

November 4, 2022

Filed Electronically

Internal Revenue Service

CC:PA:LPD:PR (Notices 19 2022-49, 2022-50, 2022-51)

Room 5203, P.O. Box 7604

Ben Franklin Station

Washington, DC 20044

Re: Notices 2022-49, 2022-50, and 2022-51, Public Comments on Implementation Regulations for the Clean Energy Tax Incentives of the Inflation Reduction Act

The Wisconsin Building Trades Council (WBTC) appreciates the opportunity to submit these comments on the Implementation Regulations for the Clean Energy Tax Incentives of the Inflation Reduction Act.

The Wisconsin Building Trade Council (WBTC) was created in 2018 to act as a unifying voice for 17 craft unions and over 40,000 union workers in Wisconsin. Our effort is to enrich and protect their livelihoods, families, and communities to build a brighter tomorrow. We act as the professional partner for businesses, developers, contractors, individuals, municipalities, and the State of Wisconsin to further the excellence and growth in the construction industry and in Wisconsin's local economies.

The WBTC's comments are focused on the following areas:

- I. Encouraging compliance with the Davis-Bacon wage standards (2022-51)
- II. Implementing the requirement to use registered apprentices (2022-51)
- III. A process for equitable allocation of the 1.8 GW of low-income tax incentives (2022-49)
- IV. Interpreting the domestic content bonus incentive and energy communities incentive (2022-51), and
- V. Making the direct pay process for not-for-profits as practical and efficient as possible (2022-50)

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 as 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.



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 journey person 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 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

We appreciate this opportunity to comment on the implementation of these IRA regulations.

Sincerely,



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Attachment: Background on the issue of determining the “start date for construction”

Under IRS guidance, a taxpayer may establish the beginning of construction by either (1) starting physical work of a significant nature (“Physical Work Test”) or (2) paying or incurring

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

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



five percent or more of the total cost of the facility (“Safe Harbor”).³ Further, the taxpayer must demonstrate continuous progress on the projects. The facilities must either satisfy the continuous construction test (for the physical work test) or the continuous continuance efforts test (for the safe harbor test).⁴⁵

Physical Work Test. To satisfy the physical work test, the work performed must be on tangible personal property or other tangible property that is integral to the power-generating activity of the facility.⁶ The IRS has specified that “both on-site and off-site work (performed either by the taxpayer or by another person under a binding written contract) may be taken into account for purposes of demonstrating that physical work of a significant nature has begun.”⁶ Determining what works is of a significant nature is determined using a facts and circumstance test.

The IRS provides a nonexclusive list of activities that will satisfy the physical work test:

1. The beginning of the excavation for the foundation;
2. The setting of anchor bolts into the ground;
3. The pouring of the concrete pads of the foundation;
4. Physical work on a custom-designed transformer that steps up the voltage of electricity produced at the facility to the voltage needed for transmission; and
5. Starting construction on on-site roads used for moving materials to be processed (for example, biomass) and roads for equipment to operate and maintain the qualified facility.⁷

Physical work of a significant nature does not include work (performed either by the taxpayer or by another person under a binding written contract) to produce property that is either in existing inventory or is normally held in inventory by a vendor.⁸ Additionally, physical work of a

³ IRS, “Beginning of Construction for Purposes of the Renewable Electricity Production Tax Credit and Energy Investment Tax Credit”, Notice 2013-29, Section 3, <https://www.irs.gov/pub/irs-drop/n-13-29.pdf> (hereinafter Notice 2013-29).

⁴ Notice 2013-29, Section 4.06; Section 5.02.

⁵ Additionally, there is a Continuity Safe Harbor. Generally, projects that are placed in service at least two calendar years before the statutory deadline to begin construction are deemed to satisfy the Continuous Construction Test (for the Physical Work Test) or the Continuous Efforts Test (for the purposes of satisfying the Five Percent Safe Harbor). See IRS, Clarification of Notice 2013-29, Notice 2013-60, <https://www.irs.gov/pub/irs-drop/n-13-60.pdf> . ⁶ Notice 2013-29, Section 4.005.

⁶ Notice 2013-29, Section 4.02.

⁷ IRS, “Clarification and Modification of Notice 2013-29 and Notice 2013-60” Notice 2014-46, Section 3, <https://www.irs.gov/pub/irs-drop/n-14-46.pdf> (hereinafter Notice 2014-46, Section 3).

⁸ Notice 2013-29, Section 4.02.

significant nature does not include “preliminary activities, even if the cost of those preliminary activities is properly included in the depreciable basis of the facility.”⁹ Preliminary activities include:

1. planning or designing,
2. securing financing,
3. clearing a site, and
4. Removal of existing turbines and towers is preliminary work and, therefore, does not constitute physical work of a significant nature with respect to the facility.¹⁰

Multiple facilities that are operated as part of a single project (along with any property, such as a computer control system, that serves some or all such facilities) are treated as a single facility.¹¹ Whether multiple facilities are operated as part of a single project will depend on the relevant facts and circumstances.¹² Factors indicating that multiple facilities are operated as part of a single project include, but are not limited to:

- (a) The facilities are owned by a single legal entity;
- (b) The facilities are constructed on contiguous pieces of land;
- (c) The facilities are described in a common power purchase agreement or agreements;
- (d) The facilities have a common intertie; (e) The facilities share a common substation;
- (e) The facilities are described in one or more common environmental or other regulatory permits;
- (f) The facilities were constructed pursuant to a single master construction contract; and
- (g) The construction of the facilities was financed pursuant to the same loan agreement.¹³

In addition to satisfying the physical work of a significant nature, a taxpayer must satisfy the continuous construction test.¹⁴ A continuous program of construction involves continuing

⁹ *Id.*

¹⁰ *Id.*

¹¹ Notice 2013-29, Section 4.04(2).

¹² *Id.*

¹³ *Id.*

¹⁴ Notice 2013-29, Section 4.06.



physical work of a significant nature.¹⁵ Whether a taxpayer maintains a continuous program of construction will be determined by the relevant facts and circumstances.

Safe Harbor. Construction of a facility will be considered as having begun if a taxpayer pays or incurs 5 percent or more of the total cost of the facility, and thereafter, the taxpayer makes continuous efforts to advance towards completion.¹⁶ All costs properly included in the depreciable basis of the facility are taken into account to determine whether the Safe Harbor has been met.¹⁷ For property that is manufactured, constructed, or produced for the taxpayer by another person under a binding written contract with the taxpayer, costs incurred with respect to the property by the other person before the property is provided to the taxpayer are deemed incurred by the taxpayer.¹⁸

In addition, the taxpayer must make “continuous efforts” to advance toward the completion of the facility called the continuous efforts test.¹⁹ Whether a taxpayer makes continuous efforts to advance towards the completion of the facility will be determined by the relevant facts and circumstances. Facts and circumstances indicating continuous efforts to advance towards completion of the facility may include, but are not limited to:

- (a) paying or incurring additional amounts included in the total cost of the facility;
- (b) entering into binding written contracts for components or future work on the construction of the facility;
- (c) obtaining necessary permits; and
- (d) performing physical work of a significant nature (as described in section 4.02).²⁰

¹⁵ *Id.*

¹⁶ Notice 2013-29, Section 5.01.

¹⁷ Notice 2013-29, Section 5.01(1).

¹⁸ Notice 2013-29, Section 5.01(2).

¹⁹ Notice 2013-29, Section 5.02.

²⁰ Notice 2013-29, Section 5.02.