

Part III – Administrative, Procedural, and Miscellaneous

Section 45L New Energy Efficient Home Credit

Notice 2023-65

SECTION 1. PURPOSE

This notice provides guidance on the new energy efficient home credit under § 45L of the Internal Revenue Code (Code), as amended by § 13304 of Public Law 117-169, 136 Stat. 1818, 1952 (August 16, 2022), commonly known as the Inflation Reduction Act of 2022 (IRA).¹ The amendments made by § 13304 of the IRA apply to qualified new energy efficient homes acquired after December 31, 2022. The guidance provided in this notice addresses: (i) the person that is eligible for the credit, (ii) determining the applicable amount of the credit, (iii) energy saving requirements, (iv) certification requirements, and (v) substantiation requirements. This notice also obsoletes Notice 2008-35, 2008-1 C.B. 647, and Notice 2008-36, 2008-1 C.B. 650, which remain applicable for purposes of former § 45L.²

SECTION 2. BACKGROUND

.01 Former § 45L

¹ Unless otherwise specified, all “Section” or “§” references are to sections of the Code or the Income Tax Regulations (26 CFR part 1).

² All references to “former § 45L” in this notice refer to § 45L as applicable to qualified new energy efficient homes acquired on or before December 31, 2022.

(1) For purposes of the general business credit under § 38, the new energy efficient home credit under § 45L (§ 45L credit) has been a current year business credit since former § 45L and § 38(b)(23) were enacted by § 1332(a) and (b) of the Energy Policy Act of 2005, Public Law 109-58, 119 Stat. 594, 1024 (August 8, 2005).

(2) Former § 45L(a)(1) provided that, for purposes of § 38, in the case of an “eligible contractor” (defined in former § 45L(b)(1)), the new energy efficient home credit under former § 45L for the taxable year is the “applicable amount” (determined under former § 45L(a)(2)) for each “qualified new energy efficient home” (defined in former § 45L(b)(2)) that is constructed by an eligible contractor and “acquired” (as defined in former § 45L(b)(4)) by a person from such eligible contractor for use as a residence during the taxable year. Former § 45L(c) provided the energy saving requirements that a dwelling unit must have met to be a qualified new energy efficient home, as certified using the method and in the form provided under former § 45L(d). If a credit was allowed under former § 45L in connection with any expenditure for any property, former § 45L(e) provided for certain adjustments to the basis of such property for purposes of subtitle A of the Code. In addition, former § 45L(f) provided that no expenditures taken into account under § 47 or § 48(a) could be taken into account under former § 45L.

(3) As originally enacted, former § 45L(g) provided that the new energy efficient home credit under former § 45L terminated with respect to any qualified new energy efficient home acquired after December 31, 2007. Prior to the IRA, former § 45L(g) was amended 10 times between 2006 and 2020 to extend the termination of the new energy efficient home credit, with the most recent extension terminating for any qualified new energy efficient home acquired after December 31, 2021.

.02 Section 45L as Amended by the IRA

(1) Section 13304 of the IRA amended former § 45L in two ways. First, § 13304(a) and (f) of the IRA retroactively extend the new energy efficient home credit under former § 45L for qualified new energy efficient homes acquired after December 31, 2021, and on or before December 31, 2022.

(2) Second, for qualified new energy efficient homes acquired after December 31, 2022, § 13304 of the IRA amends former § 45L in various respects. Specifically, § 13304 of the IRA:

(a) Changes the applicable amount of the § 45L credit determined under § 45L(a)(2),

(b) Sets new energy saving requirements under § 45L(c),

(c) Adds an exception to the required basis adjustment under § 45L(e),

(d) Redesignates § 45L(g) as § 45L(h) and adds a new § 45L(g) to provide certain prevailing wage requirements, and

(e) Amends newly redesignated § 45L(h) to allow the § 45L credit for qualified new energy efficient homes acquired on or before December 31, 2032.

(3) The IRA did not amend § 45L(a)(1), which continues to provide that, for purposes of § 38, in the case of an eligible contractor, the § 45L credit for the taxable year is the applicable amount for each qualified new energy efficient home that is constructed by an eligible contractor and acquired by a person from such eligible contractor for use as a residence during the taxable year.

(4) Section 45L(a)(2) provides that, for purposes of § 45L(a)(1), the “applicable amount” is:

(a) \$2,500, in the case of a dwelling unit that is eligible to participate in the Energy Star Residential New Construction Program or the Energy Star Manufactured New Homes Program and meets the requirements of § 45L(c)(1)(A) (and does not meet the requirements of § 45L(c)(1)(B)),

(b) \$5,000, in the case of a dwelling unit that is eligible to participate in the Energy Star Residential New Construction Program or the Energy Star Manufactured New Homes Program and meets the requirements of § 45L(c)(1)(B),

(c) \$500, in the case of a dwelling unit that is part of a building eligible to participate in the Energy Star Multifamily New Construction Program and meets the requirements of § 45L(c)(1)(A) (and does not meet the requirements of § 45L(c)(1)(B)), and

(d) \$1,000, in the case of a dwelling unit that is part of a building eligible to participate in the Energy Star Multifamily New Construction Program and meets the requirements of § 45L(c)(1)(B).

(5) Section 45L(b) provides certain definitions for purposes of § 45L. Section 45L(b)(1) defines the term “eligible contractor” as:

(a) The person that constructed the qualified new energy efficient home, or

(b) In the case of a qualified new energy efficient home that is a manufactured home, the manufactured home producer of such home.

(6) Section 45L(b)(2) defines the term “qualified new energy efficient home” (qualified home) as a dwelling unit:

(a) Located in the United States,

(b) The construction of which is substantially completed after August 8, 2005,

and

(c) That meets the energy saving requirements of § 45L(c).

(7) Section 45L(b)(3) provides that the term “construction” includes substantial reconstruction and rehabilitation and § 45L(b)(4) provides that the term “acquire” includes purchase.

(8) Section 45L(c) provides the energy saving requirements that a dwelling unit must meet to be a qualified home. Section 45L(c)(1)(A) generally provides that a dwelling unit meets the requirements of § 45L(c)(1)(A) if such dwelling unit meets the requirements of § 45L(c)(2) or (3) (whichever is applicable). A dwelling unit meets the requirements of § 45L(c)(1)(B) if such dwelling unit is certified as a “zero energy ready home” under the “zero energy ready home program” (ZERH program) of the U.S. Department of Energy (DOE) as in effect on January 1, 2023 (or any successor program determined by the Secretary of the Treasury or her delegate (Secretary)).

(9) A dwelling unit meets the requirements of § 45L(c)(2) if:

(a) In the case of a dwelling unit acquired before January 1, 2025, the dwelling unit meets the Energy Star Single-Family New Homes National Program Requirements 3.1, and the most recent Energy Star Single-Family New Homes Program Requirements applicable to the location of such dwelling unit (as in effect on the later of January 1, 2023, or January 1 of two calendar years prior to the date such dwelling unit was acquired),

(b) In the case of a dwelling unit acquired after December 31, 2024, the dwelling unit meets the Energy Star Single-Family New Homes National Program Requirements 3.2, and the most recent Energy Star Single-Family New Homes Program

Requirements applicable to the location of such dwelling unit (as in effect on the later of January 1, 2023, or January 1 of two calendar years prior to the date such dwelling unit was acquired), or

(c) The dwelling unit meets the most recent Energy Star Manufactured Home National Program Requirements as in effect on the later of January 1, 2023, or January 1 of two calendar years prior to the date such dwelling unit is acquired.

(10) A dwelling unit meets the requirements of § 45L(c)(3) if:

(a) The dwelling unit meets the most recent Energy Star Multifamily New Construction National Program Requirements (as in effect on either January 1, 2023, or January 1 of three calendar years prior to the date the dwelling unit was acquired, whichever is later), and

(b) The dwelling unit meets the most recent Energy Star Multifamily New Construction Regional Program Requirements applicable to the location of such dwelling unit (as in effect on either January 1, 2023, or January 1 of three calendar years prior to the date the dwelling unit was acquired, whichever is later).

(11) Section 45L(d)(1) provides that the certification described in § 45L(c) must be made in accordance with guidance prescribed by the Secretary, after consultation with the Secretary of Energy, and that such guidance is to specify procedures and methods for calculating energy and cost savings. Section 45L(d)(2) provides that any certification described in § 45L(c) must be made in writing in a manner that specifies in readily verifiable fashion the energy efficient building envelope components and energy efficient heating or cooling equipment installed and their respective rated energy efficiency performance.

(12) Section 45L(e) provides that for purposes of subtitle A of the Code (except for purposes of determining the adjusted basis of any building under § 42, relating to the low-income housing credit), if a § 45L credit is allowed in connection with any expenditure for any property, the increase in the basis of such property that would (but for § 45L(e)) result from such expenditure must be reduced by the amount of the § 45L credit so determined. In addition, § 45L(f) provides that for purposes of § 45L, no expenditures taken into account under § 47 or § 48(a) can be taken into account under § 45L.

(13) Section 45L(g) adds a prevailing wage requirement that increases the amount of the § 45L credit allowed. Section 45L(g)(1) provides that in the case of a “qualifying residence” described in § 45L(a)(2)(B) meeting the prevailing wage requirements in § 45L(g)(2)(A), the § 45L credit amount allowed with respect to such residence is:

(a) \$2,500, in the case of a residence that meets the requirements of § 45L(c)(1)(A) (and does not meet the requirements of § 45L(c)(1)(B)), and

(b) \$5,000, in the case of a residence that meets the requirements of § 45L(c)(1)(B).

(14) The requirements set forth in § 45L(g)(2)(A) are that the taxpayer must ensure that any laborers and mechanics employed by the taxpayer, any contractor, or subcontractor in the construction of any qualified residence are paid wages at rates not less than the prevailing rates for construction, alteration, or repair of a similar character in the locality in which the qualified residence is located as most recently determined by the Secretary of Labor, in accordance with subchapter IV of chapter 31 of title 40,

United States Code, commonly known as the Davis-Bacon Act. Section 45L(g)(2)(B) provides that rules similar to the rules of § 45(b)(7)(B), which pertains to the correction and penalty related to the failure to satisfy prevailing wage requirements, apply for purposes of the prevailing wage requirements under § 45L(g). Section 45L(g)(3) authorizes the Secretary to issue such regulations or other guidance as the Secretary determines necessary to carry out the purposes of § 45L(g), including regulations or other guidance that provides for requirements for recordkeeping or information reporting for purposes of administering the requirements of § 45L(g).

(15) As amended and redesignated by § 13304 of the IRA, § 45L(h) provides that § 45L is not applicable to any qualified home acquired after December 31, 2032.

.03 Guidance under Former § 45L

(1) On March 13, 2006, the Department of the Treasury (Treasury Department) and the Internal Revenue Service (IRS) published Notice 2006-27, 2006-1 C.B. 626, and Notice 2006-28, 2006-1 C.B. 628. Notice 2006-27 and Notice 2006-28 were updated by Announcement 2006-88, 2006-2 C.B. 910, published on November 13, 2006. Notice 2006-27 and Notice 2006-28, as updated, provided guidance on the calculation of a dwelling unit's heating and cooling energy consumption, and on the public list of software programs used to calculate energy consumption. Notice 2006-28 is specific to manufactured homes.

(2) On March 24, 2008, the Treasury Department and the IRS published Notice 2008-35, 2008-1 C.B. 647, and Notice 2008-36, 2008-1 C.B. 650. Notice 2008-35 and Notice 2008-36 superseded Notice 2006-27 and Notice 2006-28, respectively, by substantially republishing the guidance contained in those publications while clarifying

the meaning of certain terms used in Notice 2006-27 and Notice 2006-28 and the process for removing software from the list of approved software. Notice 2008-36 is specific to manufactured homes. Because Notice 2008-35 and Notice 2008-36 provide guidance relating to former § 45L, this notice obsoletes Notice 2008-35 and Notice 2008-36 for qualified homes acquired after December 31, 2022. Notice 2008-35 and Notice 2008-36 remain applicable for qualified homes acquired on or before December 31, 2022.

.04 Post-IRA § 45L Guidance

(1) On October 24, 2022, the Treasury Department and the IRS published Notice 2022-48, 2022-43 I.R.B. 316, which included a request for comments on the amendments to § 45L by § 13304 of the IRA. Comments received in response to Notice 2022-48 were considered in the drafting of this notice.

(2) On November 30, 2022, the Treasury Department and the IRS published Notice 2022-61 in the *Federal Register* (87 F.R. 73580, corrected in 87 F.R. 75141 (Dec. 7, 2022); 2022-52 I.R.B. 560), which contains initial guidance with respect to the prevailing wage requirements under § 45L(g). On August 30, 2023, the Treasury Department and the IRS published a notice of proposed rulemaking (REG-100908-23) in the *Federal Register* (88 F.R. 60018) providing proposed regulations that would add proposed rules to the Income Tax Regulations in 26 CFR part 1 related to the prevailing wage requirements, including under § 45L(g) as provided in proposed § 1.45L-3.

SECTION 3. DETERMINING THE APPLICABLE AMOUNT OF THE § 45L CREDIT

.01 In General. The § 45L credit for the taxable year is the applicable amount for each qualified home that is constructed by an eligible contractor and acquired by a

person from such eligible contractor after December 31, 2022, and before January 1, 2033, for use as a residence during the taxable year for which the taxpayer is claiming the credit under § 45L. The eligible contractor is the taxpayer for purposes of the § 45L credit. See section 5.02 of this notice for the definition of an eligible contractor.

.02 Applicable Amount for a Dwelling Unit Meeting the Single-Family Home Requirements under § 45L(c)(2)

(1) In General. The applicable amount for a dwelling unit that is eligible to participate in the Energy Star Residential New Construction Program or the Energy Star Manufactured New Homes Program is:

(a) \$2,500, for a dwelling unit that meets the requirements of § 45L(c)(2) and does not meet the requirements of § 45L(c)(1)(B), or

(b) \$5,000, for a dwelling unit that meets the requirements of § 45L(c)(1)(B).

(2) Eligible to Participate

(a) A dwelling unit is eligible to participate in the Energy Star Residential New Construction Program if it meets the eligibility requirements provided for this program on the “About ENERGY STAR – Tax Credits for Home Builders” webpage (Energy Star Webpage)³ of the Environmental Protection Agency (EPA).

(b) A dwelling unit is eligible to participate in the Energy Star Manufactured New Homes Program if it meets the eligibility requirements provided for this program on the Energy Star Webpage.

.03 Applicable Amount for a Dwelling Unit Meeting the Multifamily Home

³ Available at https://www.energystar.gov/about/federal_tax_credits/federal_tax_credit_archives/tax_credits_home_builders. Should this link become inactive, visit the current <https://www.energystar.gov> webpage for the requirements at issue.

Requirements under § 45L(c)(3)

(1) In General. Except as described in section 3.04 of this notice, the applicable amount for a dwelling unit that is part of a building eligible to participate in the Energy Star Multifamily New Construction Program is:

(a) \$500, for a dwelling unit that meets the requirements of § 45L(c)(3) and does not meet the requirements of § 45L(c)(1)(B), or

(b) \$1,000, for a dwelling unit that meets the requirements of § 45L(c)(1)(B).

(2) Eligible to Participate. A dwelling unit is part of a building eligible to participate in the Energy Star Multifamily New Construction Program if the building meets the eligibility requirements provided for this program on the Energy Star Webpage.

.04 Increase in Applicable Amount for Multifamily Homes Meeting Prevailing Wage Requirements. In the case of a dwelling unit that is part of a building eligible to participate in the Energy Star Multifamily New Construction Program and that meets the requirements of § 45L(c)(3) (and does not meet the requirements of § 45L(c)(1)(B)) and the prevailing wage requirements of § 45L(g)(2)(A) (Prevailing Wage Requirements), the applicable amount is \$2,500. In the case of a dwelling unit that is part of a building eligible to participate in the Energy Star Multifamily New Construction Program and that meets the requirements of § 45L(c)(1)(B) and the Prevailing Wage Requirements, the applicable amount is \$5,000. Guidance on the Prevailing Wage Requirements is provided in Notice 2022-61 and in the notice of proposed rulemaking (REG-100908-23) published in the *Federal Register* on August 30, 2023.

SECTION 4. ENERGY SAVING REQUIREMENTS

.01 In General. To meet the energy saving requirements of § 45L(c), a dwelling unit must meet the single-family home requirements of § 45L(c)(2) or the multifamily home requirements of § 45L(c)(3) (whichever is applicable), or meet the zero energy ready home requirements of § 45L(c)(1)(B).

.02 Single-Family Home Requirements under § 45L(c)(2)

(1) In General. A dwelling unit meets the energy saving requirements of § 45L(c)(2) if:

(a) In the case of a dwelling unit acquired before January 1, 2025, the dwelling unit meets the Energy Star Single-Family New Homes National Program Requirements 3.1, and the most recent Energy Star Single-Family New Homes Program Requirements applicable to the location of such dwelling unit (as in effect on the later of January 1, 2023, or January 1 of two calendar years prior to the date the dwelling unit was acquired),

(b) In the case of a dwelling unit acquired after December 31, 2024, the dwelling unit meets the Energy Star Single-Family New Homes National Program Requirements 3.2, and the most recent Energy Star Single-Family New Homes Program Requirements applicable to the location of such dwelling unit (as in effect on the later of January 1, 2023, or January 1 of two calendar years prior to the date the dwelling unit was acquired), or

(c) The dwelling unit meets the most recent Energy Star Manufactured Home National Program Requirements as in effect on the later of January 1, 2023, or January 1 of two calendar years prior to the date such dwelling unit is acquired.

(2) Certification

(a) In General. As provided on the Energy Star Webpage, the Energy Star Single-Family New Homes National Program Requirements 3.1 and 3.2, the Energy Star Single-Family New Homes Program Requirements applicable to the location of such dwelling unit, and the Energy Star Manufactured Home National Program Requirements (together, the Energy Star Single-Family Home Program Requirements) each require a dwelling unit to be certified as part of meeting such requirements. A dwelling unit will be considered to meet these respective program requirements for purposes of § 45L(c)(2) if it is certified under the rules of such respective program requirements. See section 6 of this notice for more information on certification requirements.

(b) Certification of Prior Versions through Later Versions. As provided on the Energy Star Webpage, a dwelling unit certified under a currently effective version of one of the Energy Star Single-Family Home Program Requirements by definition also is certified under any prior version of the same program requirements. For example, a dwelling unit certified under the Energy Star Single-Family New Homes National Program Requirements 3.2 also is considered certified under the Energy Star Single-Family New Homes National Program Requirements 3.1. All effective versions of Energy Star Single-Family Home Program Requirements are provided on the Energy Star Webpage.

(c) Deemed Certification of National and Regional Program Requirements. As provided on the Energy Star Webpage, the EPA will deem a dwelling unit certified under certain Energy Star Single-Family New Homes National Program Requirements also to be certified under certain Energy Star Single-Family New Homes Regional Program

Requirements, and vice versa. To determine which deemed certifications correspond to which Energy Star Program Requirements, see the Energy Star Webpage.

(3) Energy Star Single-Family New Homes National Program Requirements.

Energy Star Single-Family New Homes National Program Requirements are provided on the Energy Star Webpage. As provided on the Energy Star Webpage, for purposes of § 45L(c)(2)(A)(ii), if a dwelling unit is not located in one of the States specified by the effective Energy Star Single-Family New Homes Regional Program Requirements, then the most recent Energy Star Single-Family New Homes Program Requirements applicable to the location of the dwelling unit will be the effective Energy Star Single-Family New Homes National Program Requirements.

(4) Energy Star Single-Family New Homes Regional Program Requirements.

Energy Star Single-Family New Homes Regional Program Requirements are provided on the Energy Star Webpage. As provided on the Energy Star Webpage, for purposes of § 45L(c)(2)(A)(ii), if a dwelling unit is located in one of the States specified by the effective Energy Star Single-Family New Homes Regional Program Requirements, then the most recent Energy Star Single-Family New Homes Program Requirements applicable to the location of a dwelling unit will be the Energy Star Single-Family New Homes Regional Program Requirements that apply to the dwelling unit. To determine which Energy Star Single-Family New Homes Regional Program Requirements are in effect on the later of January 1, 2023, or January 1 of two calendar years prior to the date the dwelling unit was acquired, see the Energy Star Webpage.

(5) Energy Star Manufactured Home National Program Requirements. Energy Star Manufactured Home National Program Requirements are provided on the Energy

Star Webpage. To determine which Energy Star Manufactured Home National Program Requirements are in effect on the later of January 1, 2023, or January 1 of two calendar years prior to the date the dwelling unit is acquired, see the Energy Star Webpage.

(6) Examples

(a) Example 1. A dwelling unit meets the eligibility requirements provided for the Energy Star Residential New Construction Program on the Energy Star Webpage. The dwelling unit is not located in one of the States specified by the effective Energy Star Single-Family New Homes Regional Program Requirements, as provided on the Energy Star Webpage. The dwelling unit is certified in accordance with section 6 of this notice under the Energy Star Single-Family New Homes National Program Requirements 3.1. The eligible contractor sells the dwelling unit to a person for use as a residence on January 1, 2024. Under these facts, the dwelling unit meets the energy saving requirements of § 45L(c)(2).

(b) Example 2. The facts are the same as in Example 1, except that the dwelling unit is certified in accordance with section 6 of this notice under the Energy Star Single-Family New Homes National Program Requirements 3.2. Under these facts, the dwelling unit meets the energy saving requirements of § 45L(c)(2).

(c) Example 3. The facts are the same as in Example 1, except that: (i) the dwelling unit is located in one of the States specified by the effective Energy Star Single-Family New Homes Regional Program Requirements, and is certified in accordance with section 6 of this notice under the most recent of such program requirements (as in effect on January 1, 2023), as provided on the Energy Star Webpage, and (ii) the dwelling unit is deemed also to be certified under the Energy Star

Single-Family New Homes National Program Requirements 3.1, as provided on the Energy Star Webpage. Under these facts, the dwelling unit meets the energy saving requirements of § 45L(c)(2).

.03 Multifamily Home Requirements under § 45L(c)(3)

(1) In General. A dwelling unit meets the energy saving requirements of § 45L(c)(3) if such dwelling unit meets:

(a) The most recent Energy Star Multifamily New Construction National Program Requirements (as in effect on either January 1, 2023, or January 1 of three calendar years prior to the date the dwelling unit was acquired, whichever is later), and

(b) The most recent Energy Star Multifamily New Construction Regional Program Requirements applicable to the location of such dwelling unit (as in effect on either January 1, 2023, or January 1 of three calendar years prior to the date the dwelling unit was acquired, whichever is later).

(2) Certification

(a) In General. As provided on the Energy Star Webpage, the Energy Star Multifamily New Construction National Program Requirements and the Energy Star Multifamily New Construction Regional Program Requirements applicable to the location of such dwelling unit (together, the Energy Star Multifamily Home Program Requirements) each require a dwelling unit to be certified as part of meeting such requirements. A dwelling unit will be considered to meet these respective program requirements for purposes of § 45L(c)(3) if it is certified under the rules of such respective program requirements. See section 6 of this notice for more information on certification requirements.

(b) Certification of Prior Versions through Later Versions. As provided on the Energy Star Webpage, a dwelling unit certified under a currently effective version of one of the Energy Star Multifamily Home Program Requirements by definition also is certified under any prior version of the same program requirements. For example, a dwelling unit certified under the Energy Star Multifamily New Construction National Program Requirements Version 1.2 also is considered certified under the Energy Star Multifamily New Construction National Program Requirements Version 1.1.

(c) Deemed Certification of National and Regional Program Requirements. As provided on the Energy Star Webpage, the EPA will deem a dwelling unit certified under certain Energy Star Multifamily New Construction National Program Requirements also to be certified under certain Energy Star Multifamily New Construction Regional Program Requirements, and vice versa. To determine which deemed certifications correspond to which Energy Star Program Requirements, see the Energy Star Webpage.

(3) Energy Star Multifamily New Construction National Program Requirements. Energy Star Multifamily New Construction National Program Requirements are provided on the Energy Star Webpage. To determine which Energy Star Multifamily New Construction National Program Requirements are in effect on either January 1, 2023, or January 1 of three calendar years prior to the date the dwelling unit was acquired, whichever is later, see the Energy Star Webpage.

(4) Energy Star Multifamily New Construction Regional Program Requirements. Effective Energy Star Multifamily New Construction Regional Program Requirements are provided on the Energy Star Webpage. As provided on the Energy Star Webpage,

for purposes of § 45L(c)(3)(B), the Energy Star Multifamily New Construction Regional Program Requirements apply to a dwelling unit located in one of the States specified by the effective Energy Star Multifamily New Construction Regional Program Requirements. If a dwelling unit is not located in one of the States specified by the effective Energy Star Multifamily New Construction Regional Program Requirements, § 45L(c)(3)(B) does not apply. To determine which Energy Star Multifamily New Construction Regional Program Requirements are in effect on either January 1, 2023, or January 1 of three calendar years prior to the date the dwelling unit was acquired, whichever is later, see the Energy Star Webpage.

(5) Examples

(a) Example 1. A dwelling unit is part of a building that meets the eligibility requirements provided for the Energy Star Multifamily New Construction Program on the Energy Star Webpage. The dwelling unit is not located in one of the States specified by the effective Energy Star Multifamily New Construction Regional Program Requirements, as provided on the Energy Star Webpage. The dwelling unit is certified in accordance with section 6 of this notice under the most recent Energy Star Multifamily New Construction National Program Requirements (as in effect on January 1, 2023). The eligible contractor sells the dwelling unit to a person for use as a residence on January 1, 2024. Under these facts, the dwelling unit meets the energy saving requirements of § 45L(c)(3).

(b) Example 2. The facts are the same as in Example 1, except that: (i) the dwelling unit is located in one of the States specified by the effective Energy Star Multifamily New Construction Regional Program Requirements, and is certified in

accordance with section 6 of this notice under the most recent of such program requirements (as in effect on January 1, 2023), as provided on the Energy Star Webpage, and (ii) the dwelling unit is deemed also to be certified under the most recent Energy Star Multifamily New Construction National Program Requirements (as in effect on January 1, 2023), as provided on the Energy Star Webpage. Under these facts, the dwelling unit meets the energy saving requirements of § 45L(c)(3).

.04 Zero Energy Ready Home Program Requirements under § 45L(c)(1)(B)

(1) In General. A dwelling unit meets the energy saving requirements under § 45L(c)(1)(B) if such dwelling unit is certified as a zero energy ready home under the ZERH program established by the DOE as in effect on January 1, 2023 (or any successor program determined by the Secretary). ZERH program requirements, including effective dates and certification requirements by building type, are provided on the DOE webpage, “DOE Zero Energy Ready Home (ZERH) Program Requirements” (ZERH Webpage).⁴ See section 6 of this notice for more information on certification requirements.

(2) ZERH Program in Effect; Determination of Successor Program. For purposes of establishing the ZERH program in effect under § 45L(c)(1)(B), the Secretary has determined:

(a) That the program identified on the ZERH Webpage (or any successor DOE webpage) is in effect and that successor ZERH programs will be in effect as of the date indicated on the ZERH Webpage (or any successor DOE webpage), and

⁴ Available at <https://www.energy.gov/eere/buildings/doe-zero-energy-ready-home-zerh-program-requirements>. Should this link become inactive, visit the current <https://www.energy.gov> webpage provided for the requirements at issue.

(b) That should the DOE cease identifying ZERH programs on the DOE webpage and instead provide successor ZERH programs in an alternative, publicly available DOE source, that successor ZERH programs will be in effect as of the date indicated in the alternative, publicly available DOE source.

(3) Example. A dwelling unit is certified on December 23, 2023, in accordance with section 6 of this notice as a zero energy ready home under the ZERH program in effect on January 1, 2023 (as provided on the ZERH Webpage, and as determined by the effective dates provided under section 4.04 of this notice). The eligible contractor sells the dwelling unit to a person for use as a residence on July 30, 2024. Under these facts, the dwelling unit meets the energy saving requirements of § 45L(c)(1)(B).

SECTION 5. DEFINITIONS

.01 Acquired. The term “acquired” includes purchased. The IRS also will consider a qualified home that is leased by a person from an eligible contractor for use as a residence during the taxable year as “acquired” for purposes of § 45L(a)(1)(B). A qualified home is not acquired by a person from an eligible contractor if the eligible contractor retains the home for use as a residence. A qualified home that is a manufactured home may be acquired directly or indirectly from an eligible contractor. A qualified home that is a manufactured home is acquired indirectly from an eligible contractor for use as a residence if the person that produced the manufactured home sells it to an intermediary (for example, a dealer of manufactured homes) and the intermediary (or the last of multiple intermediaries) sells or leases the manufactured home to another person for use as a residence. See section 7.03 of this notice for a safe harbor permitting an eligible contractor to rely on a dealer’s statement concerning a

sale by the dealer of manufactured homes.

.02 Eligible Contractor. An eligible contractor is the person that constructed the qualified home and owned and had a basis in the qualified home during its construction, or, in the case of a qualified home that is a manufactured home, the person that produced such home and owned and had a basis in such home during its production. For example, if a person that owns and has a basis in a qualified home during its construction hires a third-party contractor to construct the home, the person that hires the third-party contractor is the eligible contractor and the third-party contractor is not an eligible contractor.

.03 Qualified New Energy Efficient Home; Qualified Home. The terms “qualified new energy efficient home” and “qualified home” mean a dwelling unit located in the United States, the construction of which is substantially completed after August 8, 2005, that meets the energy saving requirements of § 45L(c) (see section 4 of this notice).

.04 Qualifying Residence; Qualified Residence. The terms “qualifying residence” and “qualified residence” used in § 45L(g)(1) and § 45L(g)(2)(A), respectively, each refer to a dwelling unit described in § 45L(a)(2)(B).

.05 United States. The term “United States” used in § 45L(b)(2)(A) means United States as defined in § 7701(a)(9), which includes only the States and the District of Columbia.

SECTION 6. CERTIFICATION

.01 In General. An eligible contractor must obtain any certification described in § 45L(c)(1) and sections 4.02(2), 4.03(2), and 4.04(1) of this notice with respect to a dwelling unit before claiming the § 45L credit. An eligible contractor is not required to

file the certification with the return on which the credit is claimed, but should keep the certification as required under § 6001 (see section 7 of this notice for additional information on substantiation requirements). An eligible contractor must follow any procedures outlined in guidance and applicable forms and instructions provided by the IRS Commissioner with respect to § 45L. The guidance pertaining to certification in this notice was prepared after consultation with the Secretary of Energy in accordance with § 45L(d).

.02 Energy Star Certification Requirements. Certification requirements for the effective Energy Star program are provided on the Energy Star Webpage.

.03 ZERH Certification Requirements. Certification requirements for the effective ZERH program are provided on the ZERH Webpage.

.04 Eligible Certifier. For purposes of the credit requirements in place prior to the enactment of the IRA, Notice 2008-35 and Notice 2008-36 provide that a certification must be prepared by an “eligible certifier.” Those notices do not apply for purposes of any qualified homes acquired after December 31, 2022. For purposes of preparing the certification required under Energy Star and ZERH program requirements for qualified homes acquired after December 31, 2022, rules for the person eligible to issue a certification are under the respective Energy Star and ZERH program requirements.

.05 Software Programs. For purposes of the credit requirements in place prior to the enactment of the IRA, Notice 2008-35 and Notice 2008-36 include rules for approved software that may be used to calculate energy consumption for purposes of providing a certification. Those notices do not apply for purposes of any qualified homes acquired after December 31, 2022. For purposes of preparing the certification

required under Energy Star and ZERH program requirements for qualified homes acquired after December 31, 2022, rules for the software to be used for purposes of providing a certification are under the respective Energy Star and ZERH program requirements.

.06 Safe Harbor for Certification of Energy Star and ZERH under § 45L(d). The IRS will deem a dwelling unit to meet any certification requirements under § 45L(d) if:

(1) In the case of a dwelling unit that meets the requirements of § 45L(c)(1)(A), it is certified under the rules of the Energy Star program requirements as provided in section 6.02 of this notice, or

(2) In the case of a dwelling unit that meets the requirements of § 45L(c)(1)(B), it is certified as a zero energy ready home under the ZERH program as provided in section 6.03 of this notice.

SECTION 7. SUBSTANTIATION

.01 In General. An eligible contractor claiming a credit under § 45L must meet the general recordkeeping requirements under § 6001 to substantiate that the requirements of § 45L have been met. Section 6001 provides that every person liable for any tax imposed by the Code, or for the collection thereof, must keep such records as the Secretary may from time to time prescribe. Section 1.6001-1(a) provides that any person subject to income tax under the Code, or any person required to file a return of information with respect to income, must keep such permanent books of account or records as are sufficient to establish the amount of gross income, deductions, credits, or other matters required to be shown by such person in any return of such tax or information. Section 1.6001-1(e) provides that the books and records required by

§ 1.6001-1 must be retained so long as the contents thereof may become material in the administration of any internal revenue law.

.02 Minimum Requirements. To meet the substantiation requirements described in section 7.01 of this notice, an eligible contractor must retain, at a minimum:

(1) Any Energy Star or ZERH certification described in § 45L(c)(1) and section 6 of this notice including the date of such certification,

(2) If applicable, a dealer's statement described in section 7.03 of this notice, and

(3) Books or records sufficient to establish the following:

(a) The address of the qualified home, and that such home is located in the United States (see definition in section 5.05 of this notice),

(b) That the taxpayer is an eligible contractor as defined in section 5.02 of this notice,

(c) That the qualified home was acquired by a person from the eligible contractor for use as a residence during the taxable year for which the taxpayer is claiming the § 45L credit, and the name of the person that acquired it (except with respect to a manufactured home for which the eligible contractor retains a dealer's statement described in section 7.03 of this notice), and

(d) If applicable, that the prevailing wage requirements as described in section 3.04 of this notice with respect to a qualified home are met.

.03 Safe Harbor for Sales to Dealers

(1) In General. In the case of a manufactured home sold by an eligible contractor to a dealer of manufactured homes, the eligible contractor may rely on a statement by the dealer to establish the date on which a manufactured home was acquired, that it is

located in the United States, and that it was acquired for use as a residence, if the eligible contractor retains the statement in accordance with the recordkeeping requirements of § 6001 and section 7.01 of this notice.

(2) Content of Statement. The eligible contractor may not rely on the statement by the dealer unless the statement specifies the date of the retail sale of the manufactured home, that the dealer delivered the manufactured home to the purchaser at an address in the United States, and that the dealer has no knowledge of any information suggesting that the purchaser will use the manufactured home other than as a residence. The statement also must contain the following information:

(a) The name, address, and telephone number of the dealer.

(b) If the manufactured home was passed through any intermediaries between the initial purchase from the eligible contractor to the ultimate acquisition by the person that acquired the home for use as a residence, the name, address, and telephone number of each such intermediary.

(c) A declaration, applicable to the statement made by the dealer and any accompanying documents, signed by a person currently authorized to bind the dealer in such matters, in the following form:

“Under penalties of perjury, I declare that, to the best of my knowledge and belief, the facts presented with respect to this sale transaction are true, correct, and complete.”

SECTION 8. PAPERWORK REDUCTION ACT

The Paperwork Reduction Act of 1995 (44 U.S.C. §§ 3501-3520) (PRA) requires a Federal Agency to obtain the approval of the Office of Management and Budget

(OMB) before collecting information from the public, whether such collection of information is mandatory, voluntary, or required to obtain or retain a benefit.

This notice contains recordkeeping requirements and third-party disclosures that are required to claim the § 45L credit. These collections of information generally would be used by the IRS for tax compliance purposes and by taxpayers to facilitate proper reporting and compliance. A Federal agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

The recordkeeping requirements provided in sections 6 and 7 of this notice are considered general tax records under § 1.6001-1. These records are required for the IRS to validate that eligible contractors have met the requirements of § 45L, including that a qualified home meets the energy saving requirements of § 45L(c). For PRA purposes, general tax records are already approved by OMB under control number 1545-0123 for business filers, control number 1545-0074 for individual filers, and control number 1545-1994 for trust/estate filers.

Sections 6 and 7 of this notice contain third-party disclosures to dealers of manufactured homes, and to the DOE and EPA for purposes of obtaining the certifications required to demonstrate that a dwelling unit meets the applicable Energy Star or ZERH program requirements. These certifications are included within the instructions for Form 8908, Energy Efficient Home Credit, which is approved by the OMB under control number 1545-1979.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law.

Generally, tax returns and tax return information are confidential, as required by § 6103.

SECTION 9. EFFECT ON OTHER DOCUMENTS

Notice 2008-35 and Notice 2008-36 are obsoleted for any qualified home acquired after December 31, 2022.

SECTION 10. EFFECTIVE DATE

This notice applies to any qualified home acquired after December 31, 2022 and before January 1, 2033.

SECTION 11. DRAFTING INFORMATION

The principal author of this notice is the Office of Associate Chief Counsel (Passthroughs & Special Industries). For further information regarding this notice, contact the Office of Associate Chief Counsel (Passthroughs & Special Industries) at (202) 317-6853 (not a toll-free call).