Guarini Center on Environmental, Energy & Land Use Law
NEW YORK UNIVERSITY SCHOOL OF LAW

October 30, 2024

Comments re: Draft Investment Framework for NYCI Climate Investment Account

The Guarini Center on Environmental, Energy and Land Use Law (Guarini Center) is a university-based research center housed at New York University School of Law that is devoted to advancing innovative energy and environmental policies for a sustainable and equitable economy.[1] Studying how to design effective and equitable greenhouse gas (GHG) emissions abatement policies has been one of the Guarini Center's long-time areas of focus. In 2020–2021, the Guarini Center led a study analyzing whether, in the context of New York City's Local Law 97, it would be feasible to design a trading program for buildings' GHG emissions that would promote environmental justice.

In March 2024, the Guarini Center and the Institute for Policy Integrity (Policy Integrity) filed joint comments on the Department of Environmental Conservation and the New York State Energy Research and Development Authority's pre-proposal outline for New York Cap-and-Invest (NYCI).[2] In these joint comments, the Guarini Center and Policy Integrity expressed their serious concerns with the NYCI program as presented by DEC and NYSERDA in the pre-proposal outline, because DEC and NYSERDA's modeling showed that—under all three auction price ceiling scenarios studied—NYCI appeared unlikely to induce sufficient GHG reductions from covered sectors for New York to comply with the Climate Leadership and Community Protection Act's (CLCPA) 2030 GHG emissions limit.[3] The Guarini Center and Policy Integrity furthermore urged DEC and NYSERDA (the Agencies), *inter alia*, to "provide more detailed information about their assumptions, modeling, and analysis," "provide more granular analysis of building decarbonization dynamics," and "implement measures that target the harm caused by co-pollutants" so as "to protect disadvantaged communities (DACs) against disproportionate impacts."[4]

The Guarini Center appreciates that the Agencies continue to seek public input on the development of NYCI, beyond the requirements of the State Administrative Procedure Act. Early, broad, and sustained engagement will help DEC and NYSERDA to craft a NYCI program that has the potential to transform the state's emissions profile and economy in a cost-effective and equitable way, through auction price signals and properly targeted investments (such as investments that increase uptake of key technologies like heat pumps).[5] With this background in mind, the Guarini Center respectfully offers the following comments to the Agencies regarding their draft investment framework for the

[1] This submission does not purport to represent the views, if any, of New York University or New York University School of Law.

[2] *See generally* Guarini Center & Institute for Policy Integrity, Comments to DEC and NYSERDA re: New York Cap-and-Invest Program (Mar. 15, 2024) [hereinafter Joint Comments], https://guarinicenter.org/document/joint-comments-nyci-pre-proposal-outline/.

[3] *See id.* at 2–3.

[4] *Id.* at 1–2; *see also id.* at 3–8, 15–20.

[5] *See, e.g.*, DEC & NYSERDA, New York Cap-and-Invest Pre-Proposal Stakeholder Outreach: Preliminary Scenario Analyses, slides 29–30 (Jan. 26, 2024) [hereinafter January 26 Presentation], *available at* https://capandinvest.ny.gov/Meetings-and-Events.

NYCI Climate Investment Account, which was described by the Agencies during a webinar that took place on August 15, 2024.[6]

1. **The Scoping Plan contemplates a comprehensive and coherent state strategy to drive down New York's GHG emissions at speed and scale, utilizing a combination of complementary regulatory, market-based, and financial investment policy levers. We strongly urge the Agencies to align their recommendations for spending the Climate Investment Account's funds with the overall framework of the Scoping Plan, to ensure that the CLCPA's emissions limits are met and that state funds are used optimally and equitably in accordance with state law.**

A. The CLCPA Statutory Framework and the Scoping Plan

The CLCPA amended the Environmental Conservation Law by adding a new Article 75, concerning climate change. Under section 75-0109(1), by January 2024, DEC was to "promulgate rules and regulations to ensure compliance with" the CLCPA's 2030 and 2050 "statewide emissions reduction limits."[7] The CLCPA also established the Climate Action Council and directed the Council to prepare a Scoping Plan that would detail a comprehensive strategy for "attaining the statewide greenhouse gas emissions limits" in accordance with the CLCPA's mandated timeline.[8]

In 2022, after a robust process of convening experts and soliciting public input, the Climate Action Council released the Final Scoping Plan (Scoping Plan), which laid out a pathway for meeting the CLCPA's emissions reductions requirements.[9] Specifically, the Scoping Plan analyzed the state's GHG emissions profile by sector and offered sector-specific actions needed to meet the overall economy-wide targets.

Among the key findings, the Scoping Plan found that dramatic steps were needed in the two largest sectors of emissions—transportation and buildings. Specifically, the Scoping Plan found that in addition to an aggressive shift toward zero-emission vehicles (ZEVs), "New York will need to substantially reduce VMT [vehicle miles traveled] while increasing access to public transportation."[10] The Scoping Plan also found that, under all scenarios modeled, "[a]pproximately 1 to 2 million efficient homes will need to be electrified with heat pumps by 2030" in order to meet the CLCPA's emissions reduction mandates.[11] To achieve these and other sector-specific goals, the Scoping Plan offered a combination of policy levers to reduce emissions at speed and scale.

---

[6] *See generally* DEC & NYSERDA, Presentation on Stakeholder Outreach on Use of Proceeds: Climate Investment Account (Aug. 15, 2024) [hereinafter August 15 Presentation], *available at* https://capandinvest.ny.gov/Meetings-and-Events.

[7] N.Y. Env't Conserv. Law § 75-0109(1). Section 75-0107 directed DEC to set the statewide limits based on percentage reductions compared to a 1990 baseline. DEC accordingly has set the 2030 limit at 245.87 million metric tons (MMT) of carbon dioxide equivalent (CO_2e), and for 2050, 61.47 MMT CO_2e. N.Y. Comp. Codes R. & Regs. tit. 6, § 496.4.

[8] N.Y. Env't Conserv. Law § 75-0103.

[9] New York State Climate Action Council, Scoping Plan: Full Report 3 (2022) [hereinafter Scoping Plan] (finding that "[a]chieving deep decarbonization is feasible by 2050," and that failing to act to decarbonize the state's economy would be more costly than undertaking a robust suite of GHG mitigation measures, by more than $115 billion).

[10] Scoping Plan at 123.

[11] *Id.* at 176.

B. Transportation Sector Strategies

In the transportation sector, the Scoping Plan found that "[a]n aggressive and implementable mix of policies will be required to accelerate GHG emission reductions to the level needed by 2030."[12] The Scoping Plan then listed a combination of complementary regulatory, investment, and market-based policies that, if implemented together, would allow New York to reach these goals. On the regulatory side, the Scoping Plan referred to requirements for sales of ZEVs, which the state is on a path toward implementing.[13] Among the market-based policies, the Scoping Plan described the New York City congestion pricing program, which was mandated in 2019 under the Traffic Mobility Act, and other policies such as variable pricing/parking policies, vehicle registration fees, and mileage-based user fees.[14] The Scoping Plan noted the dual benefits that transportation-specific, market-based strategies bring: 1) shifting New Yorkers away from vehicle use; and 2) "providing a source of revenue for other strategies."[15] To date, these market-based tools have been largely unimplemented.[16] On the investments side, the Scoping Plan identified a variety of needs ranging from investments in public transportation and micro-mobility to incentives for switching to low-carbon modes of transportation.[17] In this regard, transportation-specific investments were framed as working in tandem with the other regulatory and market-based policy tools to significantly drive down GHG emissions from the transportation sector.

C. Buildings Sector Strategies

In the buildings sector, the Scoping Plan also presented a range of interlocking policy levers needed to achieve the critical task of converting one to two million energy-efficient homes to heat pumps by 2030, which the Scoping Plan projected would result in rapid market growth and the generation of at least 100,000 new jobs.[18] Specifically, the Scoping Plan found that increasing heat pump deployment and building efficiency would require several regulatory actions, including revising building codes for new construction and setting emission standards for fossil fuel burning equipment, such as boilers and hot water heaters.[19] The Scoping Plan noted that "[t]hese regulations will send a clear policy signal, with compliance dates that allow regulated entities to plan and build capacity while regulators protect households from cost burdens."[20] To date, the state is in the process of implementing building

---

[12] *Id.* at 137.

[13] *Id.* at 123. *See* N.Y. Env't Conserv. Law § 19-0306-B (providing that all sales or leases of new light-duty passenger vehicles in New York must be ZEVs by 2035, all sales or leases of new medium- and heavy-duty vehicles must be ZEVs by 2045, and all new off-road vehicle and equipment purchases must be zero emission by 2035).

[14] Scoping Plan at 170–71.

[15] *Id.* at 170.

[16] *See CLCPA Scoping Plan Tracker*, Sabin Center for Climate Change Law, https://climate.law.columbia.edu/Scoping-Plan-Tracker (last visited October 29, 2024).

[17] Scoping Plan at 137, 170–71.

[18] *Id.* at 179–80.

[19] *Id.* at 180.

[20] *Id.*

code restrictions on fossil fuel infrastructure in new construction,[21] but has yet to propose rules for zero-emission appliances.[22] The Scoping Plan also recommended adopting a range of other market-shifting measures, including energy benchmarking and disclosure policies, expanding access to private capital for building decarbonization, and redesigning electricity rates to promote electrification.[23]

The Scoping Plan then situated financial investments by the state within this overall multi-pronged approach:

> ***A major investment of public funding, at a scale and along a timeframe that aligns with the adoption of zero-emission codes and standards, will be needed to decarbonize and improve the quality of housing for [low- and middle-income] households, affordable and public housing, and in Disadvantaged Communities. . . . Over the longer term, regulatory requirements must be coupled with ongoing public financial support for poor and working-class households.*** Thoughtful policy and programmatic design and coordination of funding sources will be essential to support affordability, safe and healthy housing, consumer protections, and economic opportunities that benefit Disadvantaged Communities.[24]

In this way, the Scoping Plan emphasized that in order to equitably achieve the dramatic emissions reductions needed in the buildings sector, there is a need to pair financial investments with regulations that address the localized burning of fossil fuels in buildings.

These comments do not purport to capture the full extent of the Scoping Plan's recommendations, and important strategies relating to the energy, industry, agricultural and forestry, and waste sectors are not described here. However, the state has delayed implementing a significant number of the sector-specific strategies described in the Scoping Plan, including regulatory and market-based strategies that the Scoping Plan determined would be more likely to achieve reductions of building and transportation sector emissions at speed and scale.[25]

D. Economywide Strategies: NYCI

After describing the pathways for emissions reductions on a sector-specific level, the Scoping Plan then described "economywide strategies" and recommended a cap-and-invest system, noting that equity should be integrated into the design of such a system, prioritizing air quality improvements in

---

[21] N.Y. Exec. Law § 378(19); N.Y. Energy Law § 11-104(6)–(8). *See also* N.Y. Dept. of State, Notice of Rule in Development (Jul. 25, 2024), https://dos.ny.gov/notice-rule-development.

[22] *See CLCPA Scoping Plan Tracker*, Sabin Center for Climate Change Law, https://climate.law.columbia.edu/Scoping-Plan-Tracker (last visited October 29, 2024).

[23] Scoping Plan at 190–91, 200–02, 206.

[24] *Id.* at 193–94.

[25] *See CLCPA Scoping Plan Tracker*, Sabin Center for Climate Change Law, https://climate.law.columbia.edu/Scoping-Plan-Tracker (last visited October 29, 2024). *See also* Michael B. Gerrard, *New York Falling Behind in Implementing Bold Climate Law*, N.Y. Law Journal (Sept. 12, 2024), *available at* https://scholarship.law.columbia.edu/cgi/viewcontent.cgi?article=5542&context=faculty_scholarship.

DACs and for low- and middle-income New Yorkers.[26] The Scoping Plan made clear that ***"an economywide strategy would be implemented as a complement to, not as a replacement for, other strategies in the Scoping Plan."***[27] In addition to describing a cap-and-invest system as additive to the sector-specific strategies described above, the Scoping Plan also described how implementing the sector-specific strategies ***in tandem with*** a cap-and-invest system would minimize costs associated with both:

> Other policy initiatives or regulatory changes by various agencies may complement and facilitate the efficient and effective implementation of an economywide regulatory approach to reducing GHG emissions. In this regard, a cap-and-invest program has the benefit of minimizing the costs associated with ensuring any specific level of GHG emission reductions, including the level of statewide reductions required by the Climate Act. Where a government is implementing standards and other regulations, funding new investments into clean energy solutions to drive emission reductions on a sectoral basis, or making investments to support emission reductions, the declining emissions result in a lower cost to the public for the cap-and-invest program.[28]

In 2023, the Legislature established the New York Climate Action Fund, which will receive proceeds from the NYCI allowance auctions.[29] Section 99-qq(3)(c) of the State Finance Law provides that "[m]oneys of the account shall be made available for the purposes of assisting the state in transitioning to a less carbon intensive economy, including but not limited to: (i) purposes which are consistent with the general findings of the scoping plan . . . ."

E. The State Needs to Align NYCI and its Proceeds with the Scoping Plan

In light of the statutory framework established under the CLCPA and the State Finance Law, the Guarini Center strongly urges the Agencies to develop a plan to administer the Climate Investment Account in accordance with a comprehensive state strategy that aligns with the Scoping Plan and couples investments with sector-specific complementary regulatory and market-based policies.

In order to align the NYCI process with the Scoping Plan, the Agencies must take stock of the state's progress on a sector-specific level and determine which sector-specific strategies will reduce emissions in those sectors most expeditiously and equitably, including an assessment of which of the Scoping Plan's recommendations have not yet been implemented. Only within this context will the state be able to determine how Climate Investment Account funds can best be used to expedite GHG emissions reductions, promote equity, and reduce overall costs for New Yorkers.

This analysis is particularly critical for DACs, which disproportionately bear the health costs of the localized burning of fossil fuels within the state. When considering Climate Investment Account funds allocated to benefit DACs, the state should consider these investments alongside the community benefits that could be achieved through other policy levers, such as direct regulation of fossil fuel use or market-based tools (e.g., congestion pricing). It is critical that investment-

---

[26] Scoping Plan at 339.

[27] *Id.*

[28] *Id.* at 347.

[29] 2023 N.Y. Laws ch. 56, pt. TT, §§ 1–2.

based benefits to DACs be additive and not in lieu of community benefits from emissions reductions that could be more efficiently or expeditiously achieved through other policy means outlined in the Scoping Plan. To maximize benefits and lower overall costs, the state must offer a coherent and rational strategy that combines policy tools in tandem.

It is important to note that the assessments made in the Scoping Plan were published in 2022, with projections of implementation of a comprehensive program to begin by the statutory deadline of January 1, 2024. Given the delay in implementing the majority of recommendations described in the Scoping Plan and the growing costs of inaction, these projections may need to be adjusted. Moreover, as discussed in the Guarini Center and Policy Integrity's joint comments on the Agencies' pre-proposal outline, the Agencies' modeling results show that a NYCI program substantially similar to the pre-proposal outline would not be sufficient to produce GHG reductions required under the CLCPA by 2030.[30]

If the state intends to meaningfully depart from the comprehensive approach set forth in the Scoping Plan in its implementation of NYCI and utilization of the NYCI proceeds, the state should be transparent in communicating this to the public and offer an alternate approach for meeting the CLCPA's requirements regarding emissions reductions and obligations to DACs, consistent with state law.

2. **To ensure that the Climate Investment Account spending framework is maximally aligned with the CLCPA, the Agencies should model and disclose the impacts of different Climate Investment Account allocations, so that stakeholders can better understand how different funding allocations influence GHG and co-pollutant reductions across economic sectors, geographies, and the state economy as a whole**.

In conjunction with their pre-proposal for NYCI, the Agencies modeled a number of auction price ceiling scenarios, but only one basic framework for spending Climate Investment Account funds.[31] ***Stakeholders would benefit from understanding how the Agencies' pre-proposal modeling results for GHG and co-pollutant reductions hold up under different funding framework conditions, and how GHG and co-pollutant reductions might vary due to different funding framework allocations.*** For instance, the Agencies should model the effects of funding buildings-related programs at a higher level than in the pre-proposal modeling, to understand how the sector's emissions respond to varying levels of investment. The Agencies additionally should study and disclose geographic variations in GHG and co-pollutant outcomes associated with varying investments. As noted in the Guarini Center and Policy Integrity's joint comments on the pre-proposal outline, baseline variations between regions in the state with respect to such factors as relative electricity prices may have important effects on NYCI program outcomes.[32]

The Agencies also should study how a higher-value Climate Investment Account, made possible by NYCI allowance auction prices higher than those modeled in conjunction with the pre-proposal outline, would affect both statewide and local GHG and co-pollutant emissions. As discussed in the Guarini Center and Policy Integrity's joint comments, the low auction price ceilings modeled in

[30] Joint Comments at 2–3.

[31] January 26 Presentation, slides 16, 21.

[32] Joint Comments at 4–6.

conjunction with the pre-proposal outline produced a NYCI program paradigm that ultimately seemed not to reduce GHGs in manner sufficient for the state to comply with its 2030 GHG reduction obligations under the CLCPA.[33] DEC and NYSERDA should study how higher price ceilings—which could enable higher levels of funding in the Climate Investment Account, and thus larger and/or broader investment in GHG reductions—might improve on these outcomes. ***Furthermore, the Agencies should explain known uncertainties in their modeling with respect to investments' effects***, so that stakeholders understand the extent to which the impacts of NYCI-backed investments may vary in real life from the Agencies' projections.[34]

To the extent that the Agencies recommend particular opportunities for action in their investment framework, DEC and NYSERDA should provide clear descriptions of how they came to their conclusions, including any trade-offs, so that the public can have confidence that the Agencies have thoroughly evaluated how to use the Climate Investment Account's funds, and that those funds' use is properly aligned with CLCPA requirements. ***Among other factors, the Agencies should discuss reasons why investments only are recommended for certain sectors and not others, and also why they may be made in certain locations and not others,*** so that stakeholders can be sure that allocations both are effective and fairly distributed—especially with respect to the benefits that are supposed to accrue to DACs.[35] Overall, ***the Agencies' framework should prioritize sectors, actors, and geographic locations from which the greatest amount of GHG reductions can be achieved, in view of the CLCPA's 2030 and 2050 deadlines.***

In addition, where the Agencies' framework makes specific funding recommendations, ***DEC and NYSERDA should discuss how Climate Investment Account funds complement or fill gaps where other streams of funding seemingly are available for those same projects and programs***, such as through the state's Clean Air, Clean Water and Green Jobs Environmental Bond Act, or though the federal Bipartisan Infrastructure Law and the Inflation Reduction Act. For example, with respect to investments in the transportation sector, the Agencies' August presentation mentions investments in

---

[33] *Id.* at 2–3.

[34] One potential source of uncertainty is the fact that the Agencies have prioritized development of NYCI ahead of deploying the other policy tools outlined in the Scoping Plan, while the Scoping Plan envisioned a cap-and-invest program as a complement to the rest of the state's policy actions. *See* Scoping Plan at 339 ("[A]n economywide strategy would be implemented as a complement to, not as a replacement for, other strategies in the Scoping Plan."). As noted above, the Scoping Plan described public financing as a tool to amplify the effects of the Scoping Plan's recommended direct regulations, while lowering the overall cost of achieving CLCPA limits. *See id.* ("It would provide an additional source of funding, alongside federal programs and other funding sources, to implement policies identified in this Scoping Plan, particularly policies that require State investment or State funding of incentive programs, including investments to benefit Disadvantaged Communities."); *and see id.* at 347("Where a government is implementing standards and other regulations, funding new investments into clean energy solutions to drive emission reductions on a sectoral basis, or making investments to support emission reductions, the declining emissions result in a lower cost to the public for the cap-and-invest program."). Without the other strategies described in the Scoping Plan to aggressively drive down GHG emissions, the NYCI program may leave gaps that *then* have to be filled by other policies, which may be difficult to implement in time to fulfill the state's CLCPA obligations, and/or may require additional analysis of how NYCI proceeds could be used to offset cost burdens (particularly on low- and middle-income households).

[35] *Cf.* WE ACT for Environmental Justice, Comments to DEC and NYSERDA re: New York Cap-and-Invest Climate Investment Account Use of Proceeds 13 (Sept. 30, 2024) [hereinafter WE ACT Comments] ("[T]he state should ensure geographic equity of funds so that they reach each area of the state in proportion to its share of disadvantaged communities and not replicate the funding allocation practices of the Bond Act.").

electric school buses as a possible use for NYCI proceeds.[36] The Agencies should explain how Climate Investment Account funds would work alongside existing state and federal funding mechanisms for this clean transportation initiative: both the state and the federal government already have made substantial funding available for electric school buses and associated infrastructure.[37]

3. **The Agencies' investment framework should allocate funds in a manner that ensures that the *benefits* of those investments (including but not limited to benefits arising from co-pollutant reductions) accrue to DACs in compliance with the CLCPA. The Agencies should develop a clear rubric for understanding and tracking DAC benefits resulting from Climate Investment Account spending that improves on the benefits accounting framework proposed in the Agencies' Draft Disadvantaged Communities Investment and Benefits Reporting Guidance (Draft DAC Reporting Guidance).**

The CLCPA places a clear emphasis on ensuring that DACs not only are not left behind in the state's climate transition, but indeed are at the forefront of the effort. Specifically, the CLCPA provides that DEC's regulations "*shall* . . . [p]rioritize measures to maximize net reductions of greenhouse gas emissions and co-pollutants in [DACs] . . . and encourage early action to reduce greenhouse gas emissions and co-pollutants" in DACs, as well as "[e]nsure that activities undertaken to comply with [DEC's] regulations do not result in a net increase in co-pollutant emissions or otherwise disproportionately burden [DACs]."[38] Furthermore, the CLCPA directs that DEC and other state entities "shall, to the extent practicable, invest or direct . . . programmatic resources in a manner designed to achieve a goal for [DACs] to receive forty percent of *overall benefits of spending* on clean energy and energy efficiency programs, projects or investments . . . provided however, that [DACs] shall receive no less than thirty-five percent of the *overall benefits of spending* on clean energy and energy efficiency programs, projects or investments . . . ."[39] In establishing the Climate Investment Account, the Legislature incorporated these instructions by reference for future spending of the account's funds.[40]

In their August presentation on the investment framework, however, the Agencies seem to have departed from the Legislature's statutory directions regarding the flow of climate benefits to DACs. Rather than outlining a preliminary framework focused on ensuring DACs receive *benefits* of Climate

---

[36] August 15 Presentation, slide 24.

[37] *Electric School Buses*, NYSERDA, https://www.nyserda.ny.gov/All-Programs/Electric-School-Buses (last visited October 29, 2024) (describing the New York School Bus Incentive Program, which provides $500 million for "both public school districts and contracted fleet operators" for school bus fleet electrification); *Clean School Bus Program*, U.S. Environmental Protection Agency, https://www.epa.gov/cleanschoolbus (last visited October 29, 2024) (describing the federal government's program to "provide[] $5 billion over five years (FY 2022-2026) to replace existing school buses with zero-emission and clean school buses"). New York City has been one of many jurisdictions to benefit from robust federal funding in this space. *See* Press Release, N.Y.C. Office of the Mayor, Mayor Adams Announces $77 Million in Federal Grants to Electrify School Buses, Build First-in-the-Nation Electric Truck Charging Depot (Mar. 18, 2024), https://www.nyc.gov/office-of-the-mayor/news/206-24/mayor-adams-77-million-federal-grants-electrify-school-buses-build. For other examples of existing state and federal funding streams in the transportation space, see Sierra Club & Natural Resources Defense Council, Comments re: New York Cap-and-Invest Program: Climate Investment Account 4 (Sept. 30, 2024).

[38] N.Y. Env't Conserv. Law §§ 75-0109(3)(c)–(d).

[39] N.Y. Env't Conserv. Law § 75-0117 (emphasis added).

[40] N.Y. State Fin. Law § 99-qq(3)(c).

Investment Account spending, the Agencies seem to have focused only on the account's dollars, in and of themselves.[41] DEC and NYSERDA's current approach to DAC benefits appears to repeat the one taken in the Agencies' Draft DAC Reporting Guidance.[42] However, as Policy Integrity explained in its comments on the Draft DAC Reporting Guidance, ***the Agencies' framing of the relationship of investments and DAC benefits is flawed and needs revision***.[43]

The CLCPA, by its plain terms, envisions *investments* as one type of *spending* that can produce *benefits*, and ***it is these benefits that matter for the purposes of the law's benefits of spending provision (not the investments, in and of themselves)***.[44] By conflating investments with benefits, the Agencies miss (among other things) that not all moneys invested "in" a DAC necessarily accrue to that community, potentially overstating the DAC's actual monetary benefits (and thus the state's compliance with the CLCPA's minimum benefits requirement). For example, "if public funds are used to construct a facility in a DAC, any portion of those funds that is used to purchase materials from non-DAC entities cannot be considered part of any benefit to the DAC, even though the placement of those materials in the DAC might yield actual benefits."[45] Furthermore, the Agencies have been unclear as to the status of *non*-monetary benefits to communities, seemingly describing important benefits like health quality improvements as "co-benefits," which may undercut their full accounting.[46]

The Guarini Center agrees with Policy Integrity's critique of the Draft DAC Reporting Guidance and believes many of the same points are applicable to the Agencies' current concept for the Climate Investment Account spending framework. ***The Agencies still have not put forward evidence that supports their apparent notion that there is a one-to-one relationship between dollars "invested in" DACs and benefits accruing <u>to</u> DACs***.[47] Indeed, the Agencies' modeling of their pre-proposal for the NYCI program suggests that DACs may enjoy health benefits from the program overall that are high relative to their population share, and furthermore may exceed 40% of total NYCI-related health benefits,[48] which underlines how benefits accumulation to DACs may be non-linear.

By conflating dollars invested "in" DACs with benefits to DACs, the Agencies incur at least two significant risks. The first is that the ***state may not maximize the flow of benefits to DACs***. One way this could occur is if the state's spending framework directs DEC, NYSERDA, or another agency to spend Climate Investment Account dollars on certain projects because they are "in" DACs, even though those projects may not produce as many cumulative benefits *to* DACs as certain projects

[41] *See* August 15 Presentation, slides 15, 21, 23.

[42] *See generally* NYSERDA & DEC, Draft Climate Act Disadvantaged Communities Investment and Benefits Reporting Guidance (2024), https://climate.ny.gov/Resources/Disadvantaged-Communities-Criteria/Investments-and-Benefits-Reporting-Guidance.

[43] *See generally* Institute for Policy Integrity, Comments re: Draft Climate Act Disadvantaged Communities Investment and Benefits Reporting Guidance 3–7 (Apr. 5, 2024), https://policyintegrity.org/projects/update/comments-to-new-york-dec-and-nyserda-on-draft-climate-act-disadvantaged-communities-investment-and-benefits-reporting-guidance.

[44] *Id.* at 3–4.

[45] *Id.* at 4.

[46] *Id.* at 4–5.

[47] *See* August 15 Presentation, slides 15, 21, 23.

[48] *See* January 26 Presentation, slides 46–47.

located outside of DACs—for example, because of how co-pollutants disperse to downwind locations, affecting DAC health and welfare. The second risk is that the ***state may deny DACs benefits to which they are entitled by law***.[49] In particular: if more than 40% of investment dollars are required to achieve the minimum 35% of overall benefits of spending for DACs, an investment framework that would allocate at most 40% of investment dollars to projects connected to DACs could result in DAC residents receiving less than the benefits they were promised by the CLCPA.

To avoid the foregoing risks, the Agencies should develop a more robust rubric for understanding and tracking DAC benefits as they refine the Climate Investment Account framework. In particular, the Agencies should develop a better understanding both of where the monetary benefits of Climate Investment Account funds will occur, and of how other types of benefits flow from investments. The Agencies also should be clear about what types of benefits they intend to track, how those benefits will be measured, and when (and to what extent) those benefits will "count" toward the CLCPA's benefits of spending requirements. Types of benefits the Agencies might consider include (but are not limited to): health, welfare, and economic benefits from reduced climate change damages in New York State; health, welfare, and economic benefits from increased access to summer cooling due to heat pump deployment; health, economic and educational benefits from reduced exposure to lead and mold due to pre-electrification building upgrades; health, welfare and economic benefits from increased electricity reliability due to transmission and distribution upgrades; health, welfare and economic benefits from increased energy efficiency or increased energy affordability; and health, welfare and economic benefits from reduced traffic congestion due to trip mode-shifting (such as active transit health benefits, avoided road deaths, avoided costs of car ownership, and improved access to better paying job opportunities).[50]

4. **In further developing the Climate Investment Account spending framework, the Agencies should give detailed consideration to how Climate Investment Account funds will be delivered to investment recipients, as well as to how to address structural barriers that may impede private actors' participation in investment programs, so as to ensure that GHG and co-pollutant reductions ultimately are achieved.**

In establishing the New York Climate Action Fund, the Legislature directed DEC and NYSERDA to study how best to deliver NYCI proceeds allocated to the Consumer Climate Action Account.[51] The Agencies duly complied, producing the Affordability Study, which recommended using Consumer Climate Action Account funds primarily to support a refundable tax credit for low- and middle-income households.[52] The Affordability Study included a substantial discussion of program design options and trade-offs to support the recommendation of a tax credit model for fund delivery.[53]

[49] *Cf.* Institute for Policy Integrity, Comments re: Draft Climate Act Disadvantaged Communities Investment and Benefits Reporting Guidance, at 4–5.

[50] For further perspective on the implementation of the CLCPA's benefits of spending requirement within the Climate Investment Account funding framework, we encourage the Agencies to review the comments provided by DACs and organizations representing them. *See, e.g.*, WE ACT Comments, at 8–12.

[51] N.Y. Pub. Auth. Law § 1854(26).

[52] DEC & NYSERDA, New York State Climate Affordability Study 6, 7 (2023), *available at* https://capandinvest.ny.gov/Resources.

[53] *Id.* at 14–40.

By contrast, the Agencies has not yet expressed clear ideas about potential mechanisms for delivering Climate Investment Account funds to recipients. For example, the Agencies' August presentation does not explain whether the Agencies have considered if funds for building electrification and weatherization (one of their illustrative funding priorities)[54] might be delivered through existing programs for those purposes, or through newly established programs, or both.

Even though the Agencies have yet to define their Climate Investment Account funding priorities, ***the Agencies already should be thinking about the potential benefits and pitfalls both of expanding or updating existing programs and of creating new ones.*** Without actively considering these issues upfront, the Agencies risk later spending unexpected time in program development, potentially resulting in delayed distributions of Climate Investment Account funds and concomitant delays in achieving GHG and co-pollutant reductions.

The Agencies should pay particular attention to program implementation with respect to DACs. By law, DEC and NYSERDA are supposed to incorporate community-led decision making and input into their processes for allocating Climate Investment Account funds towards DACs.[55] In 2021, the Agencies (along with the New York Power Authority) produced a detailed report on the various barriers DAC residents face in accessing and utilizing climate-related programs, goods, and services, which was intended to provide the Agencies with "guidelines and strategies for designing and delivering the programs and services" identified in the Scoping Plan "to disadvantaged communities."[56]

Notwithstanding the foregoing, ***the Agencies have not indicated what they think would be an appropriate process for bringing DAC residents and their representatives into conversations about Climate Investment Account spending and benefits on an ongoing basis. The Agencies should rectify this shortcoming as soon as possible***, both so that they have the benefit of community insights in setting up their process for sustained engagement with DACs, as well as later when the Agencies engage in investment planning and deployment for DACs' benefit. Additionally, the Agencies should think critically about the risks to public trust of engaging communities in a process of developing policy recommendations that the state may not ultimately follow through on. The Agencies should develop processes that prioritize transparency and appropriately value the time of community members offering their input.[57]

In considering how to deliver funds to investment recipients, ***the Agencies also should plan for how to address structural barriers to private actors' taking steps to reduce GHG and co-pollutant emissions***, many of which are commonly known. For example, for investments related to building decarbonization, the Agencies should consider how to address issues like split financial incentives

---

[54] See August 15 Presentation, slide 25.

[55] August 15 Presentation, slide 27. *See also* N.Y. State Fin. Law § 99-qq(3)(c) (funds of the Climate Investment Account "shall be made available for . . . measures which prioritize disadvantaged communities . . . *identified through community decision-making and stakeholder input* . . . ." (emphasis added)).

[56] NYSERDA et al., Rep. No. 21-23, New York State Disadvantaged Communities Barriers and Opportunities Report 5 (2021).

[57] For further perspective on how the Agencies could implement procedures to involve DACs in programs and projects that affect them, we encourage the Agencies to review the comments provided by DACs and organizations representing them. *See, e.g.*, WE ACT Comments, at 4.

between landlords and tenants, as well as lenders' restrictions on building owners' use of other sources of financing. These and other matters may hinder building owners' or operators' participation in funding opportunities if not accounted for in funding programs' designs.

Finally, the Agencies should consider how they are going to reach out to and educate potential fund recipients. As discussed in detail with respect to DACs in the Disadvantaged Communities Barriers and Opportunities Report, barriers can take many forms, including sometimes as matters of perception and access to information.[58] It is important that the state does not let these kinds of non-financial barriers go unaddressed, both with respect to potential funding recipients in DACs *and* recipients in non-DAC areas.

Respectfully submitted,

Christine Billy
Executive Director
Guarini Center on Environmental,
Energy and Land Use Law at
NYU School of Law

Nathaniel R. Mattison
Senior Fellow
Guarini Center on Environmental,
Energy and Land Use Law at
NYU School of Law

[58] NYSERDA et al., New York State Disadvantaged Communities Barriers and Opportunities Report, at 10.