



November 4, 2022

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

Submitted to Docket IRS N-22-51 via Regulations.gov

**Comments of GRID Alternatives in Response to IRS N-2022-51:
Prevailing Wage, Apprenticeship, and Domestic Content**

GRID Alternatives (GRID) offers these comments on the Treasury Department’s planned guidance regarding the provisions of §§ 45, 45Y, 48, 48E, and 6417 of the Internal Revenue Code,¹ as amended or added by the Inflation Reduction Act of 2022 (IRA).² GRID is a 501(c)(3) tax-exempt nonprofit organization and a national leader in helping economic and environmental justice communities³ nationwide get clean, affordable renewable energy, transportation, and jobs. As America’s largest nonprofit installer of clean energy technologies, we appreciate this opportunity to provide input on how the Treasury Department can implement certain clean energy incentives in the IRA in a manner that is efficient, effective, and most of all, equitable.

Introduction and Background

GRID envisions a rapid, equitable transition to a world powered by renewable energy that benefits everyone. We are working across the United States and internationally to build community-powered solutions to advance economic and environmental justice through renewable energy.⁴ To do so, GRID partners with affordable housing organizations, job training groups, government agencies, municipalities, environmental and social justice organizations, clean energy industry members, utilities, tribes, and local

¹ Any references to “Section” refer to sections of the Internal Revenue Code of 1986, as amended, or to Treasury regulations promulgated thereunder.

² P.L. 117-169, 136 Stat. 1818 (Aug. 16, 2022).

³ Deficit framing such as “low income” and “disadvantaged communities” defines individuals, groups of people or communities by the problems and/or issues they are faced with. While deficit terminology is common in legislative and regulatory language and in discussions around equitable access to clean energy, in these comments GRID aims to emphasize where feasible the systems of injustice our communities face, their aspirations to overcome them, and their assets such as leadership on climate solutions. *See, e.g.,* Miriam Axel-Lute, *The Opposite of Deficit-Based Language Isn’t Asset-Based Language. It’s Truth-Telling*, *Shelterforce Weekly* (Nov. 12, 2019), available at <http://shelterforce.org/2019/11/12/the-opposite-of-deficit-based-language-isnt-asset-based-language-its-truth-telling>.

⁴ *See generally* <http://www.gridalternatives.org>.

communities to make clean energy a win for everyone. Our increasingly wide-ranging work includes:

- Solar and storage installations at no cost to households qualifying as low-income, providing more than \$600 million in lifetime savings through our work
- Community/shared solar project development and implementation
- Technical assistance and solar installation for multifamily affordable housing providers
- Hands-on solar training for more than 30,000 individuals to connect people to clean energy jobs and increase equity, inclusion, and diversity in clean energy industries
- Outreach, education, and community engagement around clean energy, electrification, and environmental justice
- Equity-first clean energy policy leadership
- Over a decade of state and local energy access program design and implementation⁵
- Connecting economic and environmental justice communities with electric vehicle programs

Transitioning to renewable energy will require significant investment in workforce development to meet the growing labor demands of the industry. The Solar Energy Industries Association (SEIA) estimates that in order to reach SEIA's Solar+ Decade target of solar comprising 30% of all U.S. electricity generation by 2030, towards the Administration's target of reaching 100% carbon pollution-free electricity by 2035, the solar and storage industries will need 800,000 new workers for a total workforce of more than 1 million workers.⁶ It is becoming increasingly important to have multiple avenues for entering the clean energy workforce that take into account the diverse needs of marginalized communities. As the industry expands, it is crucial that career pathways are accessible, flexible, and lead to high-quality jobs with family-supporting wages.

GRID is committed to making our hands-on job training opportunities accessible to groups that are traditionally underrepresented in solar including women, people of color, and those impacted by the criminal justice system. Through partnerships with other community-based organizations, GRID recruits trainees from hard to reach populations that often face barriers to entering the workforce, and provides them with classroom and hands-on installation training as well as job placement assistance and other wrap-around services. GRID also supports standardization of training curriculum in solar and clean energy. We are part of a working group of employers led by the Interstate Renewable Energy Council (IREC) to explore the creation of new apprenticeship programs specifically tailored towards renewable energy, and informed by the needs of both industry employers and workers.

GRID has worked closely with many organizations since early 2021 to advocate for the strongest possible support for equitable access to clean energy benefits and jobs in the legislation that became the IRA. We are also submitting comments on Notices 2022-49 and 2022-50, and incorporate those comments by reference herein.

⁵ In 2009, GRID Alternatives led the implementation of the nation's first low-income solar incentive program for single-family homeowners under the California Solar Initiative, bringing 16MW of solar to over 5,200 households in the program's initial 7-year run. This program's success inspired subsequent programs around the country, including California's Disadvantaged Communities - Single-family Solar Homes (DAC-SASH) program which GRID also administers. GRID was also selected by the California Public Utility Commission's Energy Division in 2018 as part of the nonprofit Program Administration team for the Solar on Multifamily Affordable Housing (SOMAH) program.

⁶ See SEIA, *Workforce Development*, <https://www.seia.org/initiatives/workforce-development>.

General and Procedural Guidance Recommendations

Clear, detailed, inclusive, and accessible guidance will be of the utmost importance to ensuring a clean energy transition that is rapid and equitable, as well as being fair to workers and their families. GRID provides more extensive procedural and substantive recommendations on IRA guidance in our comments on IRS Notice 2022-49.

A one megawatt (1 MW) project size threshold for imposition of requirements includes not only utility-scale projects, but also community solar and some behind-the-meter commercial and multi-family residential projects. For many of these projects, the IRA's establishment of elective direct payments for applicable entities under Section 6417 ("direct pay") will promote equity and energy justice by enabling ownership and incentive opportunities directly, for the first time, to a wide diversity of entities including community-based organizations (CBOs) and other nonprofits, municipalities, and tribes. Many of these entities have little prior experience obtaining federal incentives through the tax system or navigating federal and state labor rules, Davis-Bacon, or domestic content requirements.⁷ The clean energy tax incentives under the IRA cannot be considered successful and effective if such entities, often serving economic and environmental justice communities, face continued higher barriers to proportional access relative to for-profit companies in more established markets.

Guidance must specifically target these entities, and must anticipate and alleviate barriers arising from inexperience, marginalization, and capacity limitations. A one-stop online compendium should be maintained and updated, incorporating questions and answers as they arise in projects around the country, so that experience and understanding are shared equitably by and with direct pay applicable entities. Guidance should avoid cross-references, jargon, and opaque numerical shorthand for statutory or regulatory requirements as much as possible. Documentation and recordkeeping requirements should be as streamlined as possible, especially around good faith efforts and possible exceptions. Tracking and oversight requirements for projects taking tax credits should be both robust and manageable.

Before finalizing the guidance (and for the labor requirements, triggering the 60-day compliance phase-in), the Treasury Department should reality-check proposed guidance and procedures in detail through rapid and active outreach to tribes, CBOs, municipalities, rural electric cooperatives, and other direct pay eligible entities, especially but not exclusively those with prior clean energy project experience. Once final guidance is promulgated, the Treasury Department should expand active outreach to ensure widespread awareness and understanding of labor and domestic content requirements. It should put significant emphasis on—and funding toward—community outreach and education, incorporating locally-rooted CBOs and other trusted local sources of information as key avenues for sharing the guidance broadly and with cultural competence in affected communities. The Treasury Department and the IRS should also offer extensive ongoing compliance assistance and allow correction of good-faith mistakes.

⁷ See generally GRID comments on IRS Notice 2022-50.

.01 Prevailing Wage (§§ 48(a)(10) and 48E(d)(3) (incorporating by reference § 45(b)(7))

As noted above, guidance must be clear, detailed, and highly accessible to entities that may not have previous experience with these labor requirements. One specific issue to address is the application of these requirements to ongoing operation and maintenance of various types of facilities, which could pose significant practical issues for one-time credits such as those under Sections 48 and 48E. Another is the application to tribes, which should be able to set their own prevailing wage scales as in certain other contexts.

The current absence of specific job classifications, occupational categories, or NAICS codes for distributed solar installers or certain other occupations in the rapidly changing clean energy sector makes clear guidance and compliance resources especially crucial. Currently, for example, solar installer prevailing wage determinations generally must make do with applying the rates for electricians or for roofers or laborers, depending on applicable tasks. Actual project installations, however, often do not support a neat dividing line among tasks between these categories, especially as the electric grid evolves to be much less centralized. Especially for projects near the 1 MW threshold, the existing job classifications can lead to significant confusion and expense, especially for small- and medium-sized and minority- and women-owned business enterprises and direct pay applicable entities. The Treasury Department should work closely with the Department of Labor, Department of Energy, clean energy employers and project developers at all scales, job training organizations, and a diverse range of potential project owners, as well as workers, to develop creative solutions to job classification mis-alignments. Doing so can protect new and incumbent workers while not over-burdening projects serving economic and environmental justice communities or hindering a fast transition to a cleaner, more distributed, more just energy system.

The manner in which prevailing wage requirements are implemented can also make it more difficult to provide some of the most valuable hands-on training opportunities. For example, GRID hosts many individuals for year-long SolarCorps fellowships, including in solar construction.⁸ We also work with shorter-term trainees, like those GRID Alternatives Mid-Atlantic and its partners train in paid, multi-week Solar Works DC cohorts,⁹ who receive industry-recognized certifications along with other services. This training opens doors into family-sustaining career paths in clean energy, including but not limited to apprenticeship paths, for members of groups that are under-represented in clean energy industries. These fellows' and trainees' pay rates are determined by governmental program requirements and cannot necessarily be modified or added to by GRID. At the same time, these program-affiliated individuals' presence on project sites to gain experience does not introduce competition or undercut other workers'

⁸ See GRID, *SolarCorps Fellowship Program*, <https://gridalternatives.org/what-we-do/workforce-development/solarcorps-fellowships>. This program has been supported by the Corporation for National and Community Service (AmeriCorps), an independent federal agency.

⁹ Solar Works DC is a solar installation and job training program spearheaded by the District of Columbia Department of Energy & Environment (DOEE) and the Department of Employment Services (DOES) and implemented by GRID Alternatives Mid-Atlantic. Solar Works DC is part of Solar for All, a program of DOEE that seeks to provide the benefits of solar electricity to 100,000 low-income households and reduce their energy bills by 50% by 2032. See DOES, *Solar Works DC*, <https://doee.dc.gov/service/solar-works-dc>; Jake Freudberg, *This D.C. Nonprofit is Bringing Solar Energy—and Green Jobs—to Low-Income Neighborhoods*, Appalachian Mountain Club (Mar. 17, 2021), <http://www.outdoors.org/resources/amc-outdoors/conservation-and-climate/this-d-c-nonprofit-is-bringing-solar-energy-and-green-jobs-to-low-income-neighborhoods/>.

wages in any way. Indeed, unlike contractors who might attempt to underbid for projects using lower paid and often non-local workers, contractors providing these job training programs incur higher costs in order to move the clean energy transition forward in a more inclusive way and to help remedy continuing injustices that existing labor standards have not solved. To the greatest extent possible, the Treasury Department should implement prevailing wage requirements in a way that allows individuals in these types of programs to be onsite so they can benefit from hands-on experience with multi-family and commercial installations over 1 MW.

The Treasury Department should also seek ways to encourage inclusive local hiring, especially in low-income, tribal, and energy communities. Even a very well-paying project may not significantly benefit the local community and its workforce if workers are brought in from elsewhere. Likewise, the Treasury Department should seek ways to encourage hiring individuals facing barriers to employment, such as formerly incarcerated individuals.

.02 Apprenticeship (§§ 48(a)(11) and 48E(d)(4) (incorporating by reference § 45(b)(8))

As with prevailing wage occupational categories, the current dearth of federally registered apprenticeships specifically for distributed solar installation and other roles in clean energy industries further underscores the need for clear guidance, outreach, and coordination. As noted above, GRID is part of an IREC-led working group of industry employers exploring the creation of new apprenticeship programs for such careers in the rapidly expanding clean energy sector. We would welcome the Treasury Department's support for this and other avenues to expand opportunities for both workers and employers to meet the IRA's demands for a modern clean energy workforce.

GRID strongly believes that apprenticeship models must be complemented by other types of training programs, including but not necessarily limited to formal pre-apprenticeships, many of which are better able to bring under-represented populations into clean energy fields than existing registered apprenticeship routes.¹⁰ The Treasury Department should bear in mind that registered apprenticeships can be extremely competitive, have complex entry requirements, and be difficult for individuals and employers to navigate. We look forward to working with federal, state, and local agencies and other stakeholders on implementing apprenticeship requirements effectively and equitably.

.03 Domestic Content Phaseout for Direct Pay (§§ 48(a)(12)-(13) and 48E(d)(5) (incorporating by reference §§ 45(b)(9)-(10), 6417)

GRID is currently unable to source the systems we install from domestic manufacturing. It is our hope that domestic manufacturing for clean energy will be successfully built first and foremost by the IRA's many incentives for domestic manufacturing itself, well before GRID and other potential direct pay applicable entities under Section 6417 face potential exclusion from direct access to clean energy tax

¹⁰ See, e.g., Janelle Jones, Alexander Hertel-Fernandez, and Christopher DeCarlo, *Equity Snapshot: Apprenticeships in America*, U.S. Dep't of Labor Blog (Nov. 4, 2021), <https://blog.dol.gov/2021/11/03/equity-snapshot-apprenticeships-in-america> (noting that completion rates reached 33% for White apprentices but only 24% for Black apprentices and that difficulties securing childcare and lack of pay for classroom instruction were significant barriers to women's participation in and completion of apprenticeship programs).

incentives if we face continued difficulties in sourcing American-made project materials. However, we do not believe it is appropriate to assume this will be entirely the case. We urge the Treasury Department to consider that quite a few hurdles to meeting domestic content requirements for direct pay may remain in coming years especially for economic and environmental justice communities,¹¹ and to implement these requirements accordingly, with a primary emphasis on equitable access to clean energy.

As with labor requirements, many direct pay applicable entities will be inexperienced in navigating domestic content or Buy America rules, and often will have limited institutional capacity to develop deep in-house expertise in this potentially complex area. Direct pay applicable entities may have more logistical difficulty shifting their supply chains and finding new procurement sources. A three year window to make these shifts is not a very long turnaround, and the consequence of any shortfalls is to completely preclude direct access to the credit after 2025. In addition, the IRA allows waivers of domestic preference requirements as a condition for receiving tax benefits as direct pay only when domestic products would increase the overall cost of the facility by more than 25% or when satisfactory domestic products are not available. Thus, even with the 10% bonus credit for meeting domestic content requirements, there may remain a gap in cost coverage, subjecting direct pay projects to higher mandatory costs than projects for which for-profit companies are taking the credit. Direct pay applicable entities could even end up competing with one another to source domestic content to meet the mandates, further increasing potential inconvenience and costs.

To help alleviate these types of inequitable difficulties, the Treasury Department should issue extensive and detailed guidance on *all* relevant terms and operative provisions and their interactions and real-world implementation in accessible language(s), so organizations with little experience in government contracting or domestic content requirements can understand at the outset of project development what will be required and can keep up with learning across the clean energy sector. The Treasury Department and IRS should allow exceptions, exemptions, and waivers broadly and with minimal paperwork burdens.

¹¹ See, e.g., Elizabeth McCarthy, *Clean energy supply bottlenecks hit overburdened communities the hardest, utilities and advocates say*, *Utility Dive* (Oct. 27, 2022), <https://www.utilitydive.com/news/clean-energy-supply-bottlenecks-overburdened-communities-equity-IIJA-IRA/634725/>.