



BOSS

Black Owners of Solar Services

November 4, 2022

**VIA WWW.REGULATIONS.GOV
AND FIRST-CLASS MAIL**

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

The Honorable Lily L. Batchelder
Assistant Secretary for Tax Policy
Department of the Treasury
1500 Pennsylvania Ave., NW
Washington, D.C. 20220

Mr. William M. Paul
Principal Deputy Chief Counsel and Deputy Chief Counsel (Technical)
Internal Revenue Service
1111 Constitution Ave., NW
Washington, D.C. 20224

**Re: Response to the 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**

Black Owners Of Solar Services (BOSS) is pleased to provide comments to U.S. Department of the Treasury (“Treasury”) and the Internal Revenue Service (“IRS” or “the Service”) pertaining to the prevailing wage, apprenticeship, domestic content, and energy community requirements for increased or bonus credit (or deduction) amounts under those respective provisions of the Internal Revenue Code of 1986, as amended.

BOSS is qualified under Section 501(c)(3). BOSS members constitute the largest community of African American professionals working in the solar photovoltaic (PV) space. BOSS members are entrepreneurs, financiers, veterans, attorneys, engineers, contractors, developers, and other peer partners. BOSS members possess deep knowledge, experience, and strategic access to the multi-trillion dollar emerging solar and clean energy technology marketplace that is fast reshaping sustainability, infrastructure resilience, and livelihoods in our country and across the globe. BOSS and its members have established roots and relationships in all communities, and particularly those disproportionately impacted by climate change—in the United States and



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abroad. Our collective efforts are making communities more resilient, sustainable, and economically powerful.

The mission of BOSS is to combine and leverage our collective power to lead actionable solutions for sustained access to equitable opportunities in clean energy production, distribution, and storage for Black-owned businesses. BOSS was launched in the Fall of 2020 after an inaugural Solar Equity Summit (SES) on September 29, 2020. A common theme throughout the SES was the importance of policy in shaping markets to enable accessibility for Black-owned businesses to thrive in the clean energy sector. Energy equity is a key policy enabler to manifesting the mission of BOSS and plays a critical role in our endeavor to highlight unfair practices and provide recommendations for common actions to address them.

The comments below address two areas on which the agencies requested information: the Prevailing Wage Requirement and the Energy Community Requirement. For the reasons we outline below, in formulating guidance on the increased credits under the IRA, the IRS should consider the unique position of employers committed to expanding and empowering all sectors of the workforce and investing in communities disproportionately affected by the climate crisis and other environmental hazards.

Section 3.01 Prevailing Wage Requirement –

2) What should the Treasury Department and the IRS consider in developing rules for taxpayers to correct a deficiency for failure to satisfy prevailing wage requirements?

As it develops rules for taxpayers, Treasury should consider instituting a narrow exception from the prevailing wage requirements for taxpayers that participate in State and Federally assisted programs committed to the workforce development of often-marginalized populations, such as recently incarcerated individuals or homeless veterans. Examples of State and Federally assisted programs are those funded through the Workforce Innovation and Opportunity Act/ Reentry Employment Opportunities program (REO). To the extent that taxpayers participating in state and federally assisted employment programs fail to meet the prevailing wage requirements, Treasury should create a special exception. Offering employment above minimum-wage, but below prevailing wages allows taxpayers to put more individuals to work, contributing to the overall development of the community.

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

Treasury should permit taxpayers who have filed and will file IRS form 8850 or its municipal-level equivalent to be exempted from any penalties associated with failure to meet the prevailing wage requirements.

Section 3.03 Domestic Content Requirement



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5) Please provide comments on any other topics relating to the domestic content requirements that may require guidance.

Treasury and IRS should exempt small solar projects with aggregate capacity of 1.5 megawatts or less from the Domestic Content Credit requirement, particularly for small residential projects located in energy communities as BOSS recommends they be defined. Taxpayers and developers of projects often cannot purchase solar panels or other components at wholesale prices or obtain other manufacturer discounts because of the comparatively small purchases they are making for these smaller projects. BOSS members have shared this hurdle with us. Thus, such small developers may already have a significant disadvantage from a project cost perspective compared with larger developers and exempting them from the Domestic Content Credit requirement is consistent with the goal of increasing solar energy capacity at affordable prices in energy communities.

Section 3.04 Energy Community Requirement

5) For each of the three categories of energy communities allowed under § 45(b)(11)(B), what past or possible future changes in the definition, scope, boundary, or status of a “brownfield site” under § 45(b)(11)(B)(i), a “metropolitan statistical area or non-metropolitan statistical area” under § 45(b)(11)(B)(ii), or a “census tract” under § 45(b)(11)(B)(iii) should be considered, and why?

In determining whether a qualified facility is located in an energy community, Treasury should consider the following location data points that are readily available to taxpayer-owners and developers of qualified facilities for reasons we outline below:

- State designated Opportunity Zones (OZs).
- Communities that rely on a disproportionate amount of Federally assisted programs such as:
 - Social Security
 - Supplemental Security Income (SSI)
 - School Nutrition Assistance Programs (SNAP)
 - Temporary Assistance for Needy Families (TANF)
 - Medicaid
 - Low Income Housing Tax Credits (LIHTC) and
 - Low Income Housing Energy Assistance Program (LIHEAP)

Category II of energy communities allowed under § 45(b)(ii)(B)(II) are defined as:

(ii) a metropolitan statistical area or non-metropolitan statistical area which—
* * *

(II) has an unemployment rate at or above the national average unemployment rate for the previous year (as determined by the Secretary),



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Treasury should consider changing the definition, scope and boundary of this category of energy community to include readily defined OZs as defined by the Tax Cuts and Jobs Act of 2017 (Public Law No. 115-97), which broadly encompasses areas which disproportionately rely on state and federally funded assistance programs.

Federally Funded Assistance Programs

Use of Federally funded assistance programs such as LIHTC, TANF, and LIHEAP would permit Treasury to capture those communities where individuals may no longer be counted in the unemployment figures for a particular locality.

Opportunity Zones

We recognize that states designate OZs based on states' priorities for development. Nevertheless, OZs are currently identifiable by taxpayers in public databases. In addition, the use of the existing OZ identifications would present administrative ease for the IRS in verifying Category II of energy communities.

BOSS also recommends that Treasury permit taxpayers to submit documentation confirming that they work in an Energy Community such as reports demonstrating a disproportionate use of federally funded assistance programs or certification that the qualified facility is located within an OZ.

The use of existing OZs and the ability to submit documentation will enable taxpayers to conduct advance planning and development of projects now without waiting for further designations and policies by state and federal authorities.

Thank you for the opportunity to respond to this request for Comments and your consideration in these issues.

Sincerely,

Ajulo E. Othow
President, Board of Directors
Black Owners of Solar Services (BOSS)