needed to limit total fund payout per respondent contractor," as a small number of contractors was responsible for a large number of claims. Contractors State License Board, "Solar Energy System Restitution Fund" slide deck (Dec. 6, 2022 Workshop Pursuant to CPUC Decision 21-09-024).

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**Approved Vendor Cap and Claim Prioritization**

With respect to the application of the Approved Vendor (“AV”) cap, the Agency is proposing the following process:



The Agency believes that a first-come, first-served approach may not be fair in establishing priority payment of restitution claims, and therefore proposes a “waiting period” of up to 90 days to allow other customers harmed by the same AV to submit claims. However, it is also important to recognize that the waiting period necessarily delays payment of the claims for customers who submitted early.

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The Agency believes the above flowchart appropriately balances timeliness and fairness, and solicits feedback on this approach and the specific length of the proposed waiting periods.

The time required to process Restitution Program claims, including the investigation, development of a recommendation, and review by the Agency, may vary significantly depending on a number of factors, including complexity of the issues, the potential need for inspection, and the responsiveness of involved entities. The Agency proposes that the above flow chart would be used to establish the entitlement to a payment for each customer claim. It does not necessarily dictate the specific order in which payments may be made. If a claim is taking an unusually long time for the Agency to investigate or make a determination on, and this causes delay on the payout of subsequent claims (or other claims submitted during the same waiting period), the Agency may choose to move forward with paying out the other claims in a way that does *not* preclude the payment of the first claim.

The Agency also proposes that if a customer submits a claim but does not answer follow-up questions or provide required information or documentation in a reasonable amount of time, the Program Administrator may “close out” that request and prioritize the payment of other later-filed claims.

The Agency proposes that the Program Administrator will keep records of Restitution Program claims that are approved, but only partially paid out due to an Approved Vendor cap being met. The Agency also proposes that the Program Administrator will also keep records of claims submitted after an Approved Vendor cap is met, including the date of the claim submission. This would ensure that if caps are adjusted upwards (or eliminated) in the future, or if the Approved Vendor reimburses the Restitution Program (for example, as a measure required for reinstatement into the program), the Program Administrator would have the available information to follow the above flowchart to potentially process and pay out additional claims.

**Questions for stakeholders:**

1. Is the above a reasonable and fair approach to prioritizing customer claims when program caps are implicated? Or should claims be paid out on a first-come, first-served basis?
2. Are the proposed waiting periods appropriate? Should these waiting periods be shorter or longer?
3. How long should the Program Administrator wait for required information from a nonresponsive customer before closing out their restitution claim and moving forward with funding later-filed claims?
4. If the Program Administrator receives Restitution Program claims submitted after an Approved Vendor cap is reached, should the Program Administrator fully investigate the claim at that time, even though there would not be available funding to pay out the claim? Or should the Program Administrator wait to investigate the claim until additional funding is available (with the drawback of it potentially being more difficult to investigate the claim due to the passage of time)?

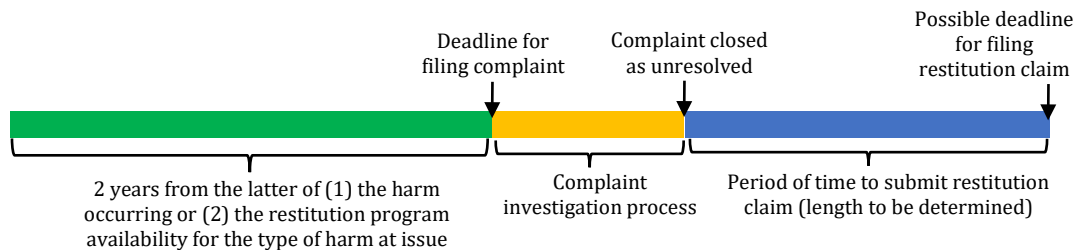


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**Limitations on Claims**

The 2024 Long-Term Plan also discussed time limitations on when a claim can be submitted:

*The Agency would also implement a limitation on the duration between the customer’s harm and the submission of a restitution program claim. For injuries that occurred prior to the opening of the restitution program for the relevant type of harm, the customer would have two years from the opening of the program for that claim type to file a complaint with the Program Administrator for that injury, which is the start of the process. For example, if a customer was harmed in 2022 by a faulty installation, and the restitution program does not allow for claims for installation damages until January of 2025, the customer would have until January of 2027 to file a complaint with the Program Administrator. Going forward, customers would have two years from the injury occurring to file their complaint. The Agency may also develop a time limit for when the customer must submit a claim request after the customer’s complaint has been closed out as “unresolved.” The Agency will determine how to appropriately notify customers of the availability of the restitution program and applicable deadlines. In addition, the Agency may develop restrictions on restitution program eligibility, such as not funding claims by customers who have or had a familial or business relationship with the entity that caused the harm.*

**Figure 9-1: Timeline for Restitution Program Claims**



The Agency intends to include a deadline for customers to file a restitution claim after notice that their complaint has been closed as unresolved. For customers whose complaints were closed as unresolved before the opening of the Restitution Program for the type of harm that they suffered, the time period to file a restitution claim will start when the Program Administrator notifies the customer that the Restitution Program is available for the customer’s type of harm. The Agency proposes a deadline of six months or one year after notification and seeks stakeholder feedback on the appropriate deadline.

The Agency acknowledges that it is possible that delays in processing a customer’s complaint could potentially contribute to a customer not submitting a restitution claim in time to receive a payment, in the case of an Approved Vendor cap being reached, since the customer cannot submit a restitution claim until their complaint has been closed as resolved. Customer complaints can take varying amounts of time to be closed, depending on complexity of the issues, Approved Vendor or Designee responsiveness, customer responsiveness, Program Administrator capacity, and other factors. The Program Administrator will make reasonable efforts to process all customer complaints in a timely

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fashion, to the extent doing so is within the Program Administrator's control, but cannot make any guarantees about the time for processing a complaint.

**Questions for stakeholders:**

5. Is the above proposed approach to deadlines fair and appropriate?
6. How long should customers have to file a restitution claim after their complaint is closed as unresolved (or, for customers harmed prior to the establishment of the Restitution Program, after notice of the availability of the Restitution Program)?

The Agency also proposes that customers are not eligible for a restitution payment if they were a 5% or greater owner, or a member of the highest-level management team, of the entity whose conduct caused the harm, during the time that the entity's conduct was ongoing. The Agency proposes that family members who live in the same household as a 5% or greater owner or member of the highest-level management team shall also be ineligible.

**Questions for stakeholders:**

7. Are these appropriate limitations on eligibility for the Restitution Program?
8. Are there other limitations on eligibility that the Agency should consider?

**Claims Process**

The 2024 Long-Term Plan includes the following description of the process for restitution claims:

***Process:** The customer would first file a complaint with the Program Administrator and go through the general complaint process until the complaint is closed as unresolved. The customer would then submit a claim to the restitution program and attest to the accuracy of supporting information. The Program Administrator would review the claim and gather any additional needed information. The Program Administrator may subcontract with an entity that inspects or evaluates solar projects and provides estimates of any necessary repairs. The Program Administrator would make a recommendation to the IPA that includes a summary of the issues, a proposed determination, and the amount of payment (if applicable). The IPA would then review and either approve or overturn the recommendation. If the IPA determines that a restitution payment is warranted, the Program Administrator would obtain the customer's signature on a document assigning claims against the Approved Vendor or Designee to the restitution program. The IPA would then request Commission approval of the restitution payment by including it in next submission to the Commission requesting approval of batches and contracts for Illinois Shines and ILSFA (see Section 7.10.5 for a summary of the process for Commission approval of batches and contracts). After Commission approval, the restitution payment would be made to the customer.<sup>10</sup>*

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<sup>10</sup> As discussed in the Plan proceeding, the Agency is open to considering different approaches for how exactly the payment is made to the customer (such as using an escrow agent, or having the Program Administrator facilitate the payment).



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During its processing of a restitution claim, the Program Administrator will confirm the customer's eligibility, starting with whether the customer has already filed a complaint with the relevant Program, and whether that complaint has been closed out as "unresolved." (Note that if the customer and/or Program Administrator is satisfied with an Approved Vendor or Designee's response to a complaint, the Program Administrator will close out the complaint as "resolved.") The Program Administrator will confirm that the customer was harmed through a program violation by an Approved Vendor or Designee, and will also determine whether any deduction of the restitution amount is appropriate based on if the customer failed to take reasonable actions to limit damages. The Program Administrator will then develop a recommendation to either fund the restitution claim (and the amount) or to not fund the claim. The Program Administrator will notify the customer and the entity whose conduct caused the harm and provide a copy of its recommendation to the Agency. The customer and/or entity whose conduct caused the harm may contest the Program Administrator's determination and submit any argument and/or additional documentation to the Agency within two weeks of receiving the notification. Once the Agency makes its final determination on the restitution claim, there would be no additional appeal opportunity provided by the Agency.

As described above, after determination by the Agency, if a restitution claim is granted, the restitution payment would be included in the next memorandum submission to the Illinois Commerce Commission (using the process by which solar project batches and contracts are approved).

The Agency seeks feedback from interested parties on how approved payments should be processed and paid out to customers. The Agency proposes that, once approved by the Illinois Commerce Commission, the Program Administrator would submit an invoice to the relevant utility and the utility would make a payment to a third-party independent agent (potentially using the same third-party agent as used for the escrow process, another consumer protection initiative described in the 2024 Long-Term Plan). The third-party agent would then make the individual payments to customers.

**Questions for stakeholders:**

9. Is the above proposal for reviewing and making recommendations related to claims appropriate? Is the proposal for processing and making payments sensible and feasible?
10. Should an independent third-party entity be used to process and send payments to individual customers?
11. Are there alternative methods for processing and making payments that the Agency should consider?

**Phased Approach to Implementation**

The 2024 Long-Term Plan also proposes to implement the Restitution Program using a phased approach:

*The Agency intends to use a "phased" approach to implementing the restitution program. In the first phase, the program will only be available for customers who were promised a direct REC payment lump-sum pass-through and did not receive it. The Agency has not yet determined whether the first phase would be limited to residential and/or Small DG projects. Later phases would expand eligibility to customers*

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*experiencing other types of harm. This approach would allow the Agency to adjust requirements and processes during a pilot stage, with claims that would be fairly straightforward and would not require physical inspections of solar projects, before broadening the scope of the initiative.*

The Agency proposes that the first phase would be open to all customers (including commercial customers and customers with large Distributed Generation projects) who were promised and have not received (and there is no reasonable likelihood of them receiving) one or more REC incentive pass-through payments. The Agency acknowledges that the Approved Vendor cap will likely be reached for at least a few Approved Vendors in the first phase; this would leave no funding available for claims made in later phases for other types of harm.

**Restitution Program and Disciplinary Action**

The 2024 Plan explains the interplay between the restitution program and disciplinary action:

*The Agency does not intend that an Approved Vendor or Designee be automatically suspended if their conduct leads to a restitution program payment. However, an Approved Vendor or Designee certainly may be suspended for Program violations that lead to a restitution payment to a customer. In this case, repayment of the restitution award may be a requirement before the entity may re-enter the Program. If an Approved Vendor or Designee repays some of the restitution [payments] made due to its conduct, this would be subtracted from the running total of payments for purposes of applying the \$200,000 cap per Approved Vendor or Designee. That is, if an Approved Vendor's conduct had led to \$150,000 in restitution payments, and the Approved Vendor repaid \$50,000, only \$100,000 of payments would count toward the cap. In addition, if the customer harm was due to an Approved Vendor not passing through promised lump-sum payments, the Program Administrator may condition re-entry on the Approved Vendor no longer making offers that include a lump-sum REC payment pass-through.*

The Agency proposes that whether or not an entity is required to repay restitution payments is made as part of the disciplinary process, rather than as a set requirement of the restitution program. If an Approved Vendor does repay restitution payments after the initial cap had been reached, the Agency proposes that those funds would be paid out based on priority established in the above flowchart.

**The Agency seeks stakeholder feedback on any and all of the above additional details, even if there is a not a specific question included about the item.** Please note that the high-level approach outlined in the 2024 Long-Term Plan (and quoted in italics above) has been approved by the Illinois Commerce Commission in [Docket 23-0714](#) and cannot be changed at this time, and that additional details must be consistent with that approach.