



CREATING GOOD JOBS, A CLEAN ENVIRONMENT, AND A FAIR AND THRIVING ECONOMY

BlueGreen Alliance
Katie Harris, Legislative Director
1020 19th St., NW | Suite 750
Washington, DC 20036
kharris@bluegreenalliance.org

July 31st, 2023

RIN 1901-AB59. Response to the Department of Energy's (DOE) Interim Final Rule and Program Guidance on the Title 17 Innovative Technologies Loan Guarantee Program

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. We appreciate the opportunity to respond to the Department of Energy's (DOE) Interim Final Rule and Program Guidance on the Title 17 Innovative Technologies Loan Guarantee Program. As DOE works to implement this program, it must ensure that these investments address climate change and toxic pollution while ensuring funding translates into high-road, union jobs, and accessible jobs for workers of color, dislocated workers, and other segments of the population historically left behind. This includes supporting and growing pathways into good union jobs along the full supply chain.

Eligibility

Industrial Transformation

When evaluating Title 17 programs, DOE's Loan Programs Office (LPO) should prioritize projects that include the deployment of technologies to significantly reduce emissions and health hazards from industrial manufacturing. We appreciate the emphasis DOE's guidance places on industrial decarbonization as an eligible technology and encourage DOE to prioritize these projects when reviewing LPO applications.

In our previous comments on Title 17, we encouraged LPO to extend Title 17 loans to developers of commercial-scale industrial transformation projects (including non-power facilities in Emissions Intensive Trade Exposed industries such as iron, steel, cement and aluminum production), particularly when those loans could help access additional investment from the private sector. (These recommendations were also identified by the House Select Committee on the Climate Crisis.¹) We were pleased to see that the new guidance extends Title 17 to "commercially ready technology."

LPO should also work with other DOE offices that administer industrial transformation loans and grants (e.g., the Office of Clean Energy Demonstrations and the Office of

Manufacturing and Energy Supply Chains) to identify promising industrial candidates for Title 17 loans, such as facilities that: 1) show strong potential for reductions in greenhouse gas emissions, local pollution, and health hazards; 2) are located in disadvantaged, energy, or deindustrialized communities; 3) show strong potential for jobs retention and growth, and 4) meet the high road labor and community standards outlined below and 5) may be challenged by the private funding match requirements of DOE grant programs (i.e. companies with limited liquidity but for whom a loan may be more feasible). While the guidance states that LPO requires "receipt of required interagency LPO and DOE approvals," the only mention of collaboration with other DOE offices is the Grid Deployment Office for transmission projects. We encourage LPO to consider collaboration with other offices in identifying strong applicants. LPO and peer offices should also work together to create a pipeline to full commercialization of emerging emissions reduction technologies for critical industrial sectors like steel, cement, and aluminum.

Supply Chains for Clean Energy

The Innovative Supply Chain project category presents an opportunity to leverage LPO loans in service of building stronger, fairer, and cleaner domestic supply chains for the clean economy. To this end, this program (in addition to the Energy Infrastructure Reinvestment program) should include a priority for projects (in addition to the industrial emissions reduction technologies referenced above) that will manufacture components that are critical for clean energy, clean transportation, efficient buildings, and clean manufacturing, but for which U.S. manufacturing capacity is limited or nonexistent. Examples include the following components, according to DOE data:

- Electric grid: Large power transformers and their components (e.g., electrical steel, CTC copper wire, and conservator bladders)
- Batteries: Anodes, cathodes, and cathode materials
- Solar: c-Si ingot, wafers, cells, and flat glass
- Onshore wind: Hubs, gearboxes, and blades
- Offshore wind: All components

While many of the above components are not brand new technologies globally, many of these components are currently made in zero, one, or two U.S. facilities and/or existing U.S. facilities have been operating for fewer than five years. Thus, new projects to manufacture these essential components should be deemed to meet the "innovative" criterion of not "being used in three or more facilities that are in commercial operation in the United States for the same general purpose as the proposed project and has been used in each such facility for a period of at least five years."

Schools

Our previous comments urged DOE to extend eligibility to school districts. In a single year, the country's K-12 public schools produce carbon dioxide equivalent to the

electricity use of 14 million homes.ⁱⁱ The new guidance does not specify whether school districts are eligible.

The Department of Energy should ensure that its resources are widely available to projects that serve the public interest. Title 17 Loan Guarantee Program fee structures should not bar broad access to funds. The Loan Program Office should not charge application fees for nonprofit organizations and public entities such as school districts and state housing authorities applying to the Title 17 Loan Guarantee Program. Nor should it charge application fees for applications in which the program's beneficiaries are public entities, nonprofit entities, or disadvantaged communities.

A "state energy financing institution" should be defined as a public entity with the authority to finance capital projects that reduce greenhouse gas emissions. As such, the Department of Energy should consider school districts "state energy financing institutions." School districts are local government units created by state law to administer public schools and facilities. Although most school districts have the authority to support energy efficiency and renewable energy projects financially, access to low-cost financing backed by the Title 17 Loan Guarantee Program would allow more U.S. school districts to source resources to address climate change.

Build America, Buy America (BABA) and Domestic Content

Passed as part of the Infrastructure Investment and Jobs Act (IIJA) on November 15, 2021, the Build America Buy America Act (BABA) was enacted to improve and expand on the existing domestic content requirements of long-standing Buy America policies. Such laws establish preferences for American-made products and materials for infrastructure projects that receive federal aid – giving American manufacturers and workers the first opportunity to supply such projects. Successful implementation of BABA will strengthen domestic supply chains, increase domestic manufacturing, and generate good quality, family-supporting manufacturing jobs.

As required by law, LPO should ensure use of domestic content and Buy America standards in applicable projects funded by this program. Although BABA is new to many agencies, there are many successful Buy America programs in effect across the government that can serve as a model – including at the Department of Transportation, the Environmental Protection Agency, and the Department of Agriculture's Rural Utilities Service. Additionally, many contractors and private sector suppliers are familiar with these policies, can certify Buy America compliance, and have sufficient capacity to meet infrastructure demand. As such, as it relates to the waiver process, LPO should avoid issuing waivers related to unavailability in the many instances in which the vast majority of component parts can be sourced domestically (e.g., steel and aluminum for the manufacturing of clean technologies). It is also in the public interest for the DOE to never issue general applicability waivers for BABA as general waivers send no actionable market signals and instead simply circumvent established policy and the intent behind them.

BABA preferences must ensure that Title 17 funded projects source their iron, steel, construction materials and manufactured goods from American manufacturers, as not only will the positive effects to both markets and employment generated be further magnified, but also the environmental benefits. BABA is an important tool to align procurement decisions with our environmental values and reduce the carbon footprint of our infrastructure investments because U.S. factories are among the cleanest in the world in critical manufacturing sectors, like steel. A recent Global Efficiency Intelligence report found that among the six largest steel producing nations – China, India, Japan, the United States, Russia, and South Korea – which account for 75 percent of global steel production, the United States has, by far, the lowest CO2 intensity.ⁱⁱⁱ While LPO stated that it anticipates that most Title 17 applicants will constitute for-profit organizations and will be exempt from BABA requirements, we encourage LPO to apply BABA wherever and whenever possible and to prioritize the applications of for-profit organization that commit voluntarily to abide by BABA requirements as such a commitment would require a Buy America Requirement term and condition be included if the application is selected for an award.

Supply chain reporting and disclosure should also be encouraged while incentivizing assembler/supplier commitments and accountability. The guidance addresses foreign collaboration but makes no mention of supply chain reporting and disclosure as a loan requirement, even for projects in the “Innovative Supply Chain Projects” category. We strongly encourage LPO to consider supply chain reporting and disclosure for selected projects.

High Road Labor and Community Standards

We encourage LPO to condition its loans and require applicants to follow high road labor and community engagement standards. We were glad to see Community Benefits Plans (CBPs) as a requirement of applicants; as applications are reviewed, we encourage LPO to prioritize projects that meet the below standards to ensure that projects create high quality jobs, meaningfully engage with workers and communities, and offer economic, health, and environmental benefits to hard-hit workers and communities. We also encourage LPO to improve CBP requirements so that applicants must meet these standards in their applications.

High road wages

Any construction funded through LPO should adhere to Davis Bacon prevailing wage. The Davis Bacon Act and Related Acts (DBRA) require contractors and subcontractors on federal and federally assisted construction projects to pay their workers no less than the local prevailing wages and fringe benefits for the same type of work within the geographic area. We appreciated that the guidance included strong language specifying that high road wages are a requirement for all LPO-funded projects.

Higher wages on a given project can attract high-road contractors employing skilled professionals who perform high quality work, helping projects meet construction milestones on time and safely, without increasing total construction costs. Higher wages can have long-term economic benefits to a community and create a longstanding professional workforce for future projects. Compliance with the DBRA, adherence to prevailing wage requirements, and supporting living wages are essential for promoting fair compensation and high-quality work in the construction industry.

Davis-Bacon rates are determined by the U.S Department of Labor (DOL) based on surveys of wages and benefits paid to workers in a local area. These rates typically include wages and fringe benefits such as health insurance, pension contributions, and other benefits that are customary for the type of work being performed. LPO should encourage applicants to consider creating quality jobs with wages that go beyond prevailing wage, such as living wage standards, and include opportunities for wage progression.

Project Labor Agreements

LPO should encourage or require applicants to utilize a Project Labor Agreement (PLA), which is an instrument to predict and control project timelines and labor costs. A PLA establishes the terms and conditions of employment of workers on specific construction projects, including wages, hours, working conditions, and dispute resolution methods. These agreements can be utilized at the state and local level to ensure high-road labor standards and timely project completion. PLAs promote safe, quality, cost-effective project delivery by providing project owners with unique access to the safest, most productive, best-trained skilled craft labor available in any given market. Large construction projects, not subject to Executive Order 14063 requiring use of Project Labor Agreements (PLA) for Federal Construction Projects over \$35 million, can still benefit from a PLA. These agreements are sometimes referred to as Community Workforce Agreements (CWA) because of the benefits and opportunities these agreements provide to local communities.

Community Benefit Agreements (CBA)

Applicants should be incentivized or required to translate their Community Benefit Plans into legally enforceable Community Benefit Agreements (CBAs). Community Benefit Agreements are legally binding agreements used to ensure that community interests are included in large development or construction projects. They can be negotiated with both union and community partners. LPO should require or incentivize CBAs to ensure that community interests are taken into account in large development or construction projects. By requiring or incentivizing CBAs, LPO can ensure that developers are held accountable for providing the benefits they promise, and that community groups and unions have a say in the development process.

Community and Labor Engagement

Applicants should be required to demonstrate successful community and labor engagement and consultation through letters of support from community organizations, Tribes, and unions. Applications should also include a plan to engage early with and address the concerns of Tribes, organizations representing residents and businesses, labor unions and other worker organizations relevant to the project. This could include workforce development organizations, local government, emergency responders, communities with environmental justice concerns, disadvantaged communities, and community-based organizations that support or work with disadvantaged communities. Finally, applications should include a project implementation strategy with concrete steps the applicant will take to maximize benefits, minimize negative impacts, and measure project impacts.

To ensure that applicants are engaging in good faith practices and to deter fraud, LPO should require a reference check as part of the review process. By checking references, LPO can verify that applicants have engaged with labor, social justice, and workforce development groups that they have named in their applications. This promotes collaboration and accountability among applicants and ensures that they are working with relevant organizations to advance equity and create high-quality jobs.

Union Affiliate Training Programs, Registered Apprenticeship, and Pre-Apprenticeship

Key mechanisms for building career pathways are union-affiliated training, registered apprenticeship, and pre-apprenticeship programs. LPO should require or incentivize the use of these programs to ensure workers have the skills and support they need to succeed.

- **Union-Affiliated Training Programs:** Industrial unions work with their employers on a variety of structures for labor-management training programs (some are registered apprenticeship programs) that provide a combination of classroom and on-the-job skills training. These programs provide workers with job training and career development opportunities to help them gain new skills and advance their careers.
- **Registered Apprenticeship:** A registered apprenticeship program is a training program that combines on-the-job training and classroom instruction. Apprenticeships are sponsored by employers, industry groups, or labor-management training committees. Registered apprenticeship programs are overseen by the U.S. Department of Labor or a DOL-recognized State Apprenticeship agency.
- **Pre-Apprenticeship:** A pre-apprenticeship program is a training program designed to prepare individuals for entry into an apprenticeship program.

These training programs offer wrap-around services to support trainees through the programs and help ensure that workers have a clear path towards skills advancement and career development. Federal agencies should encourage or—where statutory authority permits—require the use of these programs to promote workforce development and ensure that workers receive appropriate training and education. Requiring the use of

these programs can also help to promote equity and fairness in the workplace by providing opportunities for individuals from underrepresented groups to access training and career advancement. In particular, pre-apprenticeships provide individuals with the basic skills and knowledge needed to succeed in a particular trade or occupation. These programs may include classroom instruction, hands-on training, and mentorship opportunities, and they can help individuals build relationships with potential employers and apprenticeship sponsors. Pre-apprenticeships are often targeted towards individuals who may face barriers to entry into apprenticeships and/or certain populations such as low-income workers, workers of color, women, and other disadvantaged communities. Additionally, the use of these programs can help to promote a more skilled and capable workforce, supporting the economic development and prosperity of communities across the country. It is critical, however, that *quality* pre-apprenticeship programs are used.

The U.S. Department of Labor published model funding opportunity language that includes guidance on how to define a quality pre-apprenticeship and lays out five standards. A quality pre-apprenticeship:

- is designed in collaboration with registered apprenticeship program sponsors;
- provides meaningful hands-on training that does not displace paid employees;
- facilitates entry and/or articulates into a registered apprenticeship program;
- creates sustainable partnerships that promote the use of registered apprenticeships as a preferred means for industry to develop a skilled workforce and to create career opportunities and pathways leading to registered apprenticeship enrollment; and
- provides access to appropriate supportive services (e.g., wrap-around services such as child-care and transportation).^{iv}

Targeted Hire

LPO should require or incentivize targeted hire benchmarks to help support the hiring of workers on a project from certain communities, which could include women, people of color, veterans, the formerly incarcerated, dislocated workers, indigenous people, economically disadvantaged communities, historically marginalized populations, communities heavily impacted by climate change, pollution, energy transition, or deindustrialization, and many others. These communities may be prioritized for funding opportunities through contracting requirements, hiring requirements, or the use or establishment of pre-apprenticeship programs. To retain workers from disadvantaged communities, applicants should be encouraged or incentivized to develop Diversity, Equity, Inclusion, and Accessibility (DEIA) plans that foster an inclusive workplace. Ideally, these provisions establish long-lasting pipelines for members of disadvantaged communities to access good jobs and careers in the clean economy.

Dislocated energy workers with appropriate skill sets should be prioritized for this work. This prioritization is especially important for investments made under Section 1706 (the Energy Infrastructure Reinvestment Program), as these workers may have been

employed at the facilities undergoing reinvestment. As part of the CBP, LPO should require project developers to create a workforce plan and engage with labor unions that represent dislocated energy industry workers. This workforce plan should identify current or former employees of the coal industry, provide LPO with certifications of labor engagement, and require contractors to affirm they will give preference to dislocated coal industry workers in any hiring for any funded project. The plan should also include information on the number of dislocated workers that contractors employ to assess the success of this aspect of the program.

Local Hire

LPO should require or incentivize local hire benchmarks to help support the hiring of workers from within the state or local community. Local hire provisions may mandate a certain percentage of local workers be used, they may offer incentives to hire local workers, or they may simply require that local employment impacts be considered alongside other benefits of projects being evaluated.

Protecting Workers' Right to Organize and Collectively Bargain

Applicants should be required to provide information on how the applicant will support and protect workers' right to form or join unions in both construction and ongoing operations. By supporting workers' rights to organize and bargain collectively, LPO can promote fair and safe working conditions, protect workers' interests, and foster a more inclusive and equitable society. This could be demonstrated by a signed Labor Peace Agreement or Memorandum of Understanding with a relevant union.

The right to organize is an important tool for promoting workers' rights, improving wages and working conditions, and ensuring greater economic and social justice. Through the collective bargaining process, workers represented by a union negotiate the terms of their employment with their employer. This includes wages, benefits, hours, health and safety requirements, dispute resolution, advancement, and more. Research has shown that through the collective bargaining power of unions, workers are able to get consistent and better benefits across the covered workforce—such as health insurance and pensions—and are able to fight for greater enforcement of the labor protections they have a right to under the law, like safety and health regulations and overtime.

Collective Bargaining Agreements

A collective bargaining agreement is a written legal contract between an employer and a union representing the employees. The collective bargaining agreement is the result of a negotiation process between the parties regarding topics such as wages, hours, and terms and conditions of employment. Applicants should be required to describe if and whether the applicant or sub applicants have existing collective bargaining relationships. Collective bargaining is one of the most powerful tools for comprehensively and consistently raising

standards for any industry, as each renegotiated collective bargaining agreement—which typically has a three-to-five-year lifetime—usually includes gains for the workers.

Prohibition on spending

LPO should require that award recipients or any subrecipient may not use grant funds, whether directly or indirectly, to oppose union organizing.

Preventing Worker Misclassification

The Fair Labor Standards Act (FLSA) provides minimum wage and overtime pay protections to nearly all workers in the U.S. Some employers incorrectly treat workers who are employees under this federal law as independent contractors. We call this “misclassification.” Federal agencies can require that applicants explain how projects will properly classify employees and notify all workers of their rights, including workers treated as independent contractors. LPO should require that applicants demonstrate how they will prevent misclassification to ensure workers are guaranteed benefits and protections.

Health & Safety

Applicants should be required to describe planned activities and policies that fulfill the US Occupational Safety and Health Act guarantee that every American worker has the right to a safe and healthful workplace. To do so workers must be engaged in the design and execution of all safety and health, workplace violence and anti-harassment programs. These programs should include a comprehensive analysis and a management plan for all risks. They should also address how a strong safety culture will be built and maintained, how open communication about safety and health and lessons learned will be encouraged, how workers will be protected from harassment and discrimination, how retention rates will be measured, and how all worker and workplace concerns will be addressed.

One way to help achieve this is to express commitment to the CWHSSA and FLSA in all funding applications. Requiring compliance with CWHSSA ensures that workers are not exposed to unsanitary, hazardous, or dangerous working conditions on federal and federally financed construction projects. Frequently, workers in the construction industry are subject to overtime hours and the CWHSSA offers an avenue for intervention by the workers if the contractor violates the overtime requirements.

Title VI of the Civil Rights Act of 1964

LPO should require compliance with Title VI to promote equal opportunity and prevent discrimination in all federally funded programs and activities. By upholding the principles of Title VI of the Civil Rights Act, federal agencies can help promote a more inclusive and equitable society and ensure that all individuals have the opportunity to participate fully in the benefits of federal programs and activities. Title VI applies to both public and

private entities that receive federal funds, such as schools, hospitals, housing authorities, transportation providers, and many others. Compliance can include implementing policies and procedures to prevent discrimination, providing training to employees and volunteers on Title VI compliance, and establishing complaint procedures to address allegations of discrimination.

Justice40 and Prioritization of Disadvantaged Communities

President Biden's Justice40 Initiative calls for 40 percent of federal investments, in climate and clean energy, to benefit disadvantaged communities, as defined by the Council on Environmental Quality's Climate and Economic Justice Screening Tool.

The high-road labor and community standards laid out in these comments can be used to target and create opportunities for disadvantaged communities in accordance with Justice40. This can include local or targeted hire; pre-apprenticeships linked to registered apprenticeships and that offer wrap-around services such as transportation or childcare; PLAs and CBAs that increase economic opportunities for these communities; omitting or limiting background checks or drug testing; and community engagement with worker recruitment as well as project monitoring and enforcement.

LPO should require applicants to submit strong Community Benefit Plans that clearly show how projects will benefit disadvantaged communities and minimize risks to these communities. In addition to following community and labor engagement requirements of Community Benefit Plans, applicants should also utilize the DEIA and project assessment components of CBPs to ensure that projects are planned with equity embedded in design and implementation. To meet Justice40 goals and prioritize disadvantaged communities, CBPs should include how a project will:

- Target investments in disadvantaged communities with a focus on deindustrialized, impacted, and underserved communities, consistent with the administration's Justice40 Initiative;
- Utilize hiring and procurement policies that benefit low-income communities, people of color, and women; and requiring or incentivizing Community Benefits Agreements that increase economic opportunities for communities and local workers—especially for people of color and low-income communities;
- Prioritize projects that provide concrete benefits for local communities, such as reinvesting in energy infrastructure and funding for workforce development.

Conclusion

The Title 17 Innovative Technologies Loan Guarantee Program is a critical opportunity to improve the deployment of clean technologies that are vital to meeting our climate goals while providing high-quality jobs in construction, operations and maintenance, and manufacturing. We hope that these recommendations will help DOE ensure the success of this program and look forward to supporting LPO throughout this process.

ⁱ House Select Committee on the Climate Crisis. Solving the Climate Crisis: The Congressional Action Plan for a Clean Energy Economy and a Healthy, Resilient, and Just America. Available online: <https://climatecrisis.house.gov/sites/climatecrisis.house.gov/files/Climate%20Crisis%20Action%20Plan.pdf#page=237>

ⁱⁱ EPA, Greenhouse Gas Emissions Calculator. Available online: <https://www.epa.gov/energy/greenhouse-gas-equivalencies-calculator#results>

ⁱⁱⁱ BlueGreen Alliance, Four Questions: Cleaner Steel Here in the U.S., 2022. Available online: <https://www.bluegreenalliance.org/resources/four-questions-cleaner-steel-here-in-the-us/>

^{iv} U.S. Department of Labor, Job Quality and Equity Notice of Funding Opportunity (NOFO) Draft Language for Federal Agencies, 2023. Available online: <https://www.dol.gov/general/good-jobs/job-quality-and-equity-nofo-language>