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IRS-2022-51: Response to the Department of the Treasury & Internal Revenue Service's Request for Comments on the Inflation Reduction Act regarding Prevailing Wage, Apprenticeship, Domestic Content, and Energy Communities Requirements.

The BlueGreen Alliance unites labor unions and environmental organizations to solve today's environmental challenges in ways that create and maintain quality jobs and build a stronger, fairer economy. Our partnership is firm in its belief that Americans don't have to choose between a good job and a clean environment—we can and must have both. The strengthened and newly established tax credits in the Inflation Reduction Act are a critical demonstration of this principle.

We appreciate the opportunity to provide input to shape the implementation of the prevailing wage, apprenticeship, domestic content, and energy communities requirements established by the Inflation Reduction Act. These tax credits present a once-in-a-generation opportunity to drastically reduce emissions while providing good union jobs in the clean economy and driving growth in U.S. manufacturing. At the same time, they will increase equity in the transition to a clean economy by maximizing the benefits of this job growth in communities disproportionately impacted by energy transition.

The Inflation Reduction Act—for the first time ever—couples high-road labor standards with clean energy deployment tax credits. By requiring that clean energy investments support a prevailing wage and workforce development pathways in order to receive the full value of the tax credit, these provisions will:

- Grow and diversify the middle class;
- Increase diversity in the construction workforce;
- Ensure the construction workforce has the skills necessary to build and maintain infrastructure; and
- Promote hiring of local residents to work on infrastructure projects in their communities.

Furthermore, the newly established Low Income Communities and Energy Communities Credits will help address racial and economic inequality by incentivizing locating projects in communities that have a significant share of the population below the poverty line and communities that have seen significant job loss in the fossil fuel economy. These credits will help ensure that the benefits of the clean energy investments spurred by the tax credits are concentrated in these communities that need them most. Properly targeting these credits will be important to address the historic geographic disparity of clean energy investment and ensure that communities that have primarily experienced economic pain in the transition to clean energy now share fully in the economic gain of that transition.

These provisions represent a game-changing investment. By getting the details right, the U.S. can meet its clean energy deployment and climate goals while creating good union jobs, growing domestic manufacturing, delivering public health and environmental benefits, and creating a cleaner, stronger, and more equitable economy for all.

To this end, BGA offers the following responses to the Treasury Department and Internal Revenue Service's (IRS) questions on the interpretation and implementation of these provisions.

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)?

BGA urges the Treasury Department to adopt U.S. Department of Labor's (DOL) existing framework for Davis-Bacon and Related Act (DBRA) implementation in order to promote consistency across the federal government. The DOL has promulgated detailed regulations and guidance on the administration and implementation of the Davis-Bacon Act and Related Acts, 29 CFR parts 1 & 5 DOL Prevailing Wage Resource Book (May 2015). The Federal Acquisition Regulation (FAR) incorporates DOL's standard contract clauses implementing DBRA.

The Treasury Department should adopt existing FAR provisions concerning DBA as standardized procurement practices, noting that FAR provisions were designed for federal procurement and modifications will be necessary. Additionally, it is imperative that the Treasury Department adopt DOL's classifications under the DBRA to avoid underpayment via misclassification. The Department should also adopt DOL's conformance process which prevents unscrupulous contractors from

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subdividing classifications and inventing “new” low-wage classifications.

The Treasury Department should require taxpayers to use the following FAR provisions in the guidance, with relevant language modifications below.

a. FAR 52.222-5(a), Construction Wage Rate Requirements – Secondary Site of the Work
b. FAR 52.222-6 (a) & (b), Construction Wage Rate Requirements (the wage determinations referenced in this clause are publicly available at sam.gov)
c. FAR 52.222-8 (a), (b) & (c), Payrolls and Basic Records
d. FAR 52.222-9 (a) & (c), Apprentices
e. FAR 5.2.222-14, Disputes Concerning Labor Standards

The term “taxpayer” should replace “contracting officer” where it appears in FAR 52.222-8(b)(1) and in the third sentence of FAR 52.222-8(c). The phrase “taxpayer or Secretary of the Treasury” should replace “Contracting Officer or authorized representative of the Contracting Officer” where it appears in FAR 52.222-8(c). The phrase “debarment pursuant to Section 9 of the Treasury Department’s guidance on prevailing wage implementation under the Inflation Reduction Act” should replace “debarment action pursuant to 29 CFR 5.12.” where it appears in FAR 52.222-8(c).

The term “contractor” should replace “offeror” and the term “taxpayer” should replace “Government” and the term “U.S. Department of Labor” should replace “Contracting Officer” in FAR 52.222-5. For all other FAR clauses referenced above (i.e., 52.222-6,-9,-14), the term “taxpayer” should replace the term “contracting agency” and “contracting officer”; and the term “contract or project” should replace “Federal contract or project.”

A taxpayer seeking a covered tax credit or bonus should, before the commencement of construction, disclose to the Treasury Department the location and nature of the project for which the credit is sought. As with the Qualifying Advanced Energy Project Credit, 26 U.S.C. 48C(d)(5), the Treasury Department should publicly disclose such information, including the identity of the applicant.

The taxpayer should ensure that the poster referenced in FAR 52.222-6 is posted on every designated entrance of the covered jobsite, in addition to other prominent places where they can be easily seen by the workers. Additionally, construction employers (e.g., taxpayer, contractor, subcontractor) on the covered project should provide each worker with a written notice identifying the worker’s classification and the proper prevailing wage rate to which he or she is entitled. Such notice shall be provided to each worker before he or she commences work on the Qualified Facility, and each worker should sign the notice acknowledging receipt. The employer should retain copies of the notices for a period of three years following completion of the project.

Further, The taxpayer should withhold or cause to be withheld from the contractor under this contract or any other contract the taxpayer may have with the same contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the taxpayer, after written notice to the contractor, should suspend any further payment, advance, or guarantee of funds until such violations have ceased.

<u>**Apprenticeship Requirement**</u>

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

The Treasury Department issues guidance through "notices'' that involve substantive interpretations of the Internal Revenue Code and other provisions of law. Accordingly, the Treasury Department should issue a notice with the following guidance on the uniform implementation and enforcement of workforce development requirements on all covered tax credits of the Inflation Reduction Act:

Pre-apprentice Programs. Underrepresented workers without adequate industry experience are often left out of the growing industry. Pre-employment or pre-apprenticeship training is needed before they reach the skill level necessary to enter work-based learning programs. The included wrap-around services, especially access to childcare can be important on the ramp in ensuring success in the apprenticeship program.

Contract Clauses. To qualify for a covered bonus credit or deduction under the Inflation Reduction Act, the taxpayer shall use such means as may be necessary to ensure that any and all solicitations, contracts and subcontracts for construction of a Qualified Facility include the following clauses:

a. "All contractors and subcontractors engaged in the performance of construction, alteration, or repair work on a Qualified Facility shall ensure that not less than [10, 12.5, or 15] percent of the total labor hours of such work be performed by qualified apprentices."
b. "Each contractor and subcontractor who employs 4 or more individuals to perform construction, alternation, or repair work on a Qualified Facility shall employ 1 or more qualified apprentices to perform such work."
c. "While the construction activity is ongoing, the contractor shall include with each payment application to the taxpayer a report containing the following information:
    i. The names of all qualified apprentices and their apprentice

registration or identification number.

ii. The number of qualified apprentices and labor hours worked by them, categorized by trade or craft, including location of each apprenticeship hour.

iii. The number of journey level workers and labor hours worked by them, categorized by trade or craft, adding the location each apprentice worked which hours.

iv. Where applicable, a written declaration justifying an exception to the apprenticeship utilization requirement, including which location each apprenticeship worked which hours.

Domestic Content Requirement

(1) Sections 45(b)(9)(B) and 45Y(g)(11)(B) provide that a taxpayer must certify that any steel, iron, or manufactured product that is a component of a qualified facility (upon completion of construction) was produced in the United States (as determined under 49 C.F.R. 661).

In the application of domestic content ("Buy America") preferences, the question of how certain products and materials should be considered produced in the United States, and how such provenance should be documented and certified are paramount considerations and we appreciate the care with which the Department is considering these questions.

In determining how these requirements should be implemented, it is important to consider the intent of Congress in developing, drafting, and passing these provisions, as well as other similar provisions. Over the past several years, spanning multiple Congresses and administrations, the goal of the United States government has been to strengthen and expand Buy America preferences, which are long-standing and highly-successful policy tools to incentivize domestic manufacturing production and job growth.

These provisions are part of the whole-of-government effort undertaken by the Biden administration and Congress to strengthen and expand Buy America and drive domestic manufacturing job creation. Along with efforts such as the passage of the Build America, Buy America Act in the Infrastructure Investment and Jobs Act and the administration's strengthening of the Buy American Act which covers direct federal procurement, these provisions seek to ensure that to the maximum extent practicable, clean energy products and facilities are constructed using iron, steel, and manufactured products produced in the United States. A common thread in all of these policies is the clear and unambiguous goal that they should be administered as robustly as possible and that any standards that are more permissive than those which are being strengthened elsewhere in the government are contrary to the intent of the administration and Congress.

In determining what "produced in the United States" means, and the references to other regulations included in the legislative text, it is useful to consider iron and steel products and manufactured products separately, as the legislative text clearly intends.

Iron and Steel

Modern Buy America policies have been applied to iron and steel used in projects receiving federal financial assistance since 1983. Since that time, all federal agencies that administer a Buy America preference have taken the term "produced in the United States" to mean that for iron and steel, all manufacturing processes must take place in the United States, except metallurgical processes involving refinement of steel additives.

The "All Manufacturing Processes" standard for iron and steel (often also referred to as a "melted and poured" standard) is 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. For iron and steel, it is simply the only appropriate standard that is effective, administrable, and consistent with legislative intent.

In determining legislative intent, it is instructive that while a reference to 49 CFR 661 in general was included in section 45(b)(9)(B)(i), a specific reference to 49 CFR 661.5 was included in section 45(b)(9)(B)(ii) which refers to how the requirement should be applied in the case of steel and iron specifically. 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 in its requirement that the Department apply an "all manufacturing processes/melted-and-poured" standard for steel and iron.

Manufactured Products

While the code specifically references 49 CFR 661 to apply a melted-and-poured standard to steel and iron in section 45(b)(9)(B)(ii), it does not make any such reference to these regulations in section 45(b)(9)(B)(iii) applicable to manufactured products. This is reflective of legislative intent that the reference to 45 CFR 661 was intended solely to direct the Department to the proper origin standard for steel and iron, but the content threshold for manufactured products is outside the scope of 49 CFR 661.

In determining the proper interpretation and implementation of an origin standard for manufactured products, the Department should draw upon precedent and the consistent actions taken by the Congress and administration. For example, the Build America Buy America Act expanded domestic content preferences to iron, steel, manufactured products, and construction materials, and the administration has put in place a phased increase in the content percentage for manufactured goods under the Buy American Act. In both cases, the goal has been to strengthen and expand the amount of domestic content required for a manufactured product to be considered American-made, and the implementation of this provision should be implemented similarly.

Further, the Department should reject a policy that overlooks the origin of components, parts, and upstream raw materials necessary to produce a given manufactured product. These policies work best and drive job growth and retention most when they are applied as broadly as possible, and should be applied here with that intent.

Documentation
We appreciate that the Department is carefully considering the records and documentation necessary to certify compliance with these requirements. This is crucial to the successful functioning of these provisions and must be robust.
We recommend the implementation of a “step certification” process similar to those used by federal agencies that administer federal assistance Buy America preferences. These are mature and successful mechanisms that maximize compliance while minimizing administrative burden. Further, as a process which places the responsibility on the assistance 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 seems in some ways even better suited to Treasury than other agencies, as the IRS obviously has extremely long experience in requiring retention of documents that may be called upon under audit.

(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.

We appreciate the need for clear and unambiguous guidance in areas which can often be difficult to parse, and the Department’s interest in providing such guidance. For all of these subquestions, to the extent that further clarification is necessary, we urge the department to make these clarifications in a manner that reflects the Biden administration’s consistent stated goal of strengthening Buy America policies and broadening their reach.

For example, often the domestic sourcing requirements for manufactured products turn on whether a given item is considered a component or a subcomponent of a manufactured product. Gamesmanship often manifests within all these definitional issues, and the Department should seek in any clarifications to ensure that terms like “qualified facility,” “component,” and “subcomponent” are defined such that the preference applies to the maximum practicable number of products.

This is particularly important in the context of a bonus credit, which is designed to reward good actors for sourcing domestically. This is intended to be a high bar and to drive investment in domestic supply chains in order to receive this benefit, and should be applied in that context.

(3) Solely for purposes of determining whether a reduction in an elective payment amount is required under § 6417, §§ 45(b)(10)(D) and 45Y(g)(12)(D) provide an exception for the requirements contained in §§ 45(b)(9)(B) and 45Y(g)(10)(B) (respectively) if the inclusion of steel, iron, or manufactured productions that are produced in the United States increases the overall costs of construction of qualified facilities by more than 25 percent or relevant steel, iron, or manufactured products are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality.

We support the inclusion of responsible waiver systems whenever Buy America is applied. Absent such policies, Buy America would run the risk of slowing down deployment of projects, which is contrary to our goals and the goals of Congress and the administration. Buy America is intended to provide a preference for domestic products and an incentive to source them, but it is nevertheless the case that some necessary products are not produced domestically at present. In such cases, narrowly-construed, time-limited waivers have proven necessary until such time as a domestic industry in a given product can be developed.

While waivers are not necessary in the case of the bonus credit, which is either an extra reward for those that qualify, we support the policy that for purposes of applying the reduction in elective payment amount for qualified facilities that do not use domestic products, a waiver process is necessary and advisable.

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.

The terms for which the Department is seeking potential clarification in this section are well-understood terms in federal assistance Buy America preferences and should be understood as having the same meaning here. This is in keeping with Congressional and Legislative goals to ensure the harmonization wherever possible of all domestic content preferences throughout the government. Ensuring these policies work the same as much as possible as often as possible makes them all easier to manage, administer, and with which to comply.

Energy Community Requirement

(1) Section 45(b)(11)(A) provides an increased credit amount for a qualified facility located in an energy community. What further clarifications are needed regarding the term "located in" for this purpose, including any relevant timing considerations for determining whether a qualified facility is located in an energy community? Should a rule similar to the rule in § 1397C(f) (Enterprise Zones rule regarding the treatment of businesses straddling census tract lines), the rules in 26 C.F.R. §§ 1.1400Z2(d)-1 and 1.1400Z2(d)-2, or other frameworks apply in making this determination?

As coal-fired power units and coal mines close, local governments often lose significant tax revenue, putting everything from schools to water treatment facilities in danger of being severely underfunded. New investments in energy communities can help replace some of that revenue, potentially saving these communities. When thinking about the term "located in," Treasury should consider the local government entities most affected by revenue losses, and encourage investments in these areas.

Therefore, the term "located in" should align with governmental entities which receive the highest property taxes and/or income benefits from qualified facilities. This is important for several reasons. 1) Often the significant reduction in tax revenue experienced by a community after the deactivation of a coal plant, or mine closure is accompanied by changes in the social make-up of a community and unwanted land use. 2) For a host community, property tax revenue is often used for other important obligations in addition to operational purposes. These obligations include capital improvements, debt service payments and bond obligations. These reasons point out the importance of taking into account revenue losses for the community most affected by the closure or deactivation.

(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?

Clean energy projects located predominantly or entirely on a brownfield site should be eligible for the tax credit bonus. The boundaries of a brownfield site are not always precise, and some clean energy projects may not fit perfectly inside of those boundaries. Such projects located on a brownfield site should not be disqualified if they need to extend beyond the site boundaries.

It remains unclear if a site fully remediated and redeveloped under the brownfields program prior to the passage of the Inflation Reduction Act would continue to be considered a "brownfield site" in this definition. In order to maintain some consistency, Treasury should limit eligible brownfields sites to those designated after December 31, 1999, matching the criteria for closed coal mines.

(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?

If Treasury is limited to using publicly-available data, then the Census County Business Patterns (CBP) dataset is the best available source. This dataset includes county-level employment estimates categorized by NAICS industry codes, which are specific enough to allow for a decent estimate of employment in transportation, extraction, and processing of fossil fuels.

The other dataset that could be suitable is the BLS Quarterly Census of Employment and Wages (QCEW). Unfortunately, publicly-available QCEW data redacts employment values for many industries at the county and MSA level, so estimates based on this data will tend to underestimate employment in specific industries in many places. However, if Treasury can access private QCEW data directly from the BLS with no employment redactions, this data could be used in addition to or instead of Census CBP.

Both CPB and QCEW data are NAICS-based, which means employment is categorized by industry. This makes it likely that certain types of relevant workers will be left out of an analysis based only on these sources. For instance, workers who transport coal are likely categorized as "Rail Transportation" workers, with no way to distinguish them from non-energy workers in the same industry. Treasury should attempt to account for this dynamic by including some suitable subset of industries such as rail transportation in its totals. Data from the US Energy and Employment Report from DOE and BW Research Partnership, as well as occupation-based data from the BLS Occupational Employment and Wage Statistics, may be useful in deciding how to account for this dynamic.

Whatever data sources Treasury ultimately uses for this analysis, it's important to recognize that the inclusion and exclusion of MSAs will be highly sensitive to small differences in data sources and assumptions. Treasury should be mindful of this sensitivity in its analysis. If multiple sources of data or methodologies are being considered, Treasury should conduct a sensitivity analysis in order to understand how changes in approach may change which areas qualify as energy communities under this provision. Whatever methodology and data sources are ultimately used should be made public.

Finally, because of the sensitivity of this analysis to underlying data and methodology, Treasury should work to ensure that communities are not excluded due to arbitrary data issues. To the extent possible, Treasury should offer some flexibility in deciding which MSAs qualify for this criterion. For example, Treasury could come up with multiple lists of qualifying MSAs based on different data sources and methodologies, and then ultimately deem any MSA eligible if it appears on the majority of those lists.

Additionally, Treasury should allow for certain entities to appeal to the department for an MSA or non-MSA to be added to the list if the area is initially left out. These entities would need to demonstrate that the area would have been included but for an arbitrary data analysis choice, or a flaw or quirk in the data.

To limit the number of appeals the staff at Treasury would need to review, the types of entities eligible to appeal to the department could be limited to state and local governments, companies, non-profits, labor unions, churches, schools, and training centers.

(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)?

Coal Mines

The Office of Surface Mining Reclamation and Enforcement (OSMRE) and the Energy Information Agency (EIA) can provide accurate information for determining census tracts that have a coal mine closed after December 31, 1999, or had a coal-fired electric generating unit retired after December 31, 2009. States have primacy for the regulation of coal mining, so OSMRE may need to communicate with state regulators to ensure all information is precise and up to date.

For the purposes of this program, coal mines should be considered closed if they meet either of the following criteria.

A mine should be considered "closed" after the permittee has completed Phase I of the bond release process under 30 CFR 800.40. While Phase 1 is not the final step in the reclamation process, it is a clear sign that mining has completely ceased at the permitted mine site.

Not all closed mines have satisfied their legal obligations, however. To remain in line with the purpose of this tax credit bonus, census tracts should qualify if they contain a coal mine that has not produced coal for more than two years, even if the permittee has not begun the bond release process. These mines, sometimes referred to parochially as “zombie mines,” are an environmental and economic burden. The mine owners of such mines have failed to reclaim the sites, but the surrounding communities are not benefitting from the jobs or tax revenues of an active mine, and therefore face the same economic difficulties as communities near recently reclaimed mines. The Mining Safety and Health Administration (MSHA) tracks employment and production at the individual mine level, and in coordination with OSMRE and state regulators, can provide the accurate and up to date information on mines with active permits, but no active production.

Coal-fired Electric Generating Units
Coal-fired electric generating units should, as the Inflation Reduction Act clearly states, be considered on a unit by unit basis. If one unit closes at a three unit power plant, there will still be workers without jobs, and local governments coping with lost tax revenue. The law rightly recognizes the need to provide tax incentives for investment in communities that have lost a unit, not just those that have lost entire power stations.

For defining “retired” after December 31, 2009, a coal-fired electric generating unit is listed as “retired” in the EIA-860 data provided by the Energy Information Administration.

Moving forward, census tracts not currently eligible for the tax credit bonus because they contain only operating coal-fired generating units should become eligible the moment those units retire.

Coal-fired electric generating units face similar issues to coal mines, in that closure is a multi-step process. Many plants cease operations or begin the closure process long before finally decommissioning. It may be of little benefit to the power plant workers and surrounding community to start planning and developing clean energy projects only after the coal plant has closed or fully decommissioned. Development should begin as soon as closure is a certainty.

Once the retirement process commences for a coal-generating electric unit, the surrounding census tract should be eligible for the tax credit bonus.
A unit should be considered “retired” once the approval to deactivate is granted by the state public utility commission for those states which have regulated generation, or by the Regional Transmission Organization (RTO) or the Independent System Operator (ISO).

(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?

Clean energy projects located on a brownfield site should be eligible for the tax credit bonus for the life of the tax credit. Full remediation of that site should not result in it no longer being considered a "brownfield," and therefore no longer being considered eligible as an "energy community." Doing so could not only result in uncertainty that would prevent investment, but could also have the unintended consequence of discouraging the expeditious and complete remediation of a brownfield site, as the potential loss of the tax credit bonus could result in job losses.

Furthermore, it is critical that any future changes or adjustments made to the boundaries of a metropolitan statistical area, non-metropolitan statistical area, or census tract do not revoke eligibility for any areas initially eligible for a tax credit bonus. Clean energy investors should also have certainty that no changes will be made in future years to make initially eligible areas ineligible. Projects take years to plan, and many will rely on the tax incentives in the Inflation Reduction Act. Any doubts about future eligibility would serve to inhibit investments.

(7) Please provide comments on any other topics relating to the energy community requirement that may require guidance.

In order for the tax credit bonus to spur investments in energy communities, any entity investing in clean energy will need to have certainty that their project is eligible. A comprehensive, accessible, easily searchable list of eligible census tracts needs to be available on a federal agency website.

Given the challenges in defining "energy communities," creating a firm list of eligible census tracts could unintentionally exclude communities that should qualify. Instead, a list of eligible communities should be accompanied by an opportunity for those outside the federal government to appeal to Treasury demonstrating that a statistical area does indeed qualify.