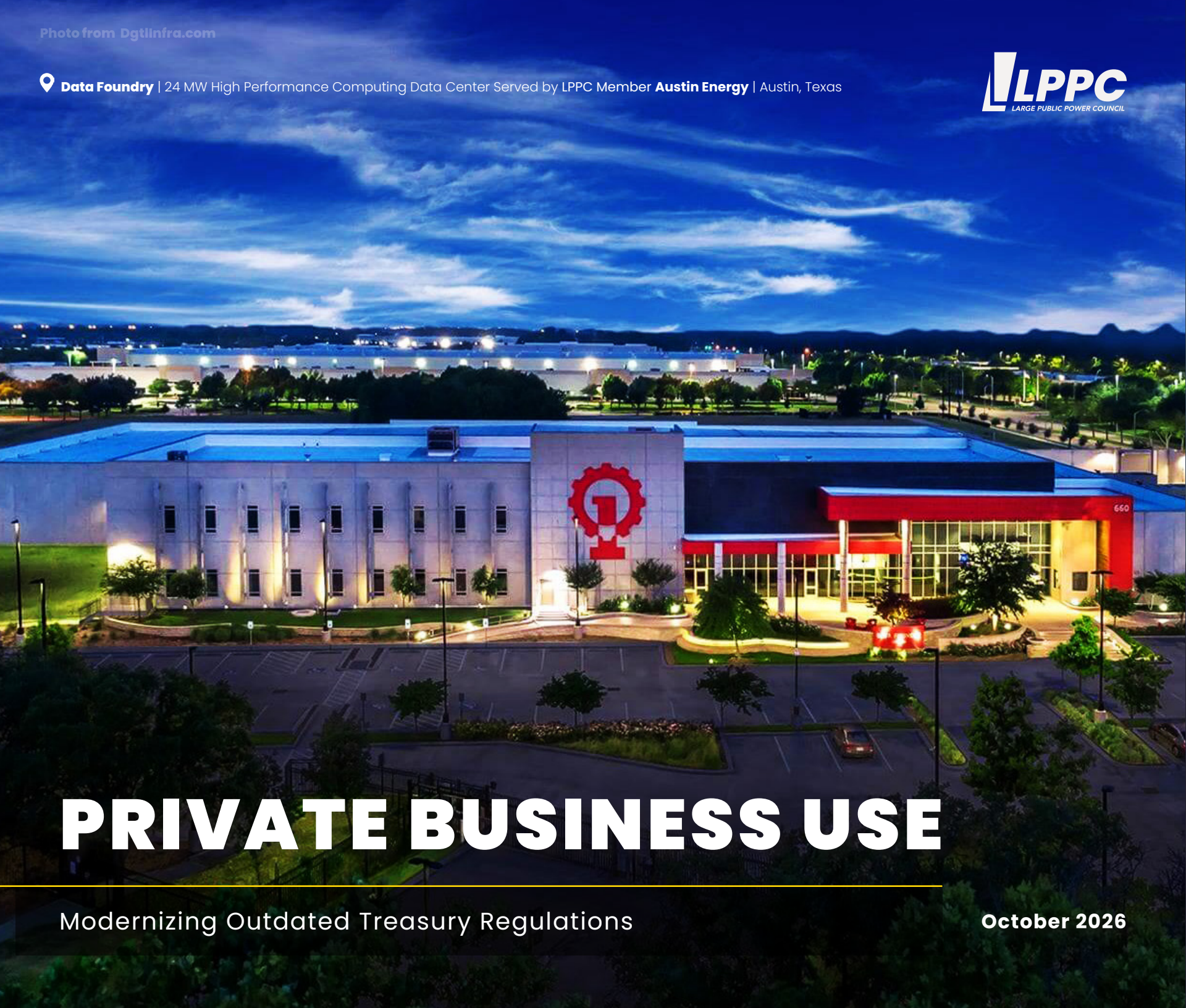


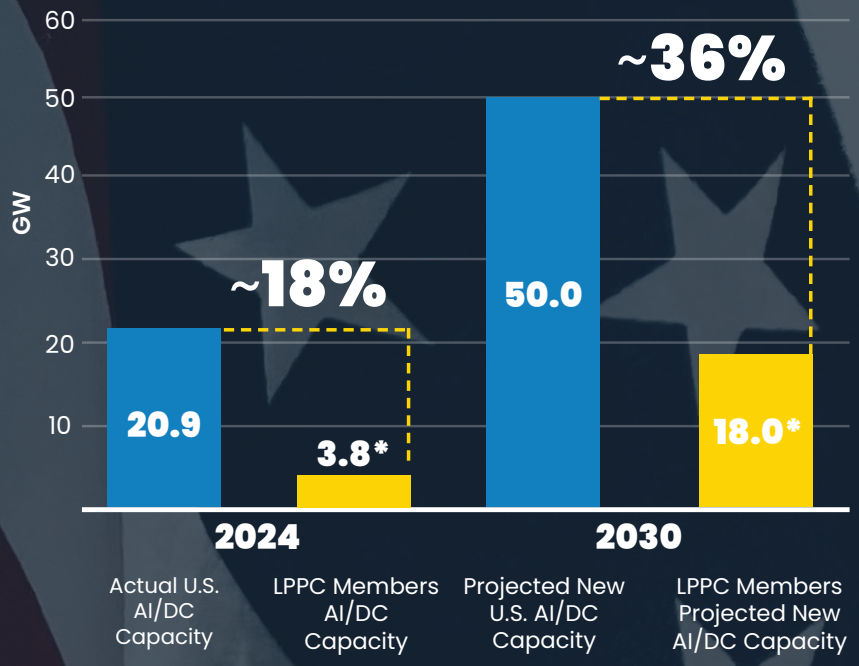
PRIVATE BUSINESS USE

Modernizing Outdated Treasury Regulations

October 2026

Public Power is Powering the Future of America's Economy [1,2,3]

LPPC members currently power over 18% of the nation's AI & Data Center load and approximately 36% of expected new data center interconnections over the next five years.



Background on the Large Public Power Council

*LPPC represents 29 of the nation's largest state and locally owned, not-for-profit public power systems, serving 30.5 million Americans across 23 states and territories. LPPC's members include the larger, asset-owning members of the public power community and own or contract for approximately **110 gigawatts** of generating capacity. They account for approximately **90 percent** of the transmission assets owned by public power. Over the next decade, LPPC members expect to invest **$166+ billion** in electric infrastructure and build approximately **59 gigawatts** of new generation.*

** LPPC members also serve ~1.8 GW of advanced manufacturing and industrial large-load customers with ~3.4 GW of projected load growth.*

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Federal policy asks data centers and other very large new customers to commit to pay the full cost of their electric service, so those costs do not fall on families and small businesses. **Public power agrees with this policy and wants to ask for those commitments.**

However, Treasury's outdated private business use regulations prevent that. Below, public power has proposed regulatory text that would allow **longer contracts** with large-load customers, if those **customers pay their full cost of service** at arm's-length or generally applicable rates and **no facility is built for their exclusive use**.

This Protects Families, Not Data Centers

The change does not give large customers the benefit of tax-exempt financing, consistent with Treasury's existing exceptions from private business use. It alters only who carries the risk if the large-load customer scales back or leaves: the customer, not the families already on the system.

Proposed Regulatory Text

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Appendix

LPPC's Proposed Amendments to Treasury Regulations

1. Amend § 1.141-7(b) to add a definition of "qualified large retail customer" as follows:

§ 1.141-7 Special rules for output facilities.

(b) Definitions. For purposes of this section —

> **Qualified large retail customer** means a nongovernmental person that purchases electric output at retail under an output contract if the issuer reasonably expects, on the effective date of that contract, that the demand for output of that person, plus the demand of any related party, located at a single site or at multiple sites within the same service area, will equal or exceed 20 megawatts or 10 percent of the related electric system's peak demand, determined, for facilities developed in phases, at full buildout.

2. Amend § 1.141-7(f) to add a new paragraph (5) as follows:

(f) Exceptions for certain contracts:

> (5) **Qualified large retail customer contracts**. An output contract (including an output contract entered into in connection with a contract described in § 1.141-15(f)) with a qualified large retail customer is not taken into account under the private business tests if:
>
> > (i) The term of the contract, including all renewal options exercisable by the qualified large retail customer, is not longer than the greater of 20 years or any term required by Federal or State law; (ii) The contract either is a negotiated, arm's-length arrangement that provides for compensation at fair market value, or is based on generally applicable and uniformly applied rates or charges, including rates or charges that differ among customer classes if those differences are customary and reasonable; (iii) The issuer reasonably expects that the compensation payable under the contract by the qualified large retail customer will equal or exceed the allocable costs of service attributable to that person, determined under customary and reasonable utility ratemaking methodologies; and (iv) The output facility is not financed for a principal purpose of providing that facility for use by the qualified large retail customer. For example, bonds issued to finance an output facility in connection with a contract with a new qualified large retail customer where the issuer's electric system does not have the capacity to serve that customer and its other customers will not be treated as financed for a principal purpose of providing it for use by that customer if the output facility is part of the governmental unit's integrated system and is not designed, built, or contractually allocated to the exclusive requirements of that person, other than incidental features.

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Appendix

LPPC's Proposed Amendments to Treasury Regulations (cont.)

Amend § 1.141-11 as follows:
§ 1.141-11 Acquisition of Nongovernmental Output Property.

(a) In general. [Reserved]

(b) Exceptions. For purposes of determining compliance with § 141(d)(3) (related to the exception for property acquired to provide output to certain areas):

(1) Private business use exceptions to apply. An output contract that does not result in private business use under § 1.141-7(f) is treated as a sale within the qualified service area or qualified annexed area of the governmental unit acquiring the nongovernmental output property; and

(2) Determinations and compliance. Compliance with § 141(d)(3)(A) may be determined based on (i) the reasonable expectations as of the issue date of the governmental unit acquiring the nongovernmental output property, or (ii) the average over the 5 calendar years preceding the acquisition of the nongovernmental output property of the output consumed in the qualified service area or qualified annexed area of the governmental unit, divided by the average during such period of the output from generation facilities owned by the governmental unit and output purchased by the governmental unit. Determinations under this paragraph may be made based on either the energy or capacity of the relevant output property.

(c) **Application of Private Business Use Rules to § 141(d)**. Except as otherwise provided therein, the general private business use rules under § 141 and sections 1.141-0 through 1.141-15 apply for purposes of § 141(d). Thus, for example, under § 1.141-6, qualified equity (as defined in § 1.141-6(b)(3)) that is used together with tax-exempt bonds to acquire nongovernmental output property is allocated first to private business use of the nongovernmental output property (whether or not such private business use arises as a result of § 141(d)). As an additional example, the measurement period rules under sections 1.141-3(g) and 1.141-13 apply to issues of bonds that finance the acquisition of nongovernmental output property. Accordingly, if taxable bonds are issued to finance an acquisition of nongovernmental output property, those taxable bonds may be refunded with tax-exempt bonds if, after applying § 141(d), the measurement period rules, and the other general private business use rules, the tax-exempt bonds are not private activity bonds and the other requirements for tax-exempt bonds are satisfied.

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Sources:

[1] *LPPC Member Current & Projected Large-Load Capacity | Capital Investment and Large Load Growth Survey, November 2025*

[2] *2024 National AI/Data Center Capacity | Energy & AI, World Energy Outlook Special Report, International Energy Agency, April 2025*

[3] *2030 National Projected AI/Data Center Load Growth | Department of Energy Resource Adequacy Report, July 2025*