

Comment from Climate Jobs Illinois

Climate Jobs Illinois submits these recommendations in response to the U.S. Department of the Treasury's request for public comments on how it should implement the clean energy tax incentives contained in the Inflation Reduction Act. See attached for our comments.



November 4, 2022

TO: U.S. Department of the Treasury; Internal Revenue Service

FR: Climate Jobs Illinois

RE: Public Comments on Implementation Regulations for the Clean Energy Tax Incentives of the Inflation Reduction Act (“ACT”)

Please direct questions and comments to:

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About Us

Climate Jobs Illinois is a coalition of labor organizations advocating for a pro-worker, pro-climate agenda in Illinois. Our mission is to advocate for a clean energy economy at the scale climate science demands, create good union jobs and support more equitable communities. Our coalition represents hundreds of thousands of Illinois working men and women who are the best trained and skilled to build Illinois’ new clean-energy economy from the ground up. Building a clean energy economy is an opportunity for labor to lead in climate by creating high-quality family-sustaining jobs that spur economic development while reducing carbon emissions.

Climate Jobs Illinois is a state affiliate of the Climate Jobs National Resource Center. Climate Jobs Illinois is directed by a coalition representing hundreds of thousands of union members across Illinois, our Executive Committee is comprised of leadership from:

- Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers Union Chicago & St. Louis
- Mid-American Carpenters Regional Council

- International Brotherhood of Electrical Workers Local 134
- International Brotherhood of Electrical Workers State Council
- Illinois Education Association
- Illinois Federation of Teachers
- International Union of Operating Engineers Local 150
- Midwest Region of Laborers International Union of North America
- Great Lakes Region Laborers International Union of North America
- Service Employees International Union State Council
- International Association of Heat and Frost Insulators and Allied Workers

Background

The U.S. Department of the Treasury has released [six Notices](#) requesting public comments on how it should implement certain provisions of the ACT. CJNRC has developed a set of suggested comments to Notices #1, #2, and #6, covering a number of the key issues facing unions as they work to maximize the benefits to workers and communities of the ACT. Our suggestions focus on five broad topics:

- I. How to encourage compliance with the Davis-Bacon wage standards;
- II. How to implement the requirement to use registered apprentices;
- III. Suggestions for a process for equitable allocation of the 1.8 GW of low-income tax incentives;
- IV. How to administer the bonus incentives for domestic content and for projects located in “energy communities”; and,
- V. how to make the direct pay process for not for profits as practical and efficient as possible.

Sec I and II. Comments on Enforcement of Prevailing Wage and Apprenticeship Requirements

In developing its regulations to implement the labor provisions of the ACT, the Department must take notice of the enforcement challenge it faces. More specifically, there will likely be tens of thousands of energy projects starting every year for the life of the incentives. Monitoring compliance of all these projects will be extremely challenging given the limited resources of the Agency. While hiring more compliance agents will be necessary, it is unrealistic to base the enforcement program on a new army of compliance agents. The mismatch between the number of projects and number of agency staff can be addressed in other ways. Specifically, as detailed

below, the agency can rely upon information sharing, transparency, and participation by stakeholders such unions and not for profits in the compliance process.

1. A Strategy for Information Sharing and Transparency

A) Taxpayers Should be Required to File a Public Notice Declaring a Taxpayer's Intention to Claim Bonus Tax Credits by Paying Prevailing Wage and Using Apprentices.

At least 60 days prior to the beginning of construction, the Secretary should require taxpayers to file a notice of their intention to claim bonus tax credits by meeting the law's prevailing wage requirements. The notice should be filed with the IRS and made public via the IRS website. The Secretary should require the following information to be included in the taxpayer's declaration of intention to claim benefits:

1. Information about the taxpayer, including the following:
 - a. Name and contact information including their physical address, email address, and phone number
 - b. Whether the taxpayer is currently affiliated with or participates in a registered apprenticeship program. If so, provide the name and contact information of the registered apprenticeship program and the number and type of apprentices received from the registered apprenticeship program
2. Information about the taxpayer's contractors or subcontractors (if hired at the time of submission), including the following:
 - a. Name and contact information including their physical address, email address, and phone number
 - b. Whether the contractor or subcontractor is currently affiliated with or participates in a registered apprenticeship program. If so, provide the name of the registered apprenticeship program(s) and the number and type of apprentices received from the registered apprenticeship program.
3. Information about the qualified facility or facilities for which the taxpayer is receiving a tax credit, including the following:
 - a. The type of energy the qualified facility or facilities will be producing (i.e. solar energy, wind energy, hydro energy, etc.)
 - b. The location of the qualified facility

- c. The type of work that will be performed on the qualified facility (i.e. construction, alteration, or repair)
 - d. The estimated start and end date of construction
 - e. An estimate of the total number of labor hours needed to complete the project
4. A description of the project's workforce, including the following:
- a. An estimate of the total number of construction employees that will be hired
 - b. An estimate of the total number of apprentices that will be hired, in which trades they will work and the rates of pay they will be paid, and the name and description of the apprenticeship program they will be enrolled in
 - c. An estimate of the total number of journeypersons that will be hired and in which trades they will work and the rates of pay they will be paid
 - d. The types of construction crafts that will be needed to complete the project
 - e. Taxpayers can meet the obligations of paragraphs b and c by providing a copy of an agreement or agreements, including a project labor agreement, that will show that they will meet the labor standards (prevailing wage and apprenticeship program) that are prerequisites for obtaining the tax credit.
5. A description of the Workforce Development Plan
- a. The taxpayer's plan for locating and employing a sufficient number of qualified apprentices and journeypersons to meet the required apprenticeship labor hours.
 - b. If applicable, the contractors or subcontractors plan for locating and employing a sufficient number of qualified apprentices and journeypersons to meet the required apprenticeship labor hours.
 - c. Taxpayers can meet the obligations of paragraphs a and b by providing a copy of an agreement or agreements, including a project labor agreement, that will show that they will meet the labor standards (prevailing wage and apprenticeship program) that are prerequisites for obtaining the tax credit.

B) Taxpayers that Claim Tax Credits with Labor Requirements Should Be Required to Regularly Submit a Sworn Labor Compliance Report to the Department of Treasury.

The Secretary should require that taxpayers, their contractors, and subcontractors that are subject to the Act's labor requirements submit certified payrolls and a sworn labor compliance report, with appropriate documentation.

The compliance reports should be submitted to the IRS at the end of each month and made publicly available via the IRS website. Davis-Bacon reporting on certified payroll should apply to taxpayers subject to the Act's labor requirements, and the IRS should make these reports publicly available via the IRS website as well.

Improving transparency so that members of the public can view certified payrolls will be an effective method for facilitating compliance without requiring an increase in compliance staff proportional to the substantial increase in labor compliance cases that the Inflation Reduction Act will create, protecting law abiding employers from being undercut by noncomplying entities.

The following information should be included in the compliance report:

1. Information about the taxpayer, including the following:
 - a. Name and contact information including their physical address, email address, and phone number
 - b. Whether the taxpayer is affiliated with or participates in a registered apprenticeship program. If applicable, provide the name and contact information of the registered apprenticeship program and the number and type of apprentices received from each registered apprenticeship program.
2. Information about the taxpayer's contractors or subcontractors, including the following:
 - a. Name and contact information including their physical address, email address, and phone number
 - b. Whether the contractor or subcontractor is affiliated with or participates in a registered apprenticeship program. If applicable, the name of the registered apprenticeship program(s) and the number of and type of apprentices received from the program.
3. Information about the qualified facility or facilities for which the taxpayer is receiving a tax credit, including the following:
 - a. The type of energy the qualified facility or facilities will be producing (i.e., solar energy, wind energy, hydro energy, etc.)
 - b. The location of the qualified facility or facilities

- c. The type of work that will be performed on the qualified facility or facilities (i.e., construction, alteration, or repair)
 - d. The start date of construction and the estimated end date of construction
 - e. The total number of labor hours completed on the project at the time of submission
 - f. An estimate of the total number of labor hours that will be needed to complete the project
4. A description of the project's workforce at the time of submission, including the following:
- a. The total number of construction employees that have been hired
 - b. The total number of apprentices that have been hired
 - c. The total number of journeypersons that have been hired
 - d. The total number of labor hours worked by qualified apprentices and journeypersons
 - e. The amount of hourly wages being paid to workers on the project.

2. A Program for Stakeholder Participation

The Treasury Department should work with the Department of Labor and local agencies with jurisdiction to enforce prevailing wage law to facilitate the establishment of Stakeholder Compliance Programs.

A Stakeholder Compliance Program enlists not for profit worker organizations, including unions, worker centers, legal advocacy organizations, and other community-based organizations. Potential partners would need to demonstrate expertise on labor violations or extensive experience with specific worker communities that are expected to work on projects receiving the Act's tax credits.

Representatives from the Stakeholder Compliance Program shall be issued federal identification badges, have the right to enter work sites without interference from employers, as well as the right to conduct interviews with employees to discuss hours worked, wages received, and problems receiving pay. Upon identifying violations, representatives shall aid employees in the wage-complaint process. The Stakeholder Compliance Program partners will be required to meet with employers to discuss their findings, discuss cases, trends, challenges, new approaches, and priorities.

3. Create a process that allows interested parties to file reports on taxpayers that fail to comply with required labor requirements.

The public should be given an opportunity to file a report with the IRS concerning a taxpayer's failure to comply with labor requirements. The reporting process should be streamlined and clearly outlined on the IRS website.

4. Continuous Apprenticeship Opportunities

The Good Faith Effort provision of the Act's Apprenticeship Requirement states that if a taxpayer's request for qualified apprentices from an apprenticeship program is denied, for reasons such as the program lacking sufficient apprentices to satisfy the request, then the taxpayer will have made a Good Faith Effort and will not lose its eligibility for bonus tax incentives.

In such cases, the apprenticeship program should have the continuous right to offer to the employer the qualified apprentices solicited in the taxpayer's initial request, at any time while the construction of the facility is ongoing. To continue satisfying the Good Faith Effort provision, if the employer has job openings on the project that apprentices offered by the apprenticeship program are qualified for, then the employer must employ those apprentices.

Additionally, the Secretary should issue regulations or guidance that further clarifies what efforts a taxpayer must take to avail themselves of the good faith efforts exception. The regulations or guidance should require the following:

1. Taxpayers and their contractors and subcontractors must make every reasonable effort to meet the required number of labor hours that must be performed by qualified apprentices. A reasonable effort means that the taxpayer and their contractors and subcontractors have contacted a specified number of registered apprenticeship programs before applying for a waiver under the good faith exception.
2. If apprentices are not available for dispatch at the beginning of the project, it is expected that the taxpayer or its contractor or subcontractors will contact a specified number of registered apprenticeship programs every month until satisfying the apprenticeship labor hours requirement.
3. Taxpayers that are unable to meet the apprenticeship labor hours requirement must submit an application for a Good Faith Efforts ("GFE") Waiver. An applicant for a GFE waiver must submit the following information:
 - a. Name and contact information of the taxpayer receiving the tax credit as well as any contractors or subcontractors that fail to satisfy the apprenticeship labor hours requirements.

- b. Evidence demonstrating that the taxpayer and its contractors or subcontractors contacted the required number of apprenticeship programs and the reasons for why they were unable to receive the number of apprentices needed to meet the apprenticeship labor hours requirement. If no apprentices are available, the contractor will document their contacts with apprenticeship programs (such as copies of e-mails or letters requesting apprentices and the response from the program/s stating by letter or e-mail that no apprentices are available).
 - c. The steps the taxpayer or its contractors and subcontractors are intending to take to come into compliance, including submitting a plan to either check back with apprenticeship programs that it already reached out to or searching for new apprenticeship programs.
 4. If granted, the GFE waiver will only excuse the taxpayer from meeting the required apprenticeship labor hours for the 3 months immediately preceding the date of approval. Once a GFE waiver has expired, the taxpayer will need to reapply for a new GFE waiver.
 5. A taxpayer's completed GFE waiver and the Treasury's decision to grant or deny the waiver must be made publicly available via the IRS website.

5. Create and maintain a nationwide database of registered apprenticeship programs.

The Secretary should create a searchable database that lists registered apprenticeship programs in each state. To be included in the database, registered apprenticeship programs should be required to demonstrate the following:

1. Regularly graduate apprentices to journeyperson status
2. Regularly recruit diverse apprentices including minorities, women, and low-income individuals
3. Has entered into a formalized agreement with a pre-apprenticeship training program that permits pre-apprenticeship graduates to enter directly into the registered apprenticeship program
4. Provides a minimum of 30 hours of Occupational Safety and Health Training
5. Utilizes functioning training facilities

The database should list the following information for each registered apprenticeship program:

1. Name and contact information including phone number, email address, physical address, and hours of operation
2. Whether the apprenticeship program is registered with U.S. DOL or a state apprenticeship agency
3. The types of construction crafts available
4. Apprenticeship graduation rates
5. Union affiliation, if applicable

III. Process to Allocate 1.8 GW of Annual Incentive – 10% Federal Tax Credit – For Investments in Solar and Wind Facilities That Meet Environmental Justice Standards

1. Application Process for Receiving the 1.8 GW Environmental Justice Solar and Wind Capacity Limitation

To receive an allocation of 1.8 GW of incentives under the 10% tax credit for investments that serve specific low income and environmental justice goals, for profit or not for profit project developers (“proponents”) should be required to submit to the IRS the following information:

- evidence the project is located in an area that meets the target income level.
- evidence of site control;
- details on the project financing plan, including sources and uses of funds;
- letters of commitment from investors and/or lenders to the project;
- identification of the parties to be served by the project;
- letters of support from the intended beneficiaries;
- identity of the off-taker for the energy produced;
- a plan to utilize registered apprentices;
- statement of commitment to pay prevailing wages to employees utilized on the project;
- any feasibility studies and similar projections of output;
- proposed start date; timetable for completion; interim milestones;

Recipients of the allocation should be required to complete the project within a reasonable time, consistent with industry standards and practices for projects of a similar scope. Recipients of the allocation should be required to inform the Department within 6 months of being awarded an allocation if they will be able to complete the project within the projected time frame and at the scale originally projected. If the proponent has knowledge that the project is not going to be able to fully utilize its allocation, the proponent shall promptly relinquish the projected unused portion of the allocation.

The Department shall establish a list in the form of a queue of projects applying to receive the allocation. The list shall be ordered by date of submission to the queue. The Department shall make the queue public and periodically update it monthly. In the event that a project is unable to receive an allocation because the 1.8 GW for the year has been exhausted, the project should remain in the queue in its position at that time and carry over to the subsequent year. Reallocation of unused or new annual credits should be distributed according to the queue order.

2. Proposed Regulations for Requirements that Taxpayers to Provide an Economic Benefit to Low-income Communities.

The Statute does not define the term “economic benefits” but does require the Treasury to take into account whether the electricity produced by the projects is provided at a below-market rate to low-income households. The Secretary should include other types of economic benefits that can be provided to low-income households including the following commitments to partner with local pre-apprenticeship training programs and commitments to hire local residents as apprentices and journeypersons.

At least three months prior to construction, the taxpayer should be required to declare their intentions to claim tax credits that require providing economic benefits to low-income communities. The IRS should publish this declaration on the IRS website. The declaration should include the following information:

1. Name and contact information of the taxpayer including phone number, physical address, and email address
2. The location of the project
3. Whether the project is a low-income residential project or a low-income economic benefits project
4. The types of economic benefits that will be provided to the impacted low-impacted community

Additionally, the host community should be given an opportunity to submit a statement indicating whether they support the proposed project and their view of the proposed economic benefits.

Taxpayers should be required to regularly submit reports on the economic benefits provided to Low-Income Communities. The Secretary should monitor taxpayers' progress in providing proposed economic benefits to low-income communities. Specifically, the Secretary should require that taxpayers regularly submit progress reports on the types of economic benefits that are being offered. The IRS should make the reports publicly accessible via the IRS website.

IV. Clarify the Determination of Domestic Content for Manufactured Products Composed of Steel and Iron Components; Definition of Energy Communities

For manufactured products that are themselves composed of steel and iron components, where those steel and iron components are produced in the US as described in 45(b)(9)(B)(ii), the costs of such steel and iron components should be included in the determination of whether the manufactured product meets the domestic content criteria.

The costs of such steel and iron components should be considered a portion of the total costs of manufactured products mined, produced, or manufactured in the United States that will be divided by the total costs of all manufactured products of the qualified facility, to calculate the percentage that must be above the adjusted percentage to qualify for the domestic content provision.

Section 45(b)(11)(B)(ii) of the Inflation Reduction Act defines energy communities based on the percentage of employment in a metropolitan or non-metropolitan statistical area "related to the extraction, processing, transport, or storage of coal, oil, or natural gas." These metropolitan or non-metropolitan statistical areas must also meet the condition of an unemployment rate at or above national average unemployment rate for the previous year.

The percentage of employment in a metropolitan or non-metropolitan statistical area related to coal, oil, or natural gas should be measured over the 10 years prior to the passage of the Act.

V. Prompt Payment for Applicable Credits, including Direct Pay

From 2009-2011, The American Recovery and Reinvestment Act's Section 1603 Cash Grant program allowed renewable tax credit recipients to elect to receive cash grants in lieu of tax credits. Under the Section 1603 program, the Treasury made payments within 60 days after receiving a completed application from a qualified applicant.¹ Regulations for the Inflation

¹ <https://home.treasury.gov/system/files/216/GUIDANCE.pdf>

Reduction Act's Elective Payment of Applicable Credits should be similarly structured, but should shorten the 60-day payment window to a 30-day payment window.

In most cases, a public entity or nonprofit organization will require debt financing to cover the high upfront project costs of a renewable project, using the Inflation Reduction Act's Elective Payment provision to pay down a substantial portion of loan principal. Longer wait times for elective payment will cause higher interest costs to accumulate. The Treasury should adopt rules similar to those set by the Bureau of Fiscal Service for prompt payment, which specifies that agencies must pay recipients within 30 days, and that late payments will accrue interest to reflect the costs of delayed payment.²

² <https://www.fiscal.treasury.gov/prompt-payment/faqs.html>