Public Comments Received for Environmental Financial Advisory Board

After December 15, 2022

Written Comments

- Milken Institute
  Dan Carol, Climate Resilient Infrastructure Initiative Senior Director
  COMMENT: (attached)

- National Association of Federally-Insured Credit Unions (NAFCU)
  Ann C. Petros, Vice President of Regulatory Affairs
  COMMENT: (attached)

MILKEN INSTITUTE

December 5, 2022

The Honorable Michael S. Regan
Administrator
U.S. Environmental Protection Agency
Washington, DC 20004

Re: Docket ID No. EPA-HQ-OA-2022-0859

Dear Administrator Regan:

Thank you for the opportunity to comment on the program design and implementation of the Greenhouse Gas Reduction Fund (GGRF).

The Milken Institute is a nonprofit, nonpartisan think tank focused on accelerating measurable progress on the path to a meaningful life. With a focus on financial, physical, mental, and environmental health, we bring together the best ideas and innovative resourcing to develop blueprints for tackling some of our most critical global issues.

We are writing to offer three recommendations regarding the development of evaluation criteria for applicants to the planned Greenhouse Gas Reduction Fund competition under Section 134. These recommendations are designed to ensure that under-served communities and diverse regions are able to access funding and benefit from this wise, new investment in energy-efficient and climate-smart community infrastructure projects.

Substantial evidence exists that a persistent difficulty faced by many state and federal lending programs is that under-served communities often lack the resources needed to even develop loan-worthy applications and projects and access affordable project financing resources.[1] In 2021, many groups came together to highlight the need for catalytic predevelopment funding to overcome this critical funding gap. Past studies by EPA's Brownfields program and the U.S. Economic Development Administration also show that so-called predevelopment funding to de-risk projects and develop loan-worthy project applications pays back $16-20 per $1 invested.

To ensure that this project pipeline problem is addressed, we urge the EPA to require that every winning application demonstrates the capacity to offer technical assistance grants or sub-grants to under-served communities as follows by:

1. Outlining a specific plan to create a shared services center and lending network with sufficient national capacity, and local, state, and regional implementation partners, who can carry out both project lending and grant-making to under-served communities that enable these communities to access these new loan sources.

[1] See, for example: https://www.policyinnovation.org/publications/a-fairer-funding-stream, https://transportation.house.gov/download/carol-testimony, and http://2021.nibs.org/files/pdfs/ms_v4_overview.pdf

2. Demonstrating the capability, commitment, and proposed grant eligibility criteria to provide $250,000 predevelopment grants to 10,000 communities (totaling $2.5 billion) over the grant period, exclusive of administrative costs.

3. Specifying the capability to advance deployment of at least three different types of highly-replicable greenhouse gas emission reduction projects to reduce green gas reductions in the built environment, including energy efficiency investments, that reduce household energy burdens in under-served communities.

Simply adding to the capital base of lending institutions without explicit commitments to do direct grant-making to under-served rural and urban communities would, in our view, fail to ensure that GGRF funding is fully leveraged.

We are aware that leading philanthropic investors and leaders in community development and environmental justice have raised similar concerns and outlined options for consideration. We welcome the chance to work collaboratively to find solutions that address the multiple objectives and policy commitments articulated by the President, including the Justice 40 pledge.

Thank you for your consideration. We are happy to offer further detailed suggestions.

Sincerely,

Dan Carol

Senior Director, Climate Resilient Infrastructure Initiative
Milken Institute

CC:
Kerry O'Neill
Chairperson, EFAB
United States Environmental Protection Agency

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National Association of Federally-Insured Credit Unions

January 10, 2022

Michael S. Regan
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20004

RE: Design and Implementation of the Greenhouse Gas Reduction Fund

Dear Administrator Regan:

On behalf of the National Association of Federally-Insured Credit Unions (NAFCU) and the nation's credit unions, I respectfully submit the following responses to important legal and policy questions that your staff have previously raised with NAFCU regarding the design and implementation of the Greenhouse Gas Reduction Fund (GHGR Fund or Fund). Those responses, which are provided in the attached memorandum, address a series of related issues regarding the authority of the Environmental Protection Agency (EPA) to establish and capitalize one single, national green bank under section 134 of the Clean Air Act (CAA). The need for NAFCU to provide a full response on those issues has become critically important in order to correct many recent inaccurate and misleading statements that have been made regarding the nature and scope of the EPA's authority to implement and administer the Fund. Those other comments were recently submitted in response to EPA's Request for Information[1] (RFI) as well as through public outreach facilitated by the Environmental Financial Advisory Board (EFAB).

NAFCU advocates for all federally-insured not-for-profit credit unions that, in turn, serve over 134 million consumers with personal and small business financial services products. Community Development Financial Institutions (CDFIs) and credit unions already serve low-income and disadvantaged communities across the country, abide by strong regulatory requirements and are subject to robust supervision, and work to offer green loan options to support energy efficiency and help their members reduce their carbon footprints. NAFCU reiterates its previous request to the EPA to reject the idea of a single, national green bank recipient of the GHGR Fund monies in favor of a multi-recipient model that prioritizes community-based lenders like credit unions to effectively and swiftly carry out the intent of the GHGR Fund.[2] A multi-recipient model can be

[1] Request for Information: Greenhouse Gas Reduction Fund – Docket ID No. EPA-HQ-OA-2022-0859.
[2] NAFCU Letter to EPA, Request for Information – Greenhouse Gas Reduction Fund (Docket ID No. EPA-HQ-OA-2022-0859) (Dec. 5, 2022), https://www.nafcu.org/system/files/files/12.5.2022%20Letter%20to%20EPA%20re%20Greenhouse%20Gas%20Reduction%20Fund%20RFI.pdf.

demonstrated to more efficiently deploy capital to meet the goals of the GHGR Fund and further the Biden-Harris Administration's commitment to environmental justice. NAFCU has a direct and substantial interest in the design and implementation of the GHGR Fund because our member credit unions are well positioned to play key roles in helping the EPA to achieve the goals of Fund, which are focused on reducing greenhouse gas (GHG) emissions and other forms of air pollution while also assisting communities, particularly those households in low-income and disadvantaged communities, through financial and technical assistance to encourage the rapid deployment of clean energy projects.

Those key roles of the Fund are not limited to our credit unions providing financial assistance to consumers in deploying qualified clean energy projects through funding received as "indirect recipients" from some other "national" nonprofit lending entity. Rather, our credit unions also have the ability to organize and implement independent nonprofit organizations that would be "direct recipients" of grants from the GHGR Fund and then use that grant funding to achieve the core objectives of the Fund in the most cost-effective manner at the lowest cost with rapid deployment and maximum leverage capital, especially in the case of low-income and disadvantaged communities. This can be achieved, for example, through proven platforms that can be managed through a credit union service organization (CUSO)[3] and thereby serve a valuable tool for leveraging public and private investment and deploying that capital through highly effective lending operations with clear underwriting criteria, risk-management strategies, portfolio management, and engaged servicing of loans to ensure the success and recycling of the investment and borrowers.

To assure that both of these roles (as direct and indirect recipients of the grants) are available to our credit union members, it is essential that the EPA be guided by the following legal and policy considerations in the design and implementation of the GHGR Fund.

Authority to Create and Capitalize a National Green Bank

CAA section 134 does not require or authorize the EPA to create and capitalize one single national green bank that would receive all of the funding appropriated for the general assistance grant program (totaling almost $12 billion) and a second grant program for low-income and disadvantage communities (totaling $8 billion). This conclusion is clearly supported by the plain language of the statute. In fact, section 134 makes no reference to a national green bank but instead directs the EPA to make grants to "eligible recipients" on a "competitive basis."

Furthermore, any attempt for the EPA to reinterpret the statute as requiring or authorizing the creation of a single, national green bank conflicts with the legislative history of the statute, including the inherent and highly restrictive limitations placed on Congress in enacting section 134 through the budget reconciliation process. These constraints on the EPA's authority are

[3] CUSOs are authorized and regulated by federal law codified at 12 U.S.C. Part 712 (establishing, among other things, the rules on when a federal credit union may invest in and make loans to CUSOs).

explained in the attached memorandum as well as the clear limitations imposed by the highly prescriptive and comprehensive process for chartering "national banks" of any type (including a national green bank) under long-standing federal regulatory framework for establishing national banks.

Broad Discretion in Making Grants from the GHGR Fund

A second important objective of the attached memorandum is to clarify for the administrative record that CAA section 134 does not impose a highly prescriptive and inflexible scheme that would have the effect of requiring the EPA to capitalize a national green bank by awarding all of the funding (totally approximately $20 billion) from two of grant programs established by Congress. Nothing in section 134 requires the EPA to interpret the statutory provisions in such an exacting and overly demanding manner. Rather, the statute provides the EPA with considerable discretion and latitude to adopt and implement a broader and more accommodating framework that will allow various other eligible recipients and qualified organizations to apply for and secure grants.

As explained in the attached memorandum, one notable category of eligible recipients includes those separate, special-purpose independent nonprofit organizations funded by public or charitable contributions that are organized to serve credit unions and CDFIs for incentivizing the deployment of clean energy projects. These and other types of organizations clearly can meet the statutory criteria for qualifying as an "eligible recipient," as defined in CAA section 134(c)(1) and meet the other key eligibility requirements of the program, including those requirements for the "use of funds" for providing assistance under CAA section 134(b) and the deployment of "qualified projects," as defined under CAA section 134(c)(3).

NAFCU and its member credit unions appreciate the opportunity to submit this supplemental information to the EPA. We look forward to working with your staff in developing the most effective and efficient framework for fulfilling the objectives of the GHGR Fund to reduce emissions of GHG emissions and other air pollutants while addressing environmental injustice in the low-income and disadvantaged communities. If I can answer any questions or provide you with additional information, please do not hesitate to contact me at 703-842-2212 or apetros@nafcu.org.

Sincerely,

Ann C. Petros
Vice President of Regulatory Affairs

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MEMORANDUM

DATE: January 9, 2023

RE: LEGAL ASSESSMENT OF EPA'S AUTHORITY TO DESIGN AND IMPLEMENT A GREENHOUSE GAS REDUCTION FUND UNDER SECTION 134 OF THE CLEAN AIR ACT

This memorandum provides a legal assessment of the statutory authority that section 134 of the Clean Air Act (CAA) provides to the Environmental Protection Agency (EPA or Agency) to distribute federal funds from the Greenhouse Gas Reduction Fund (GHGR Fund or Fund). It is prepared in response to legal interpretations advanced by the Coalition for Green Capital (CGC or Coalition) in its comments to EPA's Request for Information[1] (RFI) that call for EPA to establish a single national green bank. Those interpretations include many inaccurate and misleading statements as to the nature and scope of EPA's authority to implement and administer the Fund and are also repeated by the Coalition in several other submissions to the Environmental Financial Advisory Board (EFAB). Moreover, the Coalition's interpretations go to fundamental structural decisions affecting EPA's ability to determine who may receive funds from the GHGR Fund. This legal assessment corrects the EPA administrative record on the many inaccurate and misleading statements of the CGC and provides specific guidance on how EPA may implement and administer the Fund in a manner consistent with the statutory framework established in CAA section 134.[2]

EXECUTIVE SUMMARY

The memorandum begins with an overview of statutory provisions for the design and implementation of the GHGR Fund as specified in section 134 of the CAA. This overview is followed by an analysis and explanation of the many reasons why the plain language in section 134 does not require or authorize the establishment of a single national green bank, and that Congress lacked the ability to require EPA to take such a prescriptive and narrow approach due to the clear limitations placed on Congress in enacting this legislation through the highly restrictive budget reconciliation process.

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[1] Request for Information: Greenhouse Gas Reduction Fund – Docket ID No. EPA-HQ-OA-2022-0859 (RFI).
[2] 42 U.S.C. § 7434.

The memorandum then provides an assessment of the legal authority that section 134 confers to EPA in the design and implementation of the GHGR Fund. This assessment clearly demonstrates that the Agency has broad discretion and considerable flexibility to craft a grant program for achieving the fundamental objectives of the Fund. Those objectives include achieving reductions of greenhouse gas (GHG) emissions and other forms of air pollution and assisting communities, particularly those households in low-income and disadvantaged communities, through financial and technical assistance to encourage the rapid deployment of "low- and zero-emission products, technologies, and services" [3] ("clean energy projects"). As a result, the Agency has the authority under section 134 to fashion a grant program that would allow entities other than a national green bank to apply for and receive grants from the Fund. As discussed below in the legal assessment, these other entities could include separate, special-purpose independent nonprofit organizations funded by public or charitable contributions that are organized to serve a variety of intermediaries, including credit unions and community development financial institutions (CDFIs) for incentivizing the deployment of clean energy projects.

The memorandum also corrects a number of inaccurate claims made by CGC in its submissions to EPA and EFAB regarding the authority provided by section 134 to establish and capitalize a single, national green bank. These corrections clarify the administrative record that the statute does not explicitly or implicitly require or authorize the creation of a national green bank. Similarly, section 134 does not provide EPA with any independent or plenary authority to create a national green bank or any other type of national nonprofit entity that would then carry out the objectives of, and requirements for administering, the GHGR Fund. Rather, Congress intended EPA to make grants from the Fund to as many entities as the Agency deemed appropriate in accordance with the provisions of section 134. EPA can best fulfill these statutory responsibilities by initiating a full, robust, and competitive grant application process that will allow for the selection and awarding of grants to those eligible recipients that are best positioned to assist (as determined by EPA) in the deployment of clean energy projects in an efficient and cost-effective manner, with a special focus on providing that assistance to low-income and disadvantage communities.

These legal conclusions on EPA's lack of authority to create a national green bank are reinforced and confirmed by the fact that Congress has established a specific licensing process for financial institutions to register and operate as "national banks," including "special purpose banks" such as a national green bank. Authorized by the National Bank Act of 1864,[4] this comprehensive and long-standing federal regulatory framework for establishing a national bank further reflects Congress' intent that the creation of a new national green bank must adhere to this specific regulatory framework and that EPA may not deviate from that well-established framework unless and only if Congress has established a separate and independent process for organizing a national green bank (or other such national independent nonprofit entity).[5] Furthermore, the only way to deviate from the existing banking framework is for Congress to pass legislation

[3] Section 134(c)(1)(A).
[4] 12 U.S.C. §21
[5] This means that any entity not chartered as a "national bank" cannot apply for a GHGR Fund grant as a national green bank until it first has obtained such authorization to operate as a national bank pursuant to the current applicable federal banking regulations. We recognize that a nonprofit entity could seek to work around this federal limitation by not calling itself a "national green bank" and instead organizing itself as a lending intermediary that does not itself engage in regulated banking activities. Notably, this type of entity, however, would have effectively the same basic organizational structure as the other separate, special-purpose independent nonprofit organizations organized to serve credit unions and CDFIs.

establishing an alternate regulatory framework for the creation of a national green bank. While the House and Senate bills referenced by the Coalition – which were never enacted into law – sought to authorize the formation and capitalization of one single, national green bank (or other such national nonprofit lending organization), Congress did not provide such authority for EPA to do so when enacting into law CAA section 134. As a result, EPA is neither required nor authorized by section 134 to implement the grant program in a manner that would only support the formation and capitalization of a single, national green bank as the Coalition is urging EPA to do.

Finally, the memorandum seeks to address the Coalition's inaccurate claims, that section 134 imposes many "exacting and nondiscretionary"[6] requirements that have the effect of requiring EPA to "capitalize a national green bank" by awarding all of the funding (totaling approximately $20 billion) from two of major grant programs.[7] Nothing in section 134 requires EPA to interpret the statutory provisions in such a highly prescriptive and exacting manner. The memorandum provides a correct and more realistic interpretation of the statute that allows EPA to adopt and implement a broader and more accommodating framework that will allow various other qualified organizations to apply for and secure grants to provide financial and technical assistance to clean energy projects under the program consistent with section 134.

In particular, EPA has discretion under the statute to design a framework that would allow the awarding of grants under CAA section 134 to other separate, special-purpose independent nonprofit organizations funded by public or charitable contributions that are organized to serve credit unions and CDFIs for incentivizing the deployment of clean energy projects. As discussed below, these organizations clearly can meet the statutory criteria for qualifying as an "eligible entity," as defined in CAA section 134(c)(1) and meet the other key eligibility requirements of the program, including those requirements for the "use of funds" for providing assistance under CAA section 134(b) and the deployment of "qualified projects," as defined under CAA section 134(c)(3). In addition, many of these eligible entities meeting the basic statutory requirements also have the necessary capabilities and attributes for achieving the core objectives of the grant program – namely, avoiding and reducing GHG and other air emissions while addressing environmental justice in low-income and disadvantaged communities. More importantly, they can achieve these core objectives in the most cost-effective manner at the lowest cost with rapid deployment and maximum leverage capital.

LEGAL ASSESSMENT

Overview of GHGR Fund Authorized under CAA Section 134

Section 60103 of the Inflation Reduction Act[8] (IRA) amended the CAA by adding an entirely new section of the CAA that authorizes the establishment and implementation of a GHGR Fund. Codified in section 134 of the CAA, this provision appropriated a total of $27 billion dollars in

[6] Coalition for Green Capital (CGC) Response to Request for Information (RFI): Greenhouse Gas Reduction Fund (GHGRF), Docket ID No. EPA-HQ-OA-2022-0859, at p. 5 (December 5, 2022) [hereinafter "CGC Response to EPA RFI dated Dec. 5, 2022"].

[7] CGC Comments to EFAB dated December 15, 2022, at page 2. Coalition for Green Capital (CGC) Submission to the Environmental Financial Advisory Board (EFAB), from Eli Hopson, Executive Director and Chief Operating Officer for the CGC, to Hon. Edward H. Chu, Designated Federal Officer, and Hon. Kerry O'Neill, Chair, p. 2 (December 15, 2022) [hereinafter "CGC Hopson Submission to EFAB dated Dec. 15, 2022"].

[8] Public Law 117-169, 136 Stat. 1818 (August 16, 2022).

federal funding for use by EPA in implementing three related grant programs supporting the rapid deployment of clean energy projects. The amount of federal funds appropriated to EPA for use in the "General Assistance" Grant Program (GA Grant Program) is almost $12 billion,[9] and another $8 billion is appropriated for EPA use to the "Low-Income and Disadvantaged Communities" Grant Program (LIDC Grant Program).[10] The remaining $7 billion is appropriated for EPA use in the "Zero-Emission Technologies" Grant Program (ZET Grant Program) for the deployment of zero-emission technologies that produce zero emissions of both greenhouse gases and other air pollutants.[11]

In the case of all three grant programs, Section 134 does not specify any particular entity (such as a national green bank) to whom the EPA must award the grants. The statute also does not require or otherwise authorize the creation of a single national green bank to which the Agency could capitalize with funds appropriated to any of three grant programs.[12] Instead, EPA is directed "to make grants, on a competitive basis" to any entity that meets the eligibility requirements specified in CAA section 134. Those eligibility requirements only allow EPA to make competitive grants to "eligible recipients" under the GA and LIDC Grant Programs and provide general criteria for identifying those entities that qualify as "eligible recipients" for receiving grant funding. In the case of the ZET Grant Program, by contrast, EPA may award grants not only to eligible recipients but also to "States, municipalities, and Tribal Governments."

Similarly, CAA section 134 does not state in a highly prescriptive manner the express purposes for which grants may be awarded but instead provides EPA with general direction regarding those purposes. The primary overall purpose of all three grant programs is to make grants to fund the deployment of clean energy projects that will avoid or reduce greenhouse gases and other air pollutants. In the case of the GA and LIDC Grant Programs, EPA is authorized to provide "financial assistance and technical assistance," while the statute is more specific for the ZET Grant Program by directing EPA to provide "grants, loans, or other forms of financial support and technical assistance, to enable low-income and disadvantaged communities to deploy or benefit from zero-emissions technologies, including distributed technologies on residential rooftops."

The other important purpose of the GHGR Fund is to provide financial support for the deployment of clean energy projects in low-income and disadvantaged communities. This objective is expressly required in the statutory authorization to make grants for the deployment

[9] Section 134(a)(2) of the CAA. The exact amount appropriated to the GA Program is $11.97 billion with another $30 million appropriated to EPA for "administrative costs necessary to carry out the activities under this section." Section 134(a)(4) of the CAA.
[10] Section 134(a)(3) of the CAA.
[11] Section 134(a)(1) of the CAA.
[12] As explained below in greater detail, Congress' silence on the creation of a single national green bank in section 134 means that any entity (such as CGC) electing to apply as a national green bank for some or all of funds under GA and LIDC Grant Programs must meet – in addition to the GHGR Fund requirements in section 134 – all of the applicable federal requirements for operating as a "national bank." One key set of threshold requirements for operating as a "national bank" are the licensing requirements for obtaining a charter to perform the core banking functions from the Office of the Comptroller of the Currency (OCC) – an independent bureau of the U.S. Department of Treasury – pursuant to the National Bank Act of 1864 (codified at 12 U.S.C. § 21) and OCC's implementing regulations (codified at 12 C.F.R. §5.20).

of such projects under the ZET and LIDC Grant Programs, as set forth in CAA sections 134(a)(1) and (a)(3), respectively.[13]

This funding priority for low-income and disadvantaged communities also is clearly reflected in the statutory requirements for how the funds may be used by eligible recipients under all three grant programs. For direct investment of the funds to qualified projected projects as described in CAA section 134(b)(1), eligible recipients for all three grant programs are required to "prioritize investment in qualified projects that would otherwise lack access to financing." By implication, this requirement for prioritization would have the general effect of requiring recipients to prioritize the delivery of the funds to communities most challenged in securing funding for the deployment of clean energy projects – namely those households located in low-income and disadvantaged communities. Similarly, CAA section 134(b)(2) authorizes eligible recipients to use grant funds to make indirect investments through a wide range of local and community financing entities, "including community- and low-income-focused lenders and capital providers" (such as credit unions and CDFIs) that are well positioned to provide the funding and technical assistance to the low-income and disadvantaged communities.

To the extent that the statute leaves any ambiguity on the priority that should be given to low-income and disadvantaged communities, EPA may be guided by the Justice40 policy of the Biden Administration. That policy requires EPA and other federal agencies to ensure 40 percent of the investments authorized under IRA (including the GHGR Fund) flow to low-income and disadvantaged communities.[14] Although the Justice40 policy is not a mandatory statutory requirement, the alignment of the GHGR Fund with this policy is generally consistent with the "low-income and disadvantaged communities" objectives in section 134 and therefore reflects a reasonable exercise of EPA's authority to distribute funding under all three grant programs.

Most importantly for purposes of this legal assessment, CAA section 134 establishes the broad contours of a framework for the design and implementation of the GHGR Fund and does not prescribe any detailed regulatory requirements for the distribution of grants as the Coalition claims. That framework provides general guidance, not specific, on how EPA should establish the following basic design elements of administering the Fund for all three grant programs, including guidance on:

- The "eligible recipients" that can apply for and to whom EPA may award the grants, as defined in CAA section 134(c)(1);
- The "qualified projects" that can receive financial and technical assistance from eligible recipients for "any project, activity, or technology" that reduces or avoids GHG emissions and other forms of air pollution, as provided in CAA section 134(c)(3); and

[13] Section 134(a)(1) of the CAA requires the grants be used to provide assistance that will "enable low-income and advantaged communities to deploy or benefit from zero-emission technologies," while CAA section 134(a)(3) requires the grant be used to provide assistance "in low-income and disadvantaged communities."

[14] *See* Executive Order 14008: Tackling the Climate Crisis at Home and Abroad, Section 219 (setting goal "to secure an equitable economic future" and to "ensure that environmental and economic justice are key considerations in how we govern," and acknowledging that the achievement of this goal "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"); Interim Implementation Guidance for the Justice40 Initiative Memorandum (issuing the presidential directive to issue guidance on achieving the goal that 40 percent of the overall benefits from federal investment should flow to disadvantaged communities).

- The use of the funds to make "direct investments" for providing "financial assistance" to qualified projects, as provided in CAA section 134(b)(1) and "indirect investments" for providing "funding and technical assistance" to qualified projects through not-for-profit and nonprofit entities, as provided in CAA section 134(b)(2).

Clearly, the basic design framework established in section 134 is general in nature and not highly prescriptive and thereby affords EPA considerable discretionary authority to craft a flexible framework that allows for multiple entities to receive funding and provide assistance under each of the grant programs, such as special-purpose nonprofit entities that are organized by credit unions and CDFIs and funded through public or charitable contributions. The CGC, on the other hand, unnecessarily interprets these provisions in a highly prescriptive and exacting manner that, if adopted, could effectively require EPA to award funding from the GA and LIDC Grant Programs to only "a single national, nonprofit financial institution," such as a national green bank that the Coalition is promoting.[15]

The Establishment of a Single National Green Bank Is Neither Required Nor Authorized by CAA Section 134.

CGC wrongly claims that the intent of Congress is to establish a single national green bank that should be capitalized by all of funds appropriated to GA and LIDC Grant programs. In support of this claim, the Coalition cites to a September 9, 2022, letter to EPA Administrator Regan from Senator Van Hollen, Senator Markey, and Representative Dingell[16] (Congressional Letter) and an August 12, 2022, statement for the Congressional Record made by Representative Dingell[17] (Congressional Record Statement) as evidencing the intent of Congress for section 134 to require the establishment of a single national green bank. For example, CGC states in a letter to EFAB:

> The Congressional Letter, in conjunction with a statement for the Congressional Record made by Representative Dingell, documents the legislative history of the GGRF and Congress's intent for how EPA should implement this new program.
>
> Together, the Letter and the Statement provide EPA with a roadmap for how to implement the GGRF and award the full amount appropriated by Congress within the time provided in the Act.
>
> The Letter and Statement explain that Congress's intent in creating the GGRF was to capitalize a single national, nonprofit financial institution – often referred to as the National Green Bank.[18]

[15] Coalition for Green Capital (CGC) Submission to the Environmental Financial Advisory Board (EFAB), from Kevin S. Minoli, Counsel to the CGC, to Hon. Edward H. Chu, Designated Federal Officer and Hon. Kerry O'Neill, Chair, at p.2 (October 11, 2022) [hereinafter "CGC Submission to EFAB dated Oct. 11, 2022"]. *See also* White Paper, entitled "Compilation of Statements by Coalition for Green Capital on the Creation of a Single National Green Bank" (hereinafter referred to as "Compilation of CGC Statements) (attached hereto in the Appendix).
[16] 117th Congress (2021-2022), Letter from Senators Van Hollen, Markey, and Representative Dingell to Environmental Protection Agency (EPA) Administrator Michael Regan, September 9, 2022 [hereinafter "Congressional Letter"].
[17] 168 Cong. Rec. H7702 (2022) (Congressional Record Statement of Rep. Dingell).
[18] CGC Submission to EFAB dated Oct. 11, 2022 (referring to Congressional Letter and Congressional Record Statement).

The Coalition attempts to advance this interpretation in several ways. The first way is to claim that the Congressional Letter and Congressional Record Statement (as described above) as well as the statute "read as whole" indicate Congress' intent for section 134 to **require** the creation of a single, national green bank that would be capitalized through grants awarded from the GHGR Fund. The second way is to take a slightly less prescriptive, alternative statutory interpretation. That alternative interpretation is that section 134 may not require, but does **authorize** EPA to capitalize a single, independent national green bank by claiming that awarding all of the funding to such a single national bank will best fulfill the purposes of the statute.

CGC has made these two related claims over fifty times in its filings to EPA and EFAB (all of which are documented in the attached white paper, entitled "Statements by Coalition for Green Capital on the Creation of a Single National Green Bank," attached hereto in the Appendix).[19] But repeating them multiple times does not make them true. In fact, these conclusions are contrary to the express, plain language of the statute and do not accurately characterize Congress' intent when it enacted section 134 into law through the budget reconciliation process. For these reasons (which are briefly discussed below in greater detail) it is wholly inappropriate for EPA to use these claims as the basis to establish and capitalize a single national green bank and, instead, must consider other eligible recipients on a competitive basis when making grants under section 134.

Plain Language of Section 134. Nothing in statutory language specifically indicates an intent of Congress to require or authorize EPA to use the funding to capitalize only one single national green bank. In fact, the exact opposite is true. Section 134 makes no reference to a national green bank but instead establishes in the case of all three grant programs a general framework for EPA to make grants to "eligible recipients" on a competitive basis. In the case of the ZET Grant Program, EPA is directed "to make grants, on a competitive basis … to States, municipalities, Tribal governments, and eligible recipients,"[20] while the statutory language for the GA Grant Program and the LIDC Grant Program requires EPA "to make grants, on a competitive basis … to eligible recipients." [21]

In addition to not making reference to the establishment of a national green bank, the statute's reference to "eligible recipients" in the plural clearly indicates that Congress intended for EPA to award grants to multiple eligible recipients and not just to one, national green bank or other such national nonprofit dedicated to assisting in the deployment of clean energy projects. This statutory interpretation is reinforced by the fact that Congress directed EPA to award the grants "on a competitive basis" based on each applicant's ability to qualify as an eligible recipient and fulfill the other requirements for providing financial and technical assistance in accordance with the objectives and provisions set forth in section 134. In effect, the basic statutory framework clearly confirms that Congress contemplated EPA making awards to multiple eligible recipients and not just one single national green bank or other such national nonprofit entity.

[19] The CGC comments also contain a few statements recognizing that EPA may choose to provide funding to multiple "eligible recipients," and not necessarily just to capitalize one national, green bank. However, as noted in this memorandum and the attached Appendix, these statements are greatly outnumbered by the vast majority of the statements calling for EPA to interpret CAA section 134 in a highly restrictive and narrow fashion that would limit the awarding of funds from the GA and LIDC Grant Programs to just one single, national green bank or similar national nonprofit financial institution.

[20] Section 134(a)(1) of the Clean Air Act.

[21] Sections 134(a)(2), (a)(3) of the Clean Air Act.

In contrast, the bills referenced by CGC (which were never enacted into law) sought to expressly create a single national green bank. In particular, legislation introduced in the Senate by Senator Van Hollen and Senator Markey and similar legislation introduced in the House by Representative Dingell[22] expressly authorize the establishment of one, single nonprofit entity[23] dedicated to reducing GHG emissions in the U.S., by among things, providing financing support for the investments in low- and zero-emissions technologies and processes.[24] In addition, both bills provide to the nonprofit entity a specific amount of federal funding ($100 billion)[25] and establish a board of directors, chief executive officer, chief risk officer as well as various oversight and advisory committees for governing the nonprofit entity.[26] None of those provisions for establishing a single national green bank exist here, in the enacted legislation, in section 134. This clearly confirms that the language of both bills authorizing the establishment of a single national green bank was in fact not "incorporated into the IRA to create the GGRF," as claimed by the CGC in all of its filings.[27] Moreover, if Congress intended to establish a single national green bank, it knew how to do so, but instead established a fundamentally different (and more flexible) framework for providing grants from the GHGR Fund to eligible recipients on a competitive basis.

Irrelevance of Congressional Interpretations. Neither the Congressional Letter nor the Congressional Record Statement (discussed above) are relevant to the question of whether the statute requires EPA to distribute all of the funds from the GHGR Fund to a single, national green bank. First, both documents are attempting to interpret Congress' intent in passing CAA section 134 based on the intent that Senators Van Hollen and Markey and Representative Dingell had in drafting legislation to establish one, single green bank in the Senate and House. Since none of the key provisions discussed above for establishing a national green bank were incorporated into section 134 during the passage of IRA through the budget reconciliation process, the reference in the Congressional Letter and Congressional Record Statement to the intent of the drafters when introducing those two other bills is irrelevant to determining Congress' intent in passing section 134.

Second, even if those two congressional interpretations were somehow relevant (which is not the case), EPA should first look to the text of the statute, which is controlling in determining the intent of section 134. If the intent of Congress is unambiguous or clearly stated, then the inquiry should end there and it is not necessary or appropriate for EPA to consider interpretations expressed by legislative materials, such the Congressional Letter and Congressional Record Statement being advanced by the Coalition.[28] Rather, the Agency must carry out the clearly

[22] *See National Climate Bank Act*, S. 283, 117th Cong. (Feb. 4, 2021) (introduced by Senators Markey and Van Hollen) (hereinafter referred to as "S. 283"); *Clean Energy and Sustainability Accelerator*, H.R. 806, 117th Cong. (Feb. 4, 2021) (introduced by Representative Dingell) (hereinafter referred to as "H.R. 806").
[23] That nonprofit entity is referred to as "National Climate Bank" in S. 283 and a "Clean Energy and Sustainability Accelerator" in H.R. 806.
[24] *See* S. 283 at pp. 8-9; H.R. 806 at pp. 8-9.
[25] *See* S. 283 at p. 22; H.R. 806 at p. 21-22.
[26] *See* S. 283 at p. 17-21; H.R. 806 at pp. 15-21.
[27] CGC Submission to EFAB dated Oct. 11, 2022 at p.1; *see also* Compilation of CGC Statements attached hereto in the Appendix.
[28] *Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837, 842-43 (1984) ("If the intent of Congress is clear, that is the end of the matter; for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress."); *see also Qi-Zhuo v. Meissner*, 70 F.3d 136, 140 (D.C. Cir. 1995) ("Where . . . the plain language of the statute is clear, the court generally will not inquire further into its meaning"); *Washington All. of Tech. Workers v. United States Dep't of Homeland Sec.*, 50 F.4th 164, 186 (D.C. Cir. 2022) ("Accordingly, Step

expressed intent of Congress – which, in this case, is an explicit mandate for EPA to provide grants from the GHGR Fund to eligible recipients on a competitive basis and provide Funds to eligible recipients (which may include more than one), and not necessarily provide all of funds to a single national green bank. Furthermore, EPA must follow the strictures of the statutory language no matter how strong or compelling the Coalition asserts the grounds may be to establish a single, national green bank.

Budget Reconciliation Limitations. Any EPA attempt to construe the statute as expressly or implicitly requiring or authorizing the establishment of a single, national green bank is absolutely barred because such an interpretation would conflict with clear limitations imposed by the budget reconciliation process. Those limitations prohibit Congress, as a matter of law, from adopting any provision in section 134 that is not primarily related to the outlay of funds or raising of revenues when it passed the IRA legislation through the budget reconciliation process. As a result, section 134 may only include "spending" provisions authorizing EPA to make grants to eligible recipients on a competitive basis, but it could not include any provisions relating to "extraneous" policy or regulatory matters unrelated to the expenditure of those funds. Clear examples of such extraneous matters that are precluded by definition from section 134 are the establishment of a single, national green bank and detailed, prescriptive policies on how EPA should design and implement federal funds appropriated to the GHGR Fund.[29]

Based on these considerations, there is no basis for EPA to conclude that the purpose or objective of section 134 was to require or authorize the establishment of a single national green bank. For the same reasons that Congress was precluded from adopting in section 134 express language requiring the establishment of a single green bank, the budget reconciliation process also now precludes EPA from adopting policy interpretations of section 134 that are based on the interpretation or view that the purpose of the statute (and the intention of Congress) was for EPA to adopt a single, national green bank. Such a statutory interpretation would run afoul of the strict prohibitions placed on Congress in passing the IRA legislation through the budget reconciliation process.

Authority to Establish "National" Banks. Congress has established a specific licensing process for financial institutions to register and operate as "national banks," including "special purpose banks" such as a national green bank. This licensing process involves the Office of the Comptroller of Currency (OCC) – an independent bureau of the U.S. Department of Treasury – granting a federal charter to the bank pursuant to its authorities provided under the National Bank Act of 1864[30] and in accordance with the detailed procedures and requirements established by federal regulation.[31] This comprehensive federal regulatory framework for establishing a

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One of the *Chevron* test asks whether the statute is unambiguous in the relevant sense—that is, whether Congress has 'directly addressed the precise question at issue.'") (quoting *Mayo Found. v. United States*, 562 U.S. 44, 52 (2011)).

[29] The budget reconciliation rules are strictly enforced by the Senate Parliamentarian, who closely reviews and vets with both parties each provision of the budget reconciliation legislation. Furthermore, these rules can be enforced by any Senator raising a point of order during consideration of reconsideration bill or conference report. If the point of order is sustained, the offending provision is stricken from the bill unless the proponents of the provision can muster a Senate majority of 60 votes. Section 313 of the Congressional Budget of 1974, codified at 2 U.S.C. §644. *See* Congressional Research Service, *The Budget Reconciliation Process: The Senate's "Byrd Rule"* (September 28, 2022), available here. Notably, no Senate Parliamentarian objection or point of order was sustained in the case of the GHGR Fund provisions in section 60103 of the IRA bill during the budget reconciliation process.

[30] 12 U.S.C. §21

[31] The OCC has adopted implementing regulations, codified at 12 C.F.R. §5.20, that establish the policies, requirements, and procedures for organizing a national bank or federal saving association. These regulations include

national bank further reflects Congress' intent that the creation of a new national green bank must adhere to this specific regulatory framework and that EPA may not deviate from that well-established framework unless and only if Congress has established a separate and independent process for organizing a national green bank. Congress' failure to provide such a separate and independent process for organizing a national green bank in this case therefore indicates that any entity (such as CGC) seeking to receive grants from the GHGR Fund as a national green bank must first apply for and obtain a charter as a "national" bank pursuant to the OCC regulations.[32]

This interpretation is further confirmed by the fact that the Senate bill (S. 283) referenced by CGC to establish a national green bank would have done so through an amendment to the current version of the National Bank Act of 1864. That amendment would have established specific federal procedures and requirements for organizing a national green bank, which would have applied in lieu of the current OCC regulatory framework for organizing any type of national bank or a federal savings association. By contrast, the House bill (H.R. 806) also referenced by the Coalition did not attempt to revise the current OCC regulatory framework for licensing national banks because the House bill did not attempt to establish a "national green bank." Such an amendment to the current OCC framework was therefore unnecessary because the legislation would not have established a national green bank but instead a nonprofit corporation referred to as the "Clean Energy and Sustainability Accelerator." In effect, the House bill would have established an alternate regulatory framework for the organization of a single, nonprofit corporation that would have operated as a national nonprofit entity similar to a national green bank without becoming subject to the OCC regulatory framework.

Notably, section 134 does not implement either one of these alternatives. It neither contains an amendment to OCC regulatory framework for establishing a national green bank (as provided in S. 283) nor establishes an alternate regulatory framework for establishing a single nonprofit entity dedicated to reducing GHG emissions by providing financing support for the deployment of clean energy projects (as provided in H.R. 806). Congress' silence on this critical matter clearly indicates that Congress did not intend to revise the current OCC federal regulatory framework in implementing the provisions of CAA section 134 and EPA therefore must defer to OCC and its regulatory framework for granting charters for the establishment of any national green bank seeking to receive grants from the GHGR Fund. As a result, section 134 provides no independent authority for EPA to implement the grant program in a manner that would only

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specific "procedures and requirements governing OCC review and approval of an application to establish a national bank or a Federal stock or mutual savings association, including a national bank or a Federal savings association with a special purpose." *Id.* at §15.20(b).

[32] Although outside the scope of this memorandum, it should be further noted that federal law strictly prohibits any entity from referring to itself as a "national" or "federal" banking organization unless otherwise "permitted by the laws of the United States." 18 U.S.C. §709 (establishing criminal laws for "false advertising or misuse of names to indicate federal agency"). Similar prohibitions typically apply at the state level. As a general matter, those state laws have the effect of precluding an entity from referring to itself and thereby operating as a green "bank" unless expressly authorized to do so by state statute or state banking commission or regulator. *See, e.g.*, Chapter 4, Article 3, Section 301(a)(5)(B) of the Business Corporation Law of New York (prohibiting domestic or foreign corporations and other such non-for-profit entities from using the name "bank," "finance," "investment," "loan," "mortgage," "savings," "trust," or "any abbreviation or derivative thereof" unless prior approval has been obtained from the Superintendent of Banks); Code of the District of Columbia § 29-103.01(e) (providing that an "entity shall not contain the words 'bank', 'banking', 'credit union', 'insurance' or words of similar import, without the prior approval of Mayor"); Texas Administrative Code, Title I, Part 4, Chapter 79, Subchapter C, Rule 79.34(b) (establishing that in Texas, "an entity name cannot include the words 'bank,' 'bank and trust,' 'trust,' 'trust company' or a similar term, phrase, or foreign language word unless accompanied by a no objection letter from the Banking Commissioner").

support the formation and capitalization of a single, national green bank as the Coalition is urging EPA to do.

A Broad, General Framework Is Established for Making Grants from the GHGR Fund.

As the previous section indicates, section 134 does not require the establishment of a single, national green bank no matter how strong or compelling the policy reasons for doing so. Nor does the statute authorize EPA to design a framework for making grants from the GHGR Fund based on irrelevant interpretations offered by Senator Van Hollen, Senator Markey, and Representative Dingell that the overall purpose of section 134 was to "a capitalize a single independent, non-profit national climate bank."[33] These and other interpretations being advanced by the Coalition in its submissions to EPA and EFAB (as identified in the attached white paper) do not provide a legal basis for authorizing the creation and capitalization of a single, national green bank. Only the OCC has the authority to create a national green bank by issuing a charter for the nonprofit entity to operate as a "national bank" pursuant to OCC's federal licensing regulations.[34] Furthermore, that nonprofit entity – once it secures a charter as a national bank from the OCC – must compete with other applicants for receiving grants from the GHGR Fund and demonstrate that it can meet all of the eligibility requirements for receiving such a grant.

As to meeting these grant eligibility requirements, the CGC argues that a "national climate bank is uniquely structured to meet all of the requirements of the GHGRF" and therefore "EPA should capitalize a national green bank with the approximately $20 billion" in funding that Congress has appropriated for the GA and LIDC Grant Programs.[35] This analysis will not attempt to address the extent to which such a national green bank can fulfill the objectives of the GHGR Fund or meet the conditions for EPA to award grants from the Fund. While these issues are outside the scope of this analysis, it is clear that **other entities** also may qualify as "eligible recipients" to receive grants from any of the three grant programs and that EPA has discretion under the statute to design a framework that would allow the awarding of grants under section 134 to other separate, special-purpose independent nonprofit organizations funded by public or charitable contributions that are organized to serve credit unions and CDFIs for incentivizing the deployment of clean energy projects.

Moreover, these organizations have capabilities and attributes that can achieve the core objectives of the grant program, namely, avoiding and reducing GHG and other air emissions while addressing environmental justice in low-income and disadvantaged communities. In addition, they do so in the most cost-effective manner at the lowest cost with rapid deployment and maximum leverage capital.

For these reasons, as discussed below, EPA should exercise its discretion not to adopt an overly prescriptive and narrow interpretation of the statutory requirements for eligibility that would require or otherwise result in the capitalization of only one single, national green bank. In addition, the Agency should use its statutory authority under section 134 to adopt a broader and more accommodating framework that will allow various other well-qualified organizations to

[33] 117th Congress (2021-2022), Letter from Senators Van Hollen, Markey, and Representative Dingell to Environmental Protection Agency (EPA) Administrator Michael Regan, September 9, 2022.
[34] *See* National Bank Act of 1864 (codified at 12 U.S.C. §21) and implementing regulations (codified at 12 C.F.R. §5.20).
[35] CGC Hopson Submission to EFAB dated Dec. 15, 2022, at p. 2.

apply for and secure grants to provide financial and technical assistance to clean energy projects under the program.

Eligible Recipient. CAA section 134(c)(1) specifies the qualification requirements for an "eligible recipient." These requirements are general in nature and provide EPA with considerable discretion in determining whether an entity may qualify as an eligible recipient. As discussed below, the requirements neither direct EPA to select only one single national green bank; nor do they preclude the selection of other entities that are not national green banks so long as they meet eligibility requirements specified in section 134(c)(1), as described below. The same interpretation also would preclude EPA from selecting only one single national nonprofit that might be able to perform many of the same functions as a national green bank.

Nonprofit Status and Charitable Contributions. One set of related eligibility requirements pertain to the organizational structure of, and funding received by, an eligible recipient. The eligible recipient must be a "nonprofit organization" and "funded by public or charitable contributions." A wide range of organizational structures may qualify under these provisions. A nonprofit organization may also include any type of entity that the Internal Revenue Service recognizes as a not-for-profit organization under the various tax-exempt exclusions provided under the Internal Revenue Code (IRC). The obligation to register as a charitable corporation under IRC section 501(c)(3) applies only if the organization receives charitable contributions under IRC section 170 and the donor wants to receive an income tax deduction. Finally, the statute is silent on the issue of whether the nonprofit organization must be funded exclusively by public or charitable contributions. Although it seems appropriate for EPA to require a predominant amount of the funding to come from such contributions, the statute is silent on this issue and therefore left it to EPA's discretion to determine the extent to which (if any) the organization may receive funding or other support from the private sector.

Purpose and Design of the Nonprofit Organization. Another set of eligibility requirements relate to the purpose and design of the nonprofit organization's investment structure. The organization must "invest in or finance projects alone or in conjunction with other investors" and 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." Notably, the statute does not mandate, as the CGC claims, that this undertaking must be the exclusive purpose or mission of the organization and that the organization cannot have been formed, designed, structured, managed, or governed for any other purpose or mission. Rather, Congress declined to define further these criteria and instead left them to EPA's discretion and good judgment to interpret and implement.

One permissible interpretation of the statutory provision is not to focus on whether these attributes are the exclusive purpose or mission of the organization, but rather evaluate eligibility on the ability, effectiveness, and speed of the organization to satisfy these criteria for investing the capital and providing financial and technical assistance. In other words, it would be reasonable for EPA to interpret these statutory provisions based on whether the entity has a framework and design (based on proven and reliable financial structures) to incentivize the rapid deployment of clean energy projects, especially such projects in low-income and disadvantaged communities. Other attributes of a nonprofit's organizational structure for which it would be reasonable for EPA to consider in assessing the eligibility of a nonprofit organization include the following:

- Whether the organization has the capability of rapidly implementing a new financial platform or adapting existing financial platforms for leveraging, monetizing, and deploying funds cost-effectively while maintaining public trust and accountability;
- Whether that financial platform has the capability of making loans rapidly for a substantial number of consumers in low-income and disadvantaged communities; and
- Whether the organization has established methods and procedures to monitor and account for the funds that are used in making loans to consumers and assure compliance with all applicable financial regulations with minimal or no EPA oversight.

Focusing on these types of organizational attributes seems to be not only reasonable, but also preferable, as compared to CGC's proposed narrow and highly prescriptive interpretation of the statute requiring that the organization must be exclusively designed, controlled, and governed to provide financial and technical assistance to deploy clean energy projects under the GHGR Fund Program. To put in other words, it would not only be permissible but also most appropriate for EPA to interpret these eligibility requirements in a broader and more flexible manner that promotes the core objectives of the program. Under this approach, EPA's focus would be expanded to include other important attributes of the organization, including the capability of the organization to implement effective financial platforms that can efficiently incentivize the rapid deployment of clean energy projects to reduce GHG emissions and other air pollutants while addressing environmental justice by maximizing the deployment of these projects in low-income and disadvantaged communities.

Taking Deposits and Receiving Other Revenue. Finally, the statute requires that the eligible recipient "not take deposits other than deposits from repayments and other revenue received from financial assistance provided using grant funds under this section." This requirement does place clear limitations on the types of nonprofit organizations that can qualify as an eligible entity. For example, a commercial depository bank, credit union, CDFIs or other financial institution that generally takes deposits is precluded from directly applying for grants as an eligible recipient under any of the three grant programs. However, the statute is silent on whether an eligible recipient may include a special-purpose nonprofit organization that derives some or all of its charitable funding from credit unions, CDFIs and/or other ineligible recipients. In other words, nothing in the statute specifically suggests that an "eligible recipient" cannot be controlled or managed by independent boards that include entities that would otherwise be ineligible, including depository institutions such as credit unions and CDFIs, as the CGC asserts.

One such organizational structure identified by EFAB as a possible "structure option" in its final report to EPA on December 15, 2022 involves providing financial and technical support to qualified projects through "lender intermediaries."[36] Contrary to claims by CGC, a lender intermediary is not a "mere paperwork construct" that operates as a "front for an entity that cannot qualify as an 'eligible recipient.'"[37] Rather, each of these lender intermediaries is a

[36] Environmental Financial Advisory Board, *GHGRF Charge: Public Meeting,* December 15, 2022, pp. 56-57.
[37] Coalition for Green Capital (CGC) Submission to the Environmental Financial Advisory Board (EFAB), from Kevin S. Minoli, Counsel for the CGC, to Hon. Edward H. Chu, Designated Federal Officer, and Hon. Kerry O'Neill, Chair, p. 19 (December 2022) [hereinafter "CGC Submission to EFAB dated Dec. 2022"].

separate and independent, legitimately-organized, nonprofit organization (with the governance and reporting requirements applicable to other nonprofit organizations) that has its own board, charter, by-laws, management team, business plan, and capability to fulfill the requirements for receiving grants and providing financial and technical assistance under CAA section 134. These lender intermediaries also can be managed by independent boards that include representatives from credit unions and/or CDFIs and frequently have the advantage of using proven, cost-effective, and efficient financial platforms. In many cases, the platform can be a very valuable tool for leveraging public and private investment and deploying that capital through highly effective lending operations with clear underwriting criteria, risk-management strategies, portfolio management, and engaged servicing of loans to ensure the success and recycling of the investment and borrowers.

One example of this model is a credit union intermediary that would use a new financial platform or adapt an existing financial platform that is managed through a Credit Union Service Organization (CUSO).[38] The CUSO financial platform has many advantages, including the following:

- Creating a loan guarantee structure coupled with credit unions and CDFIs that can leverage up to 30 times the original grant capital award to an eligible assistant;
- Making loans at a rapid pace for the deployment of clean energy projects while using the CUSO's experience and access to local communities for making loans for a substantial number of consumers in low-income and disadvantaged communities;
- Establishing one centralized system with effective methods and procedures to monitor the funds that are used in making loans to consumers;
- Designing the CUSO platform to apply nationally across any and all regions of the country (as appropriate);
- Assuring compliance with applicable financial regulations with minimal or no EPA oversight; and
- Managing the grant funds received from the GHGR Fund according to actuarial design requirements to ensure that the funds are recycled for long-term project impact to the maximum extent practicable.

Qualified Project. Section 134(c)(3) provides EPA with general guidance on the types of clean energy projects that can qualify for assistance as a "qualified project." One type of qualified projects includes "any project, activity, or technology that … reduces or avoids greenhouse gas emissions and other forms of air pollution in partnership with, and by leveraging investment from, the private sector." Notably, the statute does not prescribe the amount of emissions that must be reduced or avoided or the minimal amount of reductions that the project would have to achieve. It also does not specify how the eligible recipient would quantify, document, and report those reductions. To ease the administration of this requirement, one reasonable approach might be for EPA to develop an initial list of products, technologies, and measures that presumptively qualify, such as solar panels as well as a wide array of energy efficiency measures and appliances that reduce the amount of energy used by consumers. This presumptive list could be expanded to include other clean energy products, technologies, and measures by EPA as well as

[38] CUSOs are authorized and regulated by federal law codified at 12 U.S.C. Part 712 (establishing, among other things, the rules on when a federal credit union may invest in and make loans to CUSOs).

establishing a simple administrative process for the eligible entity to add (with EPA approval) such other actions on a case-by-case basis. Similarly, the statute does not provide further details regarding the extent to which an eligible recipient must act in partnership with, and leverage private investment from, the private sector. As a result, EPA also will need to provide guidance that sets clear and reasonable rules on how the eligible recipient should plan to work "in partnership" with the private sector and how it will use the award to "leverage" funds from the private sector.

The other category of qualified projects consists of "any project, activity, or technology that … assists communities in the efforts of those communities to reduce or avoid greenhouse gas emissions and other forms of air pollution." Again, the statute defers to EPA to provide further guidelines on the types of measures and actions that qualify under this category of qualified projects. That EPA guidance should set clear and flexible rules that will allow eligible recipients to use their own networks and relationships to work with local communities in investing funds to deploy clean energy projects, particularly in those communities with significant low-income and disadvantaged populations.

Finally, a qualified recipient need not implement both categories of projects. For example, it is permissible under the statute for a qualified recipient to use a majority of the funds for indirect investments for incentivizing the deployment of clean energy projects under section 134(b)(1) and use the smaller remaining portion of the funds for direct investments in supporting "efforts" by "communities" to deploy clean energy projects under section 134(b)(2). To put in other words, the statute does not impose inflexible or iron clad requirements for the implementation of both types of qualified projects as it designs and implements its plan for using a grant received under section 134.

Use of Funds. Section 134(b) establishes a general framework for the use of funds that eligible recipients receive as grants from the ZET, GA, and LIDC Grant Programs. This framework provides guidance on how an eligible recipient may provide "direct investments" through "financial assistance to qualified projects" under subsection (b)(1) and "indirect investments" through "funding and technical assistance" to various types of "not-for-profit or nonprofit entities," who – in turn – will provide "financial assistance to qualified projects" under subsection (b)(2).

The CGC interprets these provisions as imposing highly prescriptive requirements on direct and indirect investments that are "exacting and nondiscretionary."[39] While the statute does place several important constraints on the use of funds, these constraints do not support the Coalition's interpretation that they reflect Congress' intention to "capitalize a national green bank with approximately $20 billion" in funding appropriated for the GA and LIDC Grant Programs.[40] Nothing in section 134 requires EPA to interpret the provisions on the use of funds in this manner. Moreover, the legislative history referenced by CGC (including the Congressional Letter and Congressional Record Statement discussed above) does not reflect the intent of Congress in establishing a GHGR Fund when it passed as part of the IRA legislation. Not only is the language in section 134 fundamentally different from the language of the prior bills introduced in the Senate and House to establish a national green bank,[41] the budget reconciliation process precludes EPA from ascribing this intent to section 134. As discussed above, the budget

[39] CGC Response to EPA RFI dated Dec. 5, 2022, at p. 35.
[40] CGC Hopson Submission to EFAB at p. 2 (Dec. 2022).
[41] *See* S. 283; H.R. 806.

reconciliation rules only allowed Congress to adopt provisions on spending of federal funds in section 134 and barred, by definition, Congress from adopting extraneous federal policies, such as the establishment of a single, national green bank. The Coalition's interpretation of section 134 runs afoul of the strict prohibitions placed on Congress in passing the IRA legislation through the budget reconciliation process.

Viewed in this light, EPA has no choice but to base its interpretation on the plain language in section 134. That language is not so highly "exacting and nondiscretionary" as the Coalition claims but instead gives EPA broad discretion. The discussion below provides a few of key provisions of section 134(b), which – contrary to the Coalition's contention – are general in nature and thereby delegate considerable discretion for the EPA to determine how the grant funding awarded from the GHGR Fund may be used by eligible recipients. Key conclusions from this analysis include the following:

- In exercising its discretion, EPA has the opportunity to develop a flexible framework that does not require grant recipients to use the grant funding for both direct investment and indirect investment of the funds.

- Even if EPA elects to require both direct and indirect investment (which is not required by the statute), section 134(b) does not mandate the amount of funds an eligible recipient must use for direct investment and the amount used for indirect investment. Nor does it impose a requirement on the minimal number of eligible recipients to which EPA may award grants for use in making direct and indirect investments under subsection (b).

- The statute affords the Agency with considerable discretion to implement the grant program in a much broad manner that does not require the selection of a single, national green bank and thereby forcing other entities, such as lender intermediaries with proven and highly effective financial platforms, to secure funding as indirect recipients rather than as an eligible recipient.

- The adoption of the Coalition's interpretation limiting the use of funds to a single national bank or even a specific number of eligible recipients is not authorized by the plain language in section 134. Such an interpretation could be detrimental to EPA achieving the goals of the GHGR Fund by precluding other highly qualified eligible entities from using effective and proven financial platforms for leveraging, monetizing, and deploying funds cost-effectively (particularly in the case of low-income and disadvantaged communities) while maintaining public trust and accountability. The better course of action would be for EPA to make a qualitative decision on the number of applicants selected as eligible recipients as well as the amount of funds awarded to each selected eligible recipient when the Agency reviews the funding applications submitted pursuant to the Notice of Funding Opportunity (NOFO) sometime early this year.

Direct and Indirect Investment. One important threshold issue is whether section 134(b) requires every eligible recipient receiving grants from the GHGR Fund to use those funds to make both direct investments under subsection (b)(1) and indirect investments under subsection (b)(2). While the statute does require the funds be used "in accordance with the following" provisions enumerated in subsection (b), the statute is silent on whether the eligible recipient has a nondiscretionary duty to perform all of the enumerated provisions in subsection (b) or just follow the requirements for direct investment when the eligible recipient provides financial assistance to

qualified projects under subsection (b)(1) and follow the requirements for indirect investment when it provides funding and technical assistance to not-for-profit or nonprofit organizations under subsection (b)(2).

If Congress intended to require the performance of each and every action listed for direct and indirect investment in subsections (b)(1) and (2), then the statute would have been written with an "and" or other express language indicating the obligation of the eligible recipient to do so. Notably, this convention was in fact followed in the drafting of other sections of 134. Subsection (b)(1) contains an "and" to make clear that all of the actions enumerated in subparagraphs (A), (B), and (C) are additive and therefore must be performed to meet the direct investment requirements. Similarly, the definitions of "eligible recipient" in subsection (c)(1) and "zero-emission technology" in subsection (c)(4) use an "and" to indicate that each of elements enumerated in those definitions shall apply. Furthermore, this interpretation is consistent with the general cannons of statutory construction whereby when an "and" is used to connect a list of requirements in a statute, the word has a conjunctive sense, meaning that all of enumerated items on the list must be met.[42] Moreover, the absence of such conjunctive language does not necessarily mean that all of the requirements must apply and, at the very least, creates a statutory ambiguity on whether EPA must require an eligible applicant to perform all of the actions for direct and indirect investment.

Number of Eligible Recipients. In light of this statutory ambiguity, EPA has considerable discretion to interpret the provisions on the use of funds in a less prescriptive and broader manner than the interpretation promoted by CGC. That discretion therefore allows the Agency to adopt other interpretations that are consistent with the statutory requirements and advance the core objective of section 134.[43] As discussed above, the core objective is focused on deploying clean energy projects that will reduce or avoid emissions of greenhouse gases and other forms of air pollutants while also addressing environmental justice in low-income and disadvantaged communities. It is not to establish a single national green bank nor to limit the number of eligible recipients to just one national nonprofit or a few selected eligible recipients. Imposing such constraints upfront prior to the issuance of a NOFO could be detrimental for the GHGR Fund achieving this objective by precluding other highly qualified eligible entities from participating in the program.

Instead, the statute leaves this matter open and for EPA to decide based on its best judgment. Accordingly, it is within EPA's discretionary authority to select an appropriate number of eligible recipients to which EPA may award grants for making direct and indirect investments under section 134(b). In exercising its discretion, EPA should have the flexibility to select the appropriate number of recipients that have:

- The ability to establish and implement rapidly proven financial platforms for deploying clean energy products, technologies, and services at the lowest cost; and

- The experience and capability to engage with a large network of downstream not-for-profit or nonprofit entities that can provide the financial assistance to qualified projects, particularly to those located in low-income and disadvantaged communities.

[42] *See United States v. Palomar-Santiago*, 141 S.Ct. 1615, 1620-21 (2021); *see also United States v. Garcon*, 54 F.4th 1274 (11th Cir. 2022); *see also* WEBSTER'S THIRD NEW INT'L DICTIONARY (1993).
[43] *Chevron*, 467 U.S. at 843.

Proceeding in this fashion offers the best way to maximize the effectiveness of the funding that Congress appropriated to the GHGR Fund under section 134.

Amount Used for Direct and Indirect Investment. Even if EPA elects to require both direct and investment (which is not required by the statute), section 134(b) does not mandate the amount of funds an eligible recipient must use for direct investment and the amount used for indirect investment. This flexibility in the statute allows EPA and eligible recipients to calibrate in the most productive and efficient manner the amount of the grant award that would be used for direct investment under subsection (b)(1) and the amount of the award that would be used for indirect investment under subsection (b)(2).

This approach also will advance the deployment of qualified projects in the most expeditious matter possible. It does so by allowing selected eligible recipients to focus first on leveraging capital on the most productive, "shovel-ready" opportunities for deploying clean energy products, technologies, and services in the near term and subsequently phase in the additional projects. These opportunities may involve the recipient to make direct investments under subsection (b)(1) by providing financial assistance to "shovel-ready" qualified projects that can be rapidly deployed. By contrast, it could in other cases entail the recipient giving priority to indirect investments under subsection (b)(2) if that pathway proves to be most efficient and effective. This would likely occur in those cases where the eligible recipient has the capability of designing and implementing a distribution platform for providing funding and technical assistance to the not-for-profit and nonprofit entities that can quickly be providing financial assistance to the qualified projects – particularly when those qualified projects are located in low-income and disadvantaged communities.

In order to maximize the speed and efficiency of delivering financial assistance to qualified projects and low-income and disadvantaged communities, it is appropriate for EPA to provide flexibility on how funds shall be implemented under section 134(b). EPA therefore should not prejudge or impose specific amounts of the total grant allocated for direct investment under subsection (b)(1) and indirect investment under subsection (b)(2), and should not set overly prescriptive requirements on the order and timing in which eligible entities must provide each type of investment. Imposing such constraints on the use of funds by eligible recipients is not mandated by the statute and could have counterproductive impacts on the ability of eligible recipients to incentivizing the rapid deployment of clean energy projects.

APPENDIX

COMPILATION OF STATEMENTS BY THE COALITION FOR GREEN CAPITAL ON THE CREATION OF A SINGLE NATIONAL GREEN BANK

The Coalition for Green Capital (CGC or Coalition) has made numerous statements in its recent written comments to the Environmental Protection Agency (EPA) and the Environmental Financial Advisory Board (EFAB) on the creation and capitalization of a single national green bank with respect to the development of the Greenhouse Gas Reduction (GHGR) Fund under section 134 of the Clean Air Act (CAA). These statements were included in the comments that the Coalition submitted in response to the EPA's Request for Information[44] (RFI) on December 5, 2022, and public outreach conducted by EPA's Environmental Financial Advisory Board (EFAB) during the time period of October 11, 2022, to December 15, 2022.

The purpose of this white paper is to provide a compilation of the many major statements that CGC made on the need to establish and capitalize one single national green bank. As indicated below, the Coalition's statements – both individually and cumulatively – appear to be sending the message that CAA section 134 either requires or authorizes EPA to establish and capitalize only one single national green bank. In some cases, the CGC statements expressly argue that EPA should award to this national nonprofit financial institution all of the funding (totaling approximately $20 billion) that is appropriated to the "General Assistance" (GA) Grant Program under section 134(a)(2) and the "Low-Income and Disadvantaged Communities" (LIDC) Grant Program under section 134(a)(3).

The CGC comments also contain a few statements recognizing that EPA may choose to provide funding to multiple "eligible recipients," and not necessarily just to capitalize one national, green bank. However, these statements are greatly outnumbered by the vast majority of the statements calling for EPA to interpret CAA section 134 in a highly restrictive and narrow fashion that would limit the awarding of funds from the GA and LIDC Grant Programs to just one single, national green bank or similar national nonprofit financial institution.

Finally, it is noted that in a few cases, the Coalition also makes general reference to the creation of a national, nonprofit financial institution, instead of a national green bank. However, these general references to national nonprofit financial institutions are consistent with the core CGC message in support of the establishment and capitalization of one single national "green bank type" organization focused on securing federal funding for the deployment of qualified clean energy projects under CAA section 134.

[44] Request for Information: Greenhouse Gas Reduction Fund – Docket ID No. EPA-HQ-OA-2022-0859.

CGC Comments Submitted to EPA in Response to the RFI (December 5, 2022)[45]

1. "The Coalition is a 501(c)(3) District of Columbia nonprofit corporation meeting all requirements to be an eligible recipient" [sic] **for the purpose of seeking capitalization as a national green bank under Section 134**."[46]
2. "CGC does business as the American Green Bank Consortium. In its 44-page filing it explained that it **intends to seek capitalization as a national green bank** drawing funds from the $11.970 billion appropriated for General Assistance under Section 134(a)(2) and the $8 billion for Low-Income and Disadvantaged Communities under Section 134(a)(3). … As set forth in detail in the filing, an "eligible recipient" for either of the two funds **must be a national non-profit purposefully and exclusively designed for direct and indirect investing** in the 'qualified projects' defined in the statute. An entity with any other purpose does not pass the definitional bar of the statute."[47]
3. "CGC noted that congressional authors of the GHGRF have made its intent clear. On September 9, 2022, Senator Chris Van Hollen (D-MD), Senator Edward Markey (D-MA), and Representative Debbie Dingell (D-MI) wrote EPA Administrator Michael Regan **urging him to use the GHGRF funding to capitalize 'a single, independent, non-profit national climate bank** that would maximize the leveraging of private capital investment, ensure the efficient distribution of funds within a growing green bank network and create opportunities for large scale, transformational investments — particularly in environmental justice communities.'"[48]
4. "Understanding the plain reading, history and context of Section 134, EPA is now in a moment to design and define how the GHGRF can incorporate energy justice and environmental justice … In championing the GHGRF the sponsors of the legislation have explained publicly that they **envisioned the capitalization of a national green bank as the purpose of the legislation**."[49]
5. "The three programs give EPA a once-in-a-generation opportunity that is **best met by a prompt capitalization of a national green bank** from the GA and LIDC funds designed, structured, governed, and monitored by EPA to achieve the critical, carefully defined purposes of Section 134."[50]
6. "**Read as a whole, the plain language of Section 134 explains** why Senator Chris Van Hollen, Senator Ed Markey, and Congresswoman Debbie Dingell wrote to EPA Administrator on September 9, 2022, **urging them to use the GHGRF funding to capitalize 'a single, independent, non-profit national climate bank** that would maximize the leveraging of private capital investment, ensure the efficient distribution of

[45] Comments of the Coalition for Green Capital in Response to Request For Information on the Greenhouse Gas Reduction Fund - Docket ID No. EPA-HQ-OA-2022-0859 (Dec. 5, 2022) (hereinafter referred to as "CGC Comments on RFI"). The comment package submitted to EPA in response to the RFI consists of the following three sections that are combined into one combined PDF document: transmittal letter to EPA; an overview summary statement by CGC; and the Coalition's actual comments. Citation is provided to both the page reference of each element of the comment package as well as the page of the combined PDF document.
[46] Transmittal letter for CGC Comments on RFI at p. 1, p. 1 of the PDF (emphasis added).
[47] Overview Summary Statement on CGC Comments on RFI at p. 1 (emphasis added).
[48] *Id*. at p. 2, p. 5 of the PDF (emphasis added).
[49] *Id*. (emphasis added).
[50] CGC Comments on RFI at p. 1, p. 6 of the PDF (emphasis added).

funds within a growing green bank network and create opportunities for large scale, transformational investments—particularly in environmental justice communities.'"[51]

7. "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.**"[52]
8. "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.'"[53]
9. "**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."[54]
10. "**If fully capitalized, a national green bank** will have adequate scale to partner with major actors to support domestic supply chains of iron, steel, manufactured products, and construction materials. For example, a national green bank could enter into supply or requirements contracts with domestic manufacturers and distributors."[55]
11. "**A national green bank would further support this mission by creating a single sustainable entity** in which some Tribal and territorial governments that may need additional time to prepare to access the GHGRF could be provided with technical assistance."[56]
12. "**A national reach is a requirement, not merely an option**. Again, the Congressional history and this text shows **Section 134 requires EPA to capitalize a national green bank** to do direct investing."[57]
13. "EPA may not fund an applicant that wishes to do direct investing only at 'regional, State, and local' levels. **Entities with those goals can be 'indirectly' funded by a national green bank**. (The structure of Section 134 reveals that EPA should not ignore the potential of regional, state, and local nonprofit investment institutions to fulfill Section 134's mission. **They are not 'eligible recipients,' but they can be indirect recipients of national green bank** 'funding and technical support.')"[58]
14. "The applicant also must (the word 'and' means this is an additional requirement) 'retain, manage, recycle, and monetize all repayments and other revenue received from fees, interest, repaid loans, and all other types of financial assistance using grant funds under this section to ensure continued operability.' **This critical clause explains a major reason why EPA should capitalize an independent nonprofit national green bank.** If funded at scale, it will be able to engage in all these financial methods to increase total investment over time. No government agency can recycle money in these ways."[59]
15. "In any case, EPA should require an applicant to show how it will provide 'funding and technical assistance' to a **national network of entities** that in turn provide 'financial

[51] *Id*. at p. 2, p. 7 of PDF (emphasis added).
[52] *Id*. at p. 9, p. 14 of PDF (emphasis added).
[53] *Id.* (emphasis added).
[54] *Id*. at p. 13, p. 18 of PDF (emphasis added).
[55] *Id*. at p. 16, p. 21 of PDF (emphasis added).
[56] *Id*. at p. 18, p. 23 of PDF (emphasis added).
[57] *Id*. at p. 23, p. 28 of PDF. (emphasis added)
[58] *Id.* (emphasis added).
[59] *Id*. at pp. 23-24, pp. 28-29 of PDF (emphasis added).

assistance to qualified projects.' **We urge EPA to preclude or at least disfavor eligible recipients that propose to limit**, confine, or otherwise create an exclusive network of such entities. **An applicant that does not present a plan for managing and growing a national network should not be deemed an "eligible recipient.**"[60]

16. "By reading the statute as a whole, **EPA can implement the Congressional purpose of capitalizing a national green bank** that: supports a 'big green tent' of indirect recipients; does direct investing in emissions and pollution reduction in low-income and disadvantaged communities; and operates according to an economically sustainable business model."[61]
17. "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**."[62]
18. "**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.'"[63]
19. "**Congress wanted a dedicated, purpose-built, focused national green bank** to be recycling its direct investments."[64]
20. "**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."[65]
21. "This summary of the entire statute reflects the text itself. It is supported by testimony in a Senate hearing, statements by sponsoring Senators and Congresspersons, and the history of previously enacted versions of Section 134 in the House. **We respectfully suggest that by capitalizing a national green bank in a timely manner, EPA can comply with Section 134** and fulfill its purposes in the best possible way."[66]

First Set of CGC Comments Submitted to the EFAB for December 15, 2022, Meeting[67]

22. "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

[60] *Id*. at p. 24, p. 29 of PDF (emphasis added).
[61] *Id*. at p. 25, p. 30 of PDF (emphasis added).
[62] *Id*. (emphasis added).
[63] *Id*. at p. 26, p. 31 of PDF (emphasis added).
[64] *Id*. at p. 36, p. 41 of PDF (emphasis added).
[65] *Id*. (emphasis added).
[66] *Id*. at p. 37, p. 42 of PDF (emphasis added).
[67] Comments of Coalition for Green Capital to Hon. Edward H. Chu, Hon. Kerry O'Neill, and Members of the EFAB, from Kevin S. Minoli, Counsel for the Coalition for Green Capital, (Undated – First Set of CGC comments submitted for December 15, 2022, Meeting) (hereinafter referred to as "Minoli CGC Submission to EFAB for the December 15, 2022 Meeting"). All references to the attachment included with these comments are to pages of the combined PDF of the comments with attachment.

reflects Congress's intent to have the money awarded under the LIDC and GA Funds be used to establish a national, nonprofit finance institution."[68]

23. "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."[69]
24. "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."[70]
25. "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. [sic]"[71]
26. "**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."[72]
27. "**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."[73]
28. "**Competition among indirect recipients for support from multiple national green banks** will lead to reduced standards at both levels."[74]
29. "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.**"[75]
30. "**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** …"[76]
31. "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."[77]

[68] Minoli CGC Submission to EFAB for the December 15, 2022, Meeting at pp. 1-2 (emphasis added).
[69] *Id*. at p. 3 (emphasis added).
[70] Attachment to Minoli CGC Submission to EFAB for the December 15, 2022, Meeting at p. 5 of the PDF (emphasis added).
[71] *Id*. at p. 6 (emphasis added).
[72] *Id* (emphasis added).
[73] *Id*. (emphasis added).
[74] *Id*. (emphasis added).
[75] *Id*. at p. 9 (emphasis added).
[76] *Id*. at p. 15 of the PDF (emphasis added).
[77] *Id*. (emphasis added).

32. "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.'"[78]
33. "**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."[79]
34. "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.**"[80]
35. "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."[81]
36. "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.'"[82]
37. "**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."[83]

Second Set of CGC Comments Submitted to the EFAB for December 15, 2022, Meeting[84]

38. "The purpose of these comments is to respond to assertions made by various commenters that disregard the purpose and express requirements of the new Section 134 of the Clean Air Act ("CAA") in Section 60103 of the Inflation Reduction Act, Public Law 117-169, 136 Stat. 1818 (August 16, 2022) **regarding capitalization of a national green bank or similar independent, nonprofit national finance entity** that must operate and make direct investments at the national, regional, State and local levels; while also making indirect investments in the form of funding and technical assistance to a broad and open access network of new and existing finance entities operating at subnational levels."[85]
39. "**EPA should capitalize a national green bank with the approximately $20 billion** available in the GA and LIDC Funds so that it can engage in an economically prudent balance of 'direct investment,' Section 134(b)(1) 'at national, regional, State, and local levels,' (b) (1(A), and 'indirect investment,' (b)(2), at the 'State, local, territorial, or Tribal level or in the District of Columbia' through a purposely broad and wide-ranging

[78] *Id*. (emphasis added).
[79] *Id*. at p. 19 (emphasis added).
[80] *Id*. (emphasis added).
[81] *Id*. at p. 20 (emphasis added)
[82] *Id*. (emphasis added).
[83] *Id*. (emphasis added).
[84] Comments of Coalition for Green Capital to Hon. Edward H. Chu, Hon. Kerry O'Neill, and Members of the EFAB, from Eli Hopson, Executive Director and Chief Operating Officer for the Coalition for Green Capital, (Undated – Second Set of CGC comments submitted for December 15, 2022, meeting).
[85] *Id*. at p. 1 (emphasis added).

network of both existing and new 'public, quasi-public, not-for-profit, or nonprofit entities…, including community-and low- income-focused lenders and capital providers,' (b)(2), as indirect recipients. **The totality of such investment would 'ensure continued operability' of the national green bank as required under Section 134(b)(1)(C)**. A growing, balanced portfolio of direct and indirect investments also would **enable the national green bank** to continue to operate over the time period necessary to fulfill the mandate in Section 134(b)(2) that it 'provide funding and technical support to establish new or support existing' entities in a large and open network of indirect recipients operating at the State and local levels."[86]

40. "To be clear, the Coalition intends to compete for funding under the GA and LIDC Funds as **the national green bank.** A reasonable number of commenters support the need for and **legal mandate in Section 134 for the capitalization of a national green bank** using funds from the GHGRF."[87]
41. "Commenters with this view make no reference to the contrary **mandate for a national entity in Section 134(b)(1)(A)** and apparently want EPA to make hundreds or even thousands of awards to purported 'eligible recipients' that operate solely at the local and community levels."[88]
42. "**The optimal solution is to capitalize a national green bank** that sets objectives with EPA and encourages local flexibility in meeting those objectives through direct investments and indirect investments working with indirect recipients."[89]
43. "While we do not see textual justification for this interpretation of 'qualified project' under Section 134(c)(3), **funding of a national green bank would allow the bank** to provide 'funding and technical assistance' to enable these same entities to invest in 'qualified projects' as expressly defined in Section 134(C)(3)."[90]
44. "**Section 134 requires funding of at least one national green bank**." [91]
45. "But no comment we have read so far explains cogently why a 'small number' of higher level coordinating entities is **superior to one national green bank (as the 'eligible recipient')** coordinating a large and broad network of downstream financing entities (as indirect recipients) that operate at a subnational level. **This approach is not only expressly contemplated under Section 134, it is both in theory and will be in practice the most inclusive**, the most likely to produce maximum investing by the private sector, and provide benefits to low-income and disadvantaged communities both rapidly and over time. This is why, for example, we have **one Federal Reserve, one Corporation for Public Broadcasting** – each with large, powerful underlying networks of regional, State and local entities." [92]
46. "**Inclusiv's assertion regarding a national green bank is contrary to the clear mandate for such an entity in Sections 134(b) and (c)**, and is not logical."[93]

[86] *Id*. at p. 2 (emphasis added).
[87] *Id*. at pp. 2-3 (emphasis added).
[88] *Id*. at p. 3 (emphasis added).
[89] *Id*. at p. 4 (emphasis added).
[90] *Id*. at pp. 4-5 (emphasis added).
[91] *Id*. at p 5 (emphasis in the original).
[92] *Id*. (emphasis in the original).
[93] *Id*. at p. 6 (emphasis added).

CGC Comments Submitted to EFAB Coalition on October 11, 2022[94]

47. "The Congressional Letter, in conjunction with a statement for the Congressional Record made by Representative Dingell, **documents the legislative history of the GGRF and Congress's intent for how EPA should implement this new program**. We commend both to the EFAB, and have included them as Attachment I and Attachment II to these comments. We further encourage the EFAB to provide EPA with advice that is consistent with Congress's intent, as documented by the Members of Congress that were the lead sponsors of the legislation that was incorporated into the IRA to create the GGRF. **Together, the Letter and the Statement provide EPA with a roadmap for how to implement the GGRF and award the full amount appropriated by Congress** within the time provided in the Act."[95]
48. "The Letter and Statement explain that **Congress's intent in creating the GGRF was to capitalize a single national, nonprofit financial institution – often referred to as the National Green Bank.** Consistent with well-established financial protocols, **Congress understood that consolidating the grant money in a single National Green Bank** would actually *expand* the number of entities that would benefit from the funding provided through the GGRF and the total amount of "funding and technical assistance" that will be delivered to these entities." [96]
49. "Congress drafted the legislation not only to provide financial assistance to qualified projects, but also to provide technical assistance and financial assistance to new or existing public, quasi-public, not-for-profit, or nonprofit entities that provide financial assistance to qualified projects at the State, local, territorial, or Tribal level or in the District of Columbia, including community- and low-income-focused lenders and capital providers. Simply put, **the National Green Bank is required to share the funding it receives with all entities** that are committed to accelerating investment in clean energy technologies in every community in the United States. … **By providing the money to a single National Green Bank** and requiring the bank to in turn provide technical and financial assistance to new and existing financial entities, **Congress found a creative solution that overcame the time-based limitations of a traditional grant program**.**"**[97]
50. "**Capitalizing one single independent National Green Bank** offers both the benefits of flexibility and speed in decision-making that private sector financing entities enjoy and the restraint on profit-seeking that should attach to the recipient of taxpayer funds."[98]
51. **"**In fact, **capitalizing a single National Green Bank** will allow for more effective and efficient accountability by consolidating the responsibilities and obligations **in a single entity**."
52. **"**As intended by Congress, **capitalizing a National Green Bank is an essential component for meeting the stated purpose of the GGRF** and is key to ensuring the rapid deployment of funds to communities across the country, and in particular low-income and disadvantaged communities."[99]

[94] Comments of Coalition for Green Capital to Hon. Edward H. Chu, Hon. Kerry O'Neill, and Members of the EFAB, from Kevin S. Minoli, Counsel for the Coalition for Green Capital (October 11, 2022).
[95] *Id*. at p. 1 (emphasis added)
[96] *Id*. at p. 2 (emphasis added)
[97] *Id*. (emphasis added)
[98] *Id*. (emphasis added)
[99] *Id*. at p. 3 (emphasis added)