November 4, 2022

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Internal Revenue Service
CC:PA:LPD:PR (Notice 2022-51)
Room 5203
P.O. Box 7604
Ben Franklin Station
Washington, DC 20044

RE: "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," Notice 2022-51 (Oct. 5, 2022)

Amicus Solar Cooperative ("Amicus") is a member-owned purchasing cooperative of 72 high-quality, values-driven solar energy companies. Our members are project developers, EPCs, and installers who together employ over 4,000 people and build projects in all 50 states, Washington D.C., and Puerto Rico. At an average business age of 18 years, our members share their extensive experience and solar industry knowledge while pooling their purchasing dollars. This unique combination allows our members to grow strong, thriving solar companies that can make a positive impact in our country. In many ways, our cooperative represents the smaller, regional-based businesses in the United States solar industry who work tirelessly installing solar panels and battery systems on homes, schools, farms, municipal buildings, businesses, and nonprofits in their local communities. Amicus appreciates the opportunity to provide these comments to the United States Department of the Treasury ("Treasury").

Responses to Requests for Comment

Prevailing Wage Requirement

(1) Section 45(b)(7)(A) provides that a taxpayer must ensure that any laborers and mechanics employed by the taxpayer, or any contractor or subcontractor, are paid wages at rates not less than the prevailing wage rates for construction, alteration, or repair of a similar character in the locality in which such facility is located as most recently determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, which is commonly known as the Davis-Bacon Act. Is guidance necessary to clarify how the Davis-Bacon prevailing wage requirements apply for purposes of §45(b)(7)(A)?

> Amicus feels many of these projects will be private sector projects with federally required Davis-Bacon prevailing wage requirements and not projects with federal certified wage oversight, and therefore guidance is necessary to clarify how the Davis-Bacon prevailing wage requirements apply for purposes of §45(b)(7)(A).

The applicable prevailing wages are determined by using appropriate wage classifications for a specified work task. Though a solar photovoltaic facility generates electricity, its construction is multi-craft and requires skills outside of the scope of electricians. Trenching, constructing the racking structure for the modules, and securing the modules to the racking system are examples of such work. Similarly, general maintenance and potentially its alteration or repair may require skills outside of the scope of electricians.

Typically for projects with federal certified wage oversight, contractors would use Form SF1444 to determine wage rates for work tasks not clearly defined in existing Davis-Bacon wage categories. Larger scale solar projects greater than one megawatt (as measured in alternating current) commonly have work tasks that are not consistently applied nationally nor clearly defined in existing wage categories.

The current workforce will need to be increased significantly to meet the aggressive greenhouse gas emission reductions targeted by the Inflation Reduction Act. Treasury's guidance can accelerate the growth of new high road jobs attracting diverse Americans not currently employed in construction and better assure the targeted reductions are met. Treasury's guidance should ensure taxpayers are not required to deploy electricians to do the work of laborers. To do otherwise would exacerbate the existing shortage of qualified electricians in the United States, significantly constrict job growth and jeopardize reaching the targeted emissions reductions.

Done responsibly, the classification of the activities required for the construction, alteration, or repair of facilities subject to these provisions for the purposes of defining the applicable prevailing wages can serve to increase the number of high-road jobs. With poor implementation, §45(b)(7)(A) could serve to exacerbate labor shortages by requiring highly qualified and licensed workers and their apprentices to perform construction activities that do not require extensive technical training and expertise to perform.

For the construction of solar photovoltaic facilities, the specific concern relates to the availability of licensed electricians to perform the necessary electrical work required of these facilities and within ratio to directly supervise registered apprentice electricians in these activities.

The recent *Occupational Outlook Handbook* published by the Bureau of Labor Statistics estimates that there were 711,200 electricians in the U.S. in 2021 and that the number of jobs for electricians will increase by 7% to 761,400 jobs by 2031. On their face, these statistics may appear to indicate moderate growth in the labor demand for electricians over the next decade. The harsh reality is that the BLS also estimates that the U.S. will average approximately 79,900 new openings for electricians each year over due to the rate at which electricians are expect to retire or change careers over the next decade. These estimates were published prior to passage of H.R. 5376.

Developing a licensed electrician qualified to supervise electrical installations such as those required to comply with §45(b)(7)(A) often requires a minimum of four years of training and experience, as outlined by the Journeyman Electrician occupation used to approve federally registered apprenticeship programs. In addition, many states define the maximum number of apprentices that can be directly supervised by a licensed electrician either in law or by rule. These supervisory ratios often define the maximum number of apprentices that can be accommodated within a registered apprenticeship program or on a jobsite.

The work performed by laborers is less regulated by occupational licensing and supervising ratios. As a result, workers in this occupation have more opportunities to engage in the construction of facilities required to comply with §45(b)(7)(A) provided the Treasury adequately defines the occupations that constitute "laborers and mechanics". Clarification on this point will also ensure that taxpayers are not required to employ electricians to do the work of laborers, which would further exacerbate the limited availability of qualified electricians in the United States.

Due to the inconsistent definition of which scope of a facility's work requires direct supervision by licensed electricians, Treasury should ensure that the provisions of §45(b)(7)(A) do not conflict with practices that are permissible within certain jurisdictions. Specifically, the Treasury rules must be broad enough to interpret that work that is authorized by a local jurisdiction to be performed by laborers can be performed by laborers. As such, Treasury should avoid being prescriptive about which work must be performed by which occupation.

To accomplish this, we respectfully request that Treasury provide explicit guidance that the scope of work that requires prevailing wage for the electrician occupation shall be defined by the electrical licensing requirements of the authority having jurisdiction at the site of the construction activities subject to the provisions of §45(b)(7)(A) and that all other workers on the site shall be classified as general laborers unless a more specific occupation, such as Operator, applies to the specific work tasks being performed. Since construction companies bidding on projects subject to the provisions of §45(b)(7)(A) will be required by the local authority having jurisdiction to employ professionals that satisfy the local electrical licensing requirements, this approach will ensure that prevailing wage requirements are appropriately aligned with the labor requirements of the jurisdiction where the work is being performed.

Treasury should avoid language that is more restrictive than required by the local authority having jurisdiction and would exacerbate the labor shortage related to electricians, Treasury does play a role in informing the Department of Labor of local policies and rules that are likely to impede the ability of the Inflation Reduction Act to meet specific targets associated with H.R. 5376.

There are multiple risks of insufficient guidance related to prevailing wage classifications that would require electricians to do the work of laborers. Without clarity, work could be bid at varying rates with various assumptions to what the correct wages for these scopes should be. Contractors bidding on projects assuming a lower wage rate for this scope of work will have a greater price advantage to win work and still be able to meet the apprenticeship requirements. With the lack of certified wage oversight and the inability to apply for clarity on wage categories, after completion of the project, and if audited, it could then be determined retroactively that the wage category used to bid and build the project was incorrect. This would cause financial harm to all parties involved in the development and construction of these projects including the contractors that lost work bidding with assumed higher wage determinations.

These issues would be easily avoided with clearer guidance on Davis-Bacon prevailing wage categories that allows local jurisdictions to manage compliance with local codes and rules related to electrical licensing and the work that requires supervision of individual license holders.

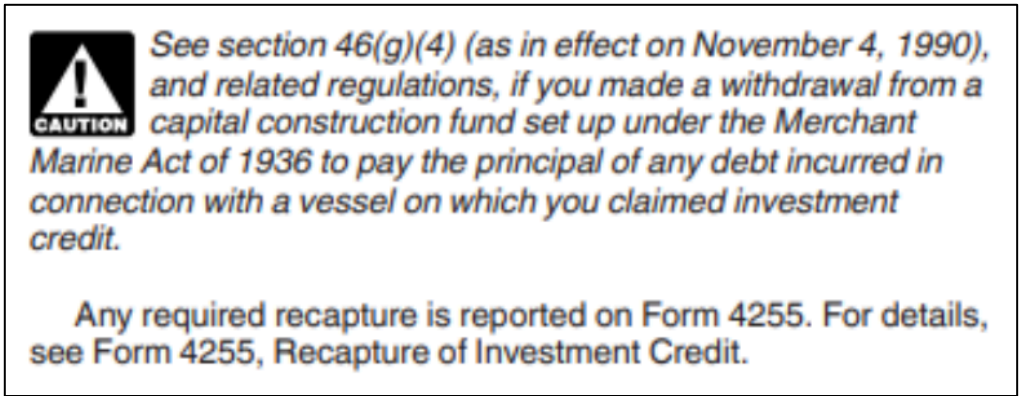
(1) Additional guidance related to the definition of "alteration or repair" of a qualified facility. As well as further guidance on wage rates for the application of Davis-Bacon wage rates.

Amicus recommends Treasury codify the definition of the alteration or repair to exclude scopes of work related to maintenance work such as vegetation care (landscaping mowing), snow removal, washing or cleaning module glass, fence repair, as well as non-contact diagnostics including monitoring, or drone operations.

Depending on the definition of alteration and repair, similar to the above request for guidance on wage categories for the construction of a qualified facility, and for the same reasons and rationale, it is recommended that Treasury use the wage category of "LABORER: Common or General" for prevailing wage rates for work tasks not clearly defined in existing labor categories.

(3) What documentation or substantiation should be required to show compliance with the prevailing wage requirements?

While these projects have prevailing wage requirements, they would be private sector projects not federal projects with "certified wage" oversight. Amicus recommends Treasury use existing tax forms and processes for taxpayers. For example, adding the essential information required, i.e. total applicable hours worked, apprentice hours worked, % of apprentice hours worked, and an affirmation that Davis-Bacon wages were paid, to the existing tax Form 3468 with an informational note (example):



The note could suggest taxpayers collect and maintain weekly wage information for qualifying projects to support the entries on Tax form 3468 such as US Dept. of Labor Payroll Form WH-347 or similar.

Apprenticeship Requirement

(1) Section 45(b)(8)(C) provides that each taxpayer, contractor, or subcontractor who employs four or more individuals to perform construction, alteration, or repair work with respect to a qualified facility must employ one or more qualified apprentices from a registered apprenticeship program to perform that work. What factors should the Treasury Department and the IRS consider regarding the appropriate duration of employment of individuals for construction, alteration, or repair work for purposes of this requirement?

Adding the consideration of an "appropriate duration of employment" or "completion / graduation rates" associated with a qualified apprenticeship program is inappropriate and inconsistent with the Inflation Reduction Act of 2022 ("Act"). The only realistic option to this question is that a "qualified apprentice" "counts" for this requirement as long as they are a qualified apprentice for the hours accounted for meeting this requirement on the project. Trying to add pre-employment, post-employment durations or adding completion or graduation rates for registered apprenticeship programs all have significant issues and are outside of, and in addition to the Act, not a clarification of it.

Registered apprenticeship programs are regulated and qualified per the United States Department of Labor or applicable State Apprenticeship agency rules and regulations. This Act should not change that oversight.

(3) What documentation or substantiation do taxpayers maintain or could they create to demonstrate compliance with the apprenticeship requirements in § 45(b)(8)(A), (B), and (C), or the good faith effort exception?

As for compliance with prevailing wage, Amicus recommends using the same approach reporting with the existing tax form 3468. We would advocate to include any additional information needed, total applicable labor hours for the project, apprentice hours worked, and a calculation of % of apprentice hours for the project.

(4) Please provide comments on any other topics relating to the apprenticeship requirements in § 45(b)(8)(B) that may require guidance.

Since construction companies bidding on projects subject to the provisions of §45(b)(8)(B) will be required by the local authority having jurisdiction to employ professionals that satisfy the local electrical licensing requirements, including ratio requirements, this approach will ensure that new requirements are appropriately aligned with the labor requirements of the jurisdiction where the work is being performed.

Treasury should avoid language that is more restrictive than required by the local authority having jurisdiction and would exacerbate the labor shortage related to electricians, Treasury does play a role in informing the Department of Labor of local policies and rules that are likely to impede the ability of the Inflation Reduction Act to meet specific targets associated with H.R. 5376.

<u>Domestic Content Requirement</u>

(2) Sections 45(b)(9)(B)(iii) and 45Y(g)(11)(B)(iii) provide that manufactured products that are components of a qualified facility upon completion of construction will be deemed to have been produced in the United States if not less than the adjusted percentage of the total costs of all of such manufactured products of such facility are attributable to manufactured products (including components) that are mined, produced, or manufactured in the United States.

(c) Does the term "manufactured product" with regard to the various technologies eligible for the domestic content bonus credit need further clarification? If so, what should be clarified? Is guidance needed to clarify what constitutes an "end product" (as defined in 49 C.F.R. 661.3) for purposes of satisfying the domestic content requirements?

Yes, Treasury should list the manufactured product categories approved as components of a qualified facility, such as but not limited to, photovoltaic modules, inverters, batteries, transformers, switchgear, panelboards and racking. Furthermore, a component should be considered to be produced or manufactured in the United States regardless of the origin of its subcomponents.

Energy Community Requirement

(2) Does the determination of a brownfield site (as defined in subparagraphs (A), (B), and (D)(ii)(III) of § 101(39) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601(39))) need further clarification? If so, what should be clarified?

> To the extent possible, Amicus believes that the responsible federal agencies should pre-define which sites would meet the definition of a brownfield for credit purposes. In our conversations with state-level brownfield remediation and redevelopment organizations, the definition appears to be "you'll know it when you see it." For effective and efficient renewable energy project development, any semblance of doubt regarding eligibility for various incentives will need to be eliminated. For example, 42 USC 9601 does not include a list of contaminants. If specific sites cannot be pre-identified by Treasury, then clear documentation regarding a definition of brownfields (i.e. specific contaminants, building or landscape types, etc.) will be needed.

(3) Which source or sources of information should the Treasury Department and the IRS consider in determining a "metropolitan statistical area" (MSA) and "non-metropolitan statistical area" (non-MSA) under § 45(b)(11)(B)(ii)? Which source or sources of information should be used in determining whether an MSA or non-MSA meets the threshold of 0.17 percent or greater direct employment related to the extraction, processing, transport, or storage of coal, oil, or natural gas, and an unemployment rate at or above the national average unemployment rate for the previous year? What industries or occupations should be considered under the definition of "direct employment" for purposes of this section?

> Traditional U3 unemployment statistics from the Bureau of Labor Statistics do not effectively capture the economic difficulties facing mining and coal communities. For instance, they do not capture unemployment due to disability, dropping out of the workforce due to long-term lack of available local work, and lack of affordable childcare options for families. A better measure would be the MSA or non-MSA's labor force participation rate as compared to the national average.
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> Regarding the threshold of 0.17 percent or greater direct employment in fossil industries, related industries should include not just direct mining or drilling, but also related chemical production, railroad and truck transportation, manufacturing of critical parts (e.g. pumps that keep mine shafts dry), pipeline construction, legal, accounting, and the like. A relevant list of NAICS codes should be pulled together and sorted to capture as wide a cross-section as possible of fossil fuel industry participation.

(4) Which source or sources of information should the Treasury Department and the IRS consider in determining census tracts that had a coal mine closed after December 31, 1999, or had a coal-fired electric generating unit retired after December 31, 2009, under § 45(b)(11)(B)(iii)? How

should the closure of a coal mine or the retirement of a coal-fired electric generating unit be defined under § 45(b)(11)(B)(iii)?

> Treasury should coordinate closely with State Energy Offices and Tax Departments, who will have kept records for coal mine operations for excise tax collection, as well as the Department of the Interior's Office of Surface Mining Reclamation and Enforcement's records of reclamation bond filings.

(6) Under § 45(b)(11)(B)(ii)(I), what should the Treasury Department and the IRS consider in determining whether a metropolitan statistical area or non-metropolitan statistical area has or had 25 percent or greater local tax revenues related to the extraction, processing, transport, or storage of coal, oil, or natural gas? What sources of information should be used in making this determination? What tax revenues (for example, municipal, county, special district) should be considered under this section? What, if any, consideration should be given to the unavailability of consistent public data for some of these types of taxes?

> Fossil fuel extraction contributes to state and local tax bases through multiple mechanisms, including: severance, personal property, direct sales, indirect sales, personal income, and corporate income taxes. Furthermore, funding of public benefits does not stop at a county's border. For instance, the West Virginia coal severance tax is collected by the state, and used to support schools, roads, and other public activities statewide, with a relatively small portion (7%) distributed back to counties and municipalities. This makes determining which MSA's and non-MSA's are above the 25% threshold more difficult. Allowances should be made for different states' approaches to funding local activities. Even though this data may not be initially available, Treasury should plan to release an open-source model for determining which areas meet the threshold.

Thank you for the opportunity to provide these responses. We sincerely appreciate the efforts by Treasury and the IRS to implement this historic climate legislation. Should you have any follow up questions, please contact me directly.

Sincerely,

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