

Comment from American Federation of Labor and Congress of Industrial Organizations (AFL-CIO)

Comments of the AFL-CIO on Notice 2022-51: Request for Comments on Prevailing Wage, Apprenticeship, Domestic Content, and Energy Communities Requirements Under the Act Commonly Known as the Inflation Reduction Act of 2022

Please see our comments, attached.



AFL-CIO

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The Department of the Treasury

Submitted electronically at: www.regulations.gov

Re: Notice 2022-51: Request for Comments on Prevailing Wage, Apprenticeship, Domestic Content, and Energy Communities Requirements under the Act Commonly Known as the Inflation Reduction Act of 2022

Comments of the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO)

The American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) thanks the Department of the Treasury for the opportunity to comment on the Prevailing Wage, Apprenticeship, Domestic Content, and Energy Communities Requirements under the Act commonly known as the Inflation Reduction Act of 2022. The AFL-CIO is the nation's labor federation, consisting of 58 affiliated international unions that represent 12.5 million working people. Our affiliates represent all sectors of the economy, including workers across the energy and manufacturing sectors who will be directly affected by these policies.

We support administration and congressional action to address climate change and strengthen domestic clean energy supply chains, and we are especially committed to securing and creating good union jobs across every part of the clean energy economy. The issues in this RFI are of vital importance to workers across the nation and to the future of these industries. The Treasury Department has the opportunity to lead in building a new era of worker-centric prosperity characterized by good union jobs and increased racial and economic equity.

Background

We are encouraged by the commitment in the Inflation Reduction Act of 2022 (IRA) to rebuilding American manufacturing and strengthening the economy with good union jobs. The IRA is designed to promote good employment practices through tax credits, and Treasury's guidance and rulemaking should reflect this clear Congressional intent. The structure of the tax credits available in the IRA incents the deployment of clean energy technologies *and* the domestic manufacture of the clean energy goods needed for this deployment. Treasury should issue guidance and promulgate rules that prevent to the extent possible taxpayer schemes designed to circumvent this intent. A major portion of the investment in these sectors and its workers is implemented through tax

credits that are available to companies that meet certain conditions. Implementation of these tax credits must be clear and effective to support the administration's, and labor's, goals on climate, jobs and community development.

In addition to our comments below, we draw your attention to the comments submitted by our affiliated departments and unions including North America's Building Trades Unions (NABTU), United Steel Workers (USW), United Auto Workers (UAW), and the International Association of Machinists and Aerospace Workers (IAM), and to the comments that the AFL-CIO has submitted on Notice 2022-47, which addresses related questions.

Credit Enhancements

Under the IRA, taxpayers qualify for a base tax credit for a qualifying facility or for production of clean energy goods, and an additional tax credit if they pay prevailing wages and utilize registered apprentices. Taxpayers are eligible for bonus credits if they utilize domestically manufactured materials and products, or invest in energy communities. The AFL-CIO strongly supports these important incentives that appropriately help ensure that tax-payer funded investments flow to energy projects that create good jobs and pathways into family-supporting employment. Similarly, public dollars should preferentially support investments in clean energy projects that also enhance the production of clean energy goods in the United States, and invest in communities that have borne the brunt of past disinvestment and transition - helping ensure that we get the greatest and longest lasting economic benefit from these investments.

More specifically, in developing rules and guidance to implement these tax credits, Treasury has a critical opportunity to ensure alignment with the Administration's Build America Buy America (BABA) objectives and commitments to spur the growth of domestic manufacturing and resilient, secure supply chains for essential energy technologies.

Prevailing Wage and Apprenticeship Requirements

North America's Building Trades Unions (NABTU) submitted extensive comments with respect to implementation of the prevailing wage and apprenticeship provisions of these credits. The AFL-CIO supports the detailed recommendations submitted by NABTU with respect to the most effective implementation of these requirements. We urge the Treasury to prioritize rapid issuance of guidance on prevailing wage and apprenticeship in line with these recommendations.

Domestic Content Requirements

The domestic content provisions attached to the IRA's investment and production tax credits will provide key support for domestic production of clean energy goods, and a more resilient domestic supply chain in critical energy and technology sectors. Not only does enhancing domestic production of the materials and components that go into these projects increase the overall economic benefit, it strengthens and speeds overall deployment and protects the U.S. from global supply chain risks and disruptions.

Implemented effectively, these credits also play a critical complementary role to, and enhance the effectiveness of, other tax credits and measures in the IRA that support the manufacture of clean energy goods.

Fortunately, there is a long history of implementation of similar requirements under the Department of Transportation's (DOT's) Buy America program. This rulemaking comes in the context of a whole of government process to strengthen and improve Buy American implementation and domestic job creation through the BABA provisions in the Bipartisan Infrastructure Law (IIJA) and related Biden Administration initiatives. This experience provides key processes and guidelines to make implementation efficient and effective for the Treasury, for taxpayers, and for American workers and communities.

Question 1

Utilize the “melted and poured” standard for iron and steel

We support the “All Manufacturing Processes” standard for iron and steel (often also referred to as a “melted and poured” standard) which our affiliated union, the United Steelworkers describes as:

“... the best, strongest, most comprehensive standard for determining whether an iron or steel product is produced in the United States. It is simple, it is straightforward, and certification of it is well-established and mature, and it is the best way to ensure that the benefits of Buy America are felt throughout the supply chain. ...49 CFR 661.5(b) states that for a product to be considered “produced in the United States”, “all steel and iron manufacturing processes must take place in the United States, except metallurgical processes involving refinement of steel additives.” Such reference in the legislative text and now in the code is unambiguous.”

The “melted and poured” standard provides the best measure of domestic production of iron and steel and is clearly aligned with legislative intent.

Reinforce Build America Buy America and related Administration actions on manufactured goods

BABA rightly expands domestic content preferences to iron, steel, manufactured products, and construction materials (which include non-ferrous metals, glass and plastics), and a phased increase in the content percentage for manufactured goods is underway under the Buy American Act.

With respect to manufactured goods, Treasury's guidance should embed provisions that require clear accounting not only for the location of final assembly, but for the origin of key components, parts, and upstream raw materials that are part of given manufactured product; as well as a fair and transparent accounting of the value of those products in the final good. This type of approach - even where it may reveal gaps in supply, works best to support overall sector and job growth.

Experience with Federal Transit Administration (FTA) domestic content implementation has shown the viability and importance of implementing domestic content provisions for manufactured goods but has

also made clear that significant opportunities to game the system are available to taxpayers. These include improper or unclear characterization of the origin of components, subcomponents and of assembly and, on the cost/value side, tariff shifts, related party transactions and transfer pricing practices. Treasury should be clear in its guidance that the use of these techniques will be carefully examined, and that any abuse of the code along these lines will result in ineligibility for these tax credits. The Department may want to further specify key components of energy technologies (or of any onshore distribution or interconnection property that is allowed) that need to be accounted for in domestic content calculations.

Utilize “step certification”

We appreciate that the Department is considering what records and documentation that taxpayers maintain or could create to prove a taxpayer has met the domestic content requirements. We recommend the use of a “step certification process similar to that used by federal agencies that administer federal assistance under Buy America preferences. This is a mature and successful mechanism that maximizes compliance while minimizing administrative burden. Further, as a process which places the responsibility on the recipient or, in this case, the taxpayer, to maintain records to demonstrate compliance which he or she may be required to produce, the application of a step certification process is well suited to Treasury implementation, as the IRS has extremely long experience in requiring retention of documents that may be called upon under audit.

Across these tax credits, the Department should consider consistent data collection that supports whole of government visibility around supply chain resilience, as well as transparency mechanisms (with appropriate privacy safeguards) that enable the public review and the aggregation of key data points such as the percentage or amount of tax credits qualifying for the domestic content bonus, which types of inputs are associated with qualification for the bonus amounts, and key gaps in domestic availability of technology or components.

Question 2

Clear definitions and processes are critical to effectively promote growth of a domestic clean energy supply chain

The domestic content credit enhancements ideally work together with mechanisms like the 45X production tax credits to spur both supply and demand for production of key clean energy technologies and components. In order to effectively support the growth of these supply chains, and enhance the effectiveness of these credits for both Treasury and taxpayers, key terminology with respect to components and assembly and how costs and value are calculated must be very clear and must facilitate - not undermine - the growth of domestic manufacturing across the entire clean energy supply chain.

Historically, we have seen that if these definitions are not precise, it will lead to gaming the system. Similar processes have been undermined by claims or interpretations of “domestic” assembly that allow minimal assembly of wholly foreign components and by inaccurate “roll up” of costs resulting in products being deemed domestic when in reality they contain minimal domestic value added. Guidance should provide clear definitions of the types of components and materials that must be accounted for,

and fair and transparent accounting procedures for determining the cost of domestic and foreign components used to meet domestic content thresholds.

While stringent and transparent accounting is important overall, it is particularly important in the context of the “bonus credit” which is designed to reward good actors for sourcing domestically. Since the bonus credit is intended to be a high bar and designed to drive investment in domestic supply chains, only manufacturers who clearly meet domestic content criteria should be able to receive this benefit.

Question 3

Any waivers or exceptions should be part of a system to strengthen domestic manufacturing and supply

In general, waivers, exceptions, or exemptions from requirements for utilizing manufactured products produced in the United States should be limited, and should be considered as part of a system to promote and build domestic supply. In this case, waivers/ exceptions for non-availability should be particularly conservatively issued, given that these domestic content requirements serve as a key driver of demand for emerging technologies and companies are actively investing now in new domestic capacity.

Put differently, the effectiveness and return on IRA taxpayer incentives for taxpayers to invest in expanding supply will be enhanced by complementary implementation of a system that strictly promotes the use of domestic products. In the case where products are truly unavailable, clear processes need to be established so as not to delay project implementation. In such cases and under the Buy America program, narrowly constructed, time limited waivers have occasionally proven necessary until such time as a domestic industry in a given product can be developed.

In formulating its guidance and/or rules surrounding waivers, we urge the Department to look to existing agency Buy America preferences for federal assistance programs as a guide. The stated waivers in the legislative text and now the code are commonplace and consistent across all such agency preferences. These include a waiver if the use of domestic materials will increase the cost of the overall project by more than 25 percent, and if domestic materials are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality.

Additionally, under BA, the waiver process provides a key tool to identify domestic manufacturing gaps and investment needs, and all waiver requests are made publicly available, enabling potential domestic suppliers to offer or invest to offer the product or component. The Department should adopt a similar process of public notice, and/or consider coordination with other agencies with established processes - such as Commerce NIST’s supplier scouting program. Public notice is consistent with the goal of the program, which is to strengthen American manufacturing and supply chains.

Adopting Buy America guidance, definitions, waiver and procedures would harmonize, wherever possible, all of domestic content preferences throughout the government and should guide the Department’s building of their own program.

Finally, while a waiver or exception policy is necessary and advisable, there should be no waivers for bonus credit. This is unnecessary since these credits will be reserved for facilities that are meeting domestic requirements and qualifying for these extra credits.

Questions 4 and 5

Interagency coordination

The tax credits under IRA are just one piece of a government-wide effort to address climate change, create good union clean energy jobs in communities across the nation, and rebuild manufacturing and critical supply chains. Other agencies already administer policies that Treasury must now adapt for implementation through the tax code, and we urge the Treasury Department to consult with other agencies - particularly the Department of Labor (DOL), Department of Energy (DOE) and the Department of Transportation (DOT) as you develop this guidance.

Energy Community Requirement

The IRA energy community tax credit enhancement is meant to promote a “just transition” for workers and communities affected by the reduction in the use of coal in the power sector and those who have seen economic and environmental losses from other industrial and energy facility closures. Attracting investment to these communities is the key enabler of a just transition.

Identifying these communities should be relatively straightforward using data from federal agencies. The Mine Safety and Health Administration maintains an extensive database of active and closed mines, including for abandoned mines, in its Mine Data Retrieval System. This system includes the last known production date. Treasury should publish a list of census tracts with mines that closed after December 31, 1999, informing taxpayers of the locations that will qualify for the enhancement.

Similarly, the archives of the Energy Information Agency (EIA) contain extensive information on all electricity generation facilities, on an individual site basis. The Treasury should engage with EIA to create a list of these sites, and publish a list of the census tracts with a coal-fired power plant that have closed since December 31, 1999, informing taxpayers of the locations that will qualify for the enhancement.

Conclusion

The tax credits provided by the Inflation Reduction Act contain provisions meant to enhance domestic job creation through increased domestic production of clean-energy goods, and to direct investment and job creation to communities that have been affected by the reduction in the production and use of coal as an energy source. It is critical that these provisions are implemented effectively and with transparency. The AFL-CIO thanks the department for the opportunity to offer these comments, and it looks forward to working together to see that American workers and communities indeed reap those benefits as fully as possible.