



# Inflation Reduction Act Fact Sheet — IRS Guidance On Clean Energy Tax Incentives

May 25, 2023

*Please read in conjunction with The Real Estate Roundtable's separate fact sheet, "Clean Energy Tax Incentives Relevant to U.S. Real Estate" (May 25, 2023)*

Congress passed the *Inflation Reduction Act (IRA)* on August 16, 2022. The *IRA* overhauled the U.S. tax code's credits and deductions to incentivize clean power generation and investment.

The U.S. Treasury Department (Treasury) and Internal Revenue Service (IRS) are coordinating with the Energy Department, the Environmental Protection Agency, and other federal agencies to develop rules and guidance to implement the IRA law. RER submitted comments on [November 4, 2022](#) and [December 2, 2022](#) to shape the agencies' direction on key matters.

Treasury/IRS have released several key guidance documents since Congress passed the law.

Treasury is expected to release proposed regulations in the months ahead that will be consistent with the recent IRS notices and announcements while also addressing stakeholder comments and providing additional details to help taxpayers comply.

This fact sheet summarizes IRA related notices and other announcements released to date to date by Treasury/IRS, regarding:

- Prevailing Wage and Apprenticeship
- "Beginning of Construction" Date
- Section 179D "Reference Standard" for New Construction
- Bonus Credits for Low-Income Communities and Housing
- Bonus Credits for Brownfields and other "Energy Communities"
- Bonus Credits for Domestic Content ("Made in the USA")

The Roundtable will update this fact sheet as new relevant rules and guidance become available.

## Prevailing Wage and Apprenticeship Guidance

[IRS Notice 2022-61](#) (87 Fed. Reg. 73,580 [November 30, 2022])

[U.S. Department of Labor slide deck](#)

- Amount of certain incentives (e.g., Section 30C and 48 credits, Section 179D deduction) increase five times (5x) if project meets both wage and apprenticeship requirements.
  - Only prevailing wage is necessary for 5x boost for 45L credit (new single- or multi-family residential construction). No apprenticeship requirements for 45L credit.





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- No need to satisfy wage, apprenticeship for “small scale” wind, solar, etc. projects to get increased Section 48 credit amounts.
  - Projects generating under 1 MW (measured in AC) qualify for the 30% Section 48 credit. No compliance with labor requirements is necessary.
- The 5x wage and apprenticeship boost is required for projects that “begin construction” on or after January 29, 2023.
- Laborers and mechanics must be paid hourly prevailing wage (and fringe benefits) applicable to the market where the building is located.
  - E.g.: Electricians, iron workers, equipment operators, carpenters.
  - Not foremen or superintendents.
- Consult the Labor Department’s [www.sam.gov](http://www.sam.gov) website to ascertain geographically appropriate wages for pertinent classifications of construction and repair jobs.
  - See also [guide to navigate sam.gov](#).
- Use the most recent wage determination.
- Must pay prevailing wages throughout construction and for five years after the project is “placed in service.”
- “Qualified apprentices” must perform an applicable percentage of “total labor hours” of the construction, alteration, or repair work.

When Construction Begins	% of Apprentice-Required Labor Hours
Before Jan 1, 2023	10%
During 2023	12.5%
After 2023	15%

- Consult registered apprenticeship programs approved by U.S. Labor Department or state labor agency; see [www.apprenticeship.gov](http://www.apprenticeship.gov) and DOL [fact sheet](#).
- Good faith exception: Make a request for “qualified apprentices” from a registered apprenticeship program. If the request is denied, or no response in five business days, exception is satisfied.
- Keep records sufficient to support any claim for the 5x credit boost—such as documents to identify the applicable wage determination, the laborers and mechanics who performed construction/repair work, classifications of work performed, hours worked in each classification, and wage rates paid.



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## "Beginning of Construction" Guidance

[IRS Notice 2022-61](#) (87 Fed. Reg. 73,580 [November 30, 2022])

- The date construction “begins” can be important to determine eligibility for *IRA* “base rate” and “bonus rate” incentive amounts.
- Construction “begins” under **either** of the following:
  - **“Physical Work Test:”** Construction begins when the taxpayer “maintains a continuous program of construction” “under a binding written contract”—that does **not** include “preliminary work” such as planning, designing, securing financing, researching, obtaining permits, engineering studies, or site clearing.
  - **“5% Safe Harbor:”** Construction begins when the taxpayer spends 5% or more of the total costs to construct a facility, and thereafter makes “continuous efforts” to complete the project.

## Section 179D “Reference Standard” for New Construction

[IRS Announcement 2023-1](#) (Jan 17, 2023)

- Establishes the “Reference Standard” for the *traditional* 179D deduction generally applicable to *new construction* (IRS guidance still expected on *“retrofit” 179D(f)* deduction for *existing buildings*).
- Baseline for measuring efficiency improvements is the [ASHRAE 90.1 energy standard](#) for commercial and high-rise multifamily buildings (4 floors or more).
- Assuming construction “begins” after December 31, 2022, the applicable year-version of the ASHRAE 90.1 baseline depends on when the building is “placed in service”:
  - **2007** version of ASHRAE 90.1: applies to a building “placed in service” up to December 31, 2026.
  - **2019** version of ASHRAE 90.1: applies to a building “placed in service” on or after January 1, 2027.

## Low-Income Communities: Section 48 Bonus Credit for Solar, Wind Projects

[IRS Notice 2023-17](#) (Feb. 13, 2023)

- Bonus credits for Low-Income Communities are “competitive.” They require an application to the Department of Energy and an award from Treasury/IRS.





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- Underlying Section 48 “base rate” credits (6% of project costs, or 30% if labor standards satisfied) and bonuses for “domestic content” and e Brownfields projects are non-competitive and require no application.
- Increased Bonus Amounts
  - Extra 10% credit boost if the project is in a [New Market Tax Credit census tract](#).
  - Extra 10% boost if the project is on “Indian land.”
  - Extra 20% credit boost if the project is “on” low-income housing (such as apartments supported by Low-Income Housing Tax Credits (LIHTCs) or Section 8 vouchers).
  - Extra 20% credit boost is part of a “low-income economic benefit project.”
    - At least 50% of the financial benefits of the electricity produced by the facility are provided to households that meet high-poverty and low-income criteria.
- Technology and Output Limitations
  - Low-Income bonus not available for all Section 48 technologies. Only for:
    - Solar property.
    - Wind property.
    - Energy storage installed in connection with such property.
    - Maximum net output < 5 MW.
- Annual Program Cap on Availability
  - 1.8 gigawatts—statutory cap for calendar years 2023 and 2024.
  - Any unused capacity based of 2023 bonus credit awards will carry over to 2024.

Bonus Rate Location	When to Apply	Annual Capacity Limit
Low-Income Community (NMTC tract)	Starting Q4 2023	700 megawatts
Indian Land	Starting Q4 2023	200 megawatts
Low-Income Residential (e.g. LIHTC, Section 8)	Starting Q3 2023	200 megawatts
Low-Income Economic Benefit	Starting Q3 2023	700 megawatts



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- Application Process and Lottery
  - Only the owner of a facility may apply for a bonus credit allocation.
  - Only one bonus allocation per facility.
  - If applications for bonus credits exceed limitations in a given category, then DOE may conduct a lottery to allocate awards.
  - Agency roles
    - US-DOE reviews applications to determine project eligibility, makes recommendations to IRS to allocate bonus credits to specific applicants, conducts lottery if capacity is over-subscribed.
    - IRS makes final decision whether to accept or reject application and notifies applicant of its decision.
- Placed in Service Deadline
  - Property must be placed in service within 4 years after the applicant receives notice from Treasury/IRS of the bonus award.
  - “Placed in service” is the earlier of the taxable years when:
    - Depreciation begins, or
    - The property is “placed in a state of condition of readiness” to perform its functions.
    - No bonus credit allowed for a facility placed in service prior to an allocation award.

## Brownfields: Section 48 Bonus Credit for “Energy Communities”

### [IRS Notice 2023-29](#) (April 4, 2023)

- Extra 2% bonus credit for Section 48 projects “placed in service” “within” a Brownfield.
  - Extra 10% bonus if Section 48 project **also** meets prevailing wage, apprenticeship requirements.
- “Brownfield” defined by prior statute.
  - See [42 U.S.C. § 9601\(39\)](#)
- Similar bonus credits provided for Section 48 projects in areas heavily dependent on coal mining and other fossil fuel industries for tax revenue and employment; and in census tracts where retired coal mines were located.
- Applies to taxable years ending after April 4, 2023.
- Notice 2023-29 governs until IRS issues regulations.





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## “Made in the USA”: Section 48 Domestic Content Bonus Credit

### [IRS Notice 2023-38](#) (May 12, 2023)

- Notice 2023-38 provides initial guidance for projects that begin construction up to 90 days after the date that the IRS issues forthcoming proposed regulations.
- Extra 2% “domestic content” bonus credit for Section 48 projects that meet “made in the U.S.” manufacturing and sourcing requirements.
  - Extra 10% bonus for Section 48 projects that meet “domestic content” **and either** generate < 1MW **or** meet prevailing wage, apprenticeship requirements.
- In general
  - Taxpayer must “certify” that steel, iron and “Manufactured Products” that are “components” of Section 48 projects (solar, wnd, storage, etc.) are produced in the U.S.
  - 100% of a Project Component’s steel or iron must be made in the US.
  - Specified pecentages of the “components” of Manufactured Products must be made in the US.
- Categorize Project Components as either “Steel or Iron” vs. “Manufactured Product.s”
  - Consult Table 2 of the [Notice](#) for a non-exhaustive list of “safe harbor” categories of Project Components.
  - If the Project Component is (i) made of steel or iron, (ii) a construction material, **and** (iii) structural in function, it must meet the “Steel or Iron Requirement”
    - E.g.: Solar PV racks, rebar in foundations, ground screws, wind towers are structural Project Components – and thus subject to the “Steel or Iron Requirement.”
  - If a Section 48 Project Component – not made of iron or steel -- is produced through a “manufacturing process,” it must meet the “Manufactured Products Requirement.”
    - E.g.: Solar cells/mounting frames/junction boxes/inverters; wind turbines/blades; and battery packs/containers/housing – are Project Components that must meet the “Manufactured Products Requirement.”
  - Nuts, bolts, screws, wires, door hinges, clamps, cabinets, fittings and other items needed to manufacture a product can be produced outside the US. These “subcomponents” are **not** subject to either the “Steel or Iron Requirement” or the “Manufactured Products Requirement.”
    - The Notice expressly states that, even if these items are made of steel or iron, they are **not** structural, and thus **not** subject to the “Steel or Iron Requirement.”





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- The Notice expressly states that foreign “subcomponents” originating abroad do not disqualify a Manufactured Product from “made in the US” status.
  - ✓ Because nuts, bolts, etc. are not “directly incorporated” into a Section 48 project, it appears that these are “subcomponents” and thus not subject to the “Manufactured Products Requirement.”
  - ✓ The Notice could be clearer and state directly what kinds of items are “subcomponents” and thus do not require US-based production.
- “Steel or Iron Requirement”
  - **All** manufacturing must take place in the US (except metallurgical processes involving refinement of steel additives).
  - Raw materials to produce iron or steel can be imported. Steel and iron *manufacturing* processes must take place in US borders.
- “Manufactured Products Requirement” – the “Adjusted Percentage Rule”
  - In general: An “Adjusted Percentage” of the “direct” costs of non-steel products used to build the project – and the components that are “directly incorporated” into those non-steel products – must be mined or manufactured in the US.
  - That is, Manufactured Products produced overseas may still count toward Domestic Content requirements as long as “direct costs” to produce the Product’s components are made in the US.
  - “Direct costs” = purchase price, and manufacturing and related labor costs to produce the Product and its Components. They do **not** include on-site installation costs.

Non-Steel Manufactured Project Component	Product Components “Directly Incorporated” into Project Component	Adjusted Percentage Rule (for non-offshore wind projects)
Solar Panels	Individual cells in the solar panel; mounting frame; junction box; adhesives	US-based “direct” costs for M’fired Prods. and Components, compared to total “direct” costs, must be at least: <ul style="list-style-type: none"> <li>• 40% (construction begins before 2025)</li> <li>• 45% (construction begins in 2025)</li> <li>• 50% (construction begins in 2026)</li> <li>• 55% (construction begins after 2026)</li> </ul>
Wind Turbine	Blades, Rotor Hub	
Battery Pack for Storage	Cells, packaging, management system	



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- The Adjusted Percentage Rule is complex and requires close analysis by accountants and lawyers to apply it to any given Project.
- Retrofitted Projects – 80/20 Rule
  - Existing projects placed in service before Dec. 31, 2022 can still qualify for the Domestic Content bonus – if the fair market value of the existing property does not exceed 20% of the total project’s value.
- Certification
  - The taxpayer claiming the Section 48 credit bears the burden to “certify” that the project meets Domestic Content requirements.
  - Whether manufacturers will provide “Made in the US” certification to taxpayers – or the information on how much it costs for the materials and labor to produce a covered Product and its Components – remains to be seen.
  - Taxpayers will likely be inclined to request guarantees from manufacturers that their steel, iron and products satisfy Domestic Content requirements, and will need to retain pertinent records sufficient to support a valid claim for a tax credit bonus.

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