

Prevailing Wage and Apprenticeship Guidance under the Inflation Reduction Act
Notice 2022-[]

SECTION 1. PURPOSE

Under the Inflation Reduction Act of 2022, Pub. L. No.117-169 (IRA), a qualified facility (as described in §§ 45(d), 45Y(b)(1)(A) or 48E(b)(3) of the Internal Revenue Code (Code), energy project (as described in § 48(a)(9)(A)(ii)) and a qualified nuclear power facility (as described in § 45U(b)(1)) will be eligible to receive an increased credit amount if certain labor requirements (i.e., the prevailing wage and apprenticeship requirements) are satisfied. This notice sets forth guidance relating to the application of the prevailing wage and apprenticeship requirements imposed by the IRA.

SECTION 2. BACKGROUND

.01 Overview.

Taxpayers may qualify for increased credit amounts under §§ 30C, 45, 45Q, 45V, 45Y, 45Z, 48, 48C, and 48E, or an increased deduction amount under § 179D, if certain prevailing wage and apprenticeship requirements are satisfied. ¹

In addition, taxpayers may claim an increased credit amount under §§ 45L and 45U for satisfying prevailing wage requirements. ²

.02 Prevailing Wage Requirement.

Sections 45(b)(7), 30C(g)(2), 45L(g),45Q(h)(3), 45U(d)(2), 45V(e)(3), 45Y(g)(9), 45Z(f)(6), 48(a)(10), 48C(e)(5), and 48E(d)(3) include prevailing wage requirements that

¹ See §13404(d) of the IRA for the prevailing wage and apprenticeship requirements under§30C(g);§13101(f) of the IRA for the prevailing wage and apprenticeship requirements under §45(b)(7);§13104(d)of the IRA for the prevailing wage and apprenticeship requirements under §45Q(h)(3) and (h)(4); §13204(a)(1) of the IRA for the prevailing wage and apprenticeship requirements under§45V(e)(3) and (e)(4); §13701(a) of the IRA for the prevailing wage and apprenticeship requirements under §45Y(g)(10);§13704(a) of the IRA for the prevailing wage and apprenticeship requirements under§45Z(f)(7); §13102(k) of the IRA for the prevailing wage and apprenticeship requirements under§48(a)(10) and (a)(11); §13501(a) of the IRA for the prevailing wage and apprenticeship requirements under §48C(e)(5) and (e)(6); §13702(a) of the IRA for the prevailing wage and apprenticeship requirements under §48E(c)(3) and (c)(4); and §13303(a)(1) of the IRA for the prevailing wage and apprenticeship requirements under§179D(b)(4) and (b)(5).

²See § 13304(d) of the IRA for the prevailing wage requirement under §45L(g)and §13105(a) for the prevailing wage requirements under § 45U(d)(2)

taxpayers must satisfy to qualify for increased credit amounts under those sections of the Code. Section 179D(b)(4) includes prevailing wage requirements that taxpayers must satisfy to qualify for an increased deduction amount under that section. The prevailing wage requirements under these various provisions are described below.

Section 45(b)(7)(A) provides, in general, that a taxpayer satisfies the prevailing wage requirements with respect to a qualified facility if the taxpayer ensures that any laborers and mechanics employed by the taxpayer or any contractor or subcontractor in the construction of such facility, and with respect to any taxable year for any portion of such taxable year that is within the period described in § 45(a)(2)(A)(ii), the alteration or repair of such facility, are paid wages at rates not less than the prevailing rates for construction, alteration, or repair of a similar character in the locality in which such facility is located as most recently determined by the Secretary of Labor, in accordance with subchapter IV of chapter 31 of title 40, United States Code. To determine an increased credit amount for a taxable year, the requirement under § 45(b)(7)(A)(ii) is applied to the taxable year in which the alteration or repair of the qualified facility occurs.

Section 45(b)(7)(B)(i) generally provides a correction and penalty mechanism for a taxpayer that claims the increased credit amount but fails to satisfy the prevailing wage requirement under § 45(b)(7)(A). Section 45(b)(7)(B)(ii) provides that the deficiency procedures under subchapter B of chapter 63 of the Code do not apply with respect to the assessment or collection of any penalty imposed by § 45(b)(7). Section 45(b)(7)(B)(iii) increases the penalty if the Secretary of the Treasury or her delegate (Secretary) determines that any failure to satisfy the prevailing wage requirement under § 45(b)(7)(A) is due to intentional disregard of the requirements under § 45(b)(7)(A).

Section 48(a)(10) provides, in general, that a taxpayer satisfies the prevailing wage requirements with respect to an energy project if the taxpayer ensures that any laborers and mechanics employed by the taxpayer or any contractor or subcontractor in the construction of such energy project, and for the 5-year period beginning on the date such project is originally placed in service the alteration or repair of such project, are

paid wages at rates not less than the prevailing rates for construction, alteration, or repair of a similar character in the locality in which such project is located as most recently determined by the Secretary of Labor, in accordance with subchapter IV of chapter 31 of title 40 of the United States Code. Subject to § 48(a)(10)(C), for purposes of any determination under § 48(a)(9)(A)(i) for the taxable year in which the energy project is placed in service, the taxpayer will be deemed to satisfy the requirement under § 48(a)(10)(A)(ii) at the time such project is placed in service. Section 48(a)(10)(B) provides that rules similar to the rules of § 45(b)(7)(B) (that is, the correction and penalty mechanism for failure to satisfy the prevailing wage requirement) apply. Section 48(a)(10)(C) provides that the Secretary is to, by regulations or other guidance, provide for recapturing the benefit of any increase in the credit allowed under § 48(a) by reason of § 48(a)(10) with respect to any project that does not satisfy the requirements under § 48(a)(10)(A) (after application of § 48(a)(10)(B)) for the period described in § 48(a)(10)(A)(ii) (but which does not cease to be investment credit property within the meaning of § 50(a)). The period and percentage of such recapture are determined under rules similar to the rules of § 50(a).

The prevailing wage requirements under §§ 30C(g)(2), 45L(g)³, 45Q(h)(3)⁴, 45U(d)(2), 45V(e)(3), 45Y(g)(9), 45Z(f)(6)(A), 48C(e)(5), 48E(d)(3), and 179D(b)(4) are similar to the requirements under §§ 45(b)(7) and 48(a)(10).

.03 Apprenticeship Requirements.

Sections 45(b)(8), 30C(g)(3), 45Q(h)(4), 45V(e)(4), 45Y(g)(10), 45Z(f)(7), 48(a)(11), 48C(e)(6), and 48E(d)(4) include apprenticeship requirements that taxpayers must satisfy to qualify for increased credit amounts under those sections of the Code. Section 179D(b)(5) includes apprenticeship requirements that taxpayers must satisfy to qualify for an increased deduction amount. The apprenticeship requirements under these various provisions are described below.

³ Section 45L (New energy efficient home credit) includes a modified prevailing wage requirement under §45L(g). Section 45L(g)(3) provides that the Secretary is to issue such regulations or other guidance necessary to carry out the purposes of §45L(g).

⁴ Section 45Q(h)(3)(A) applies with respect to any qualified facility and any carbon capture equipment.

Section 45(b)(8)(A)(i) provides that a taxpayer satisfies the apprenticeship requirements with respect to the construction of any qualified facility if the taxpayer ensures that not less than the applicable percentage of the total labor hours of the construction, alteration, or repair work (including such work performed by any contractor or subcontractor) with respect to such facility is, subject to § 45(b)(8)(B), performed by qualified apprentices. Section 45(b)(8)(E)(ii) defines “qualified apprentice” as “an individual who is employed by the taxpayer or by any contractor or subcontractor and who is participating in a registered apprenticeship program, as defined in § 3131(e)(3)(B).” Section 3131(e)(3)(B) defines a “registered apprenticeship program” as an “apprenticeship registered under the Act of August 16, 1937 (commonly known as the “National Apprenticeship Act”; 50 Stat. 664, chapter 663; 29 U.S.C. 50 et seq.) that meets the standards of subpart A of part 29 and part 30 of title 29, Code of Federal Regulations.”

Under § 45(b)(8)(A)(ii), the applicable percentage of total labor hours to be performed by a qualified apprentice is (1) in the case of a qualified facility the construction of which begins before January 1, 2023, 10 percent, (2) in the case of a qualified facility the construction of which begins after December 31, 2022, and before January 1, 2024, 12.5 percent, and (3) in the case of a qualified facility the construction of which begins after December 31, 2023, 15 percent.

Section 45(b)(8)(B) provides that the requirement under § 45(b)(A)(i) is subject to any applicable requirements for apprentice-to-journey worker ratios of the Department of Labor or the applicable State apprenticeship agency.

Section 45(b)(8)(C) provides that each taxpayer, contractor, or subcontractor who employs four or more individuals to perform construction, alteration, or repair work with respect to the construction of a qualified facility must employ one or more qualified apprentices to perform such work.

Section 45(b)(8)(D)(i) provides that a taxpayer will not be treated as failing to satisfy the apprenticeship requirements if the taxpayer (1) satisfies the good faith effort requirements described in § 45(b)(8)(D)(ii), or (2) subject to § 45(b)(8)(D)(iii), in the case of any failure by the taxpayer to satisfy the requirements under § 45(b)(8)(A) and (C)

with respect to the construction, alteration, or repair work on any qualified facility to which § 45(b)(8)(D)(i)(I) does not apply, makes payment to the Secretary of a penalty in an amount equal to the product of \$50, multiplied by the total labor hours for which the requirement was not satisfied with respect to the construction, alteration, or repair work on such qualified facility.

Section 45(b)(8)(D)(ii) provides that a taxpayer will be deemed to have satisfied the requirements under § 45(b)(8)(A) with respect to a qualified facility if such taxpayer has requested qualified apprentices from a registered apprenticeship program and (1) such request has been denied, provided that such denial is not the result of a refusal by the taxpayer or any contractors or subcontractors engaged in the performance of construction, alteration, or repair work with respect to such qualified facility to comply with the established standards and requirements of the registered apprenticeship program, or (2) the registered apprenticeship program fails to respond to such request within 5 business days after the date on which such registered apprenticeship program received such request.

Section 45(b)(8)(D)(iii) provides that if the Secretary determines that any failure described in § 45(b)(8)(D)(i)(II) is due to intentional disregard of the apprenticeship requirements, §45(b)(8)(D)(i)(II) must be applied by substituting \$500 for \$50 for purposes of computing the penalty.

Section 45(b)(8)(i) defines the term “labor hours.”

Sections 30C(g)(3), 45Q(h)(4), 45V(e)(4), 45Y(g)(10), 45Z(f)(7), 48(a)(11), 48C(e)(6) (effective for taxable years beginning after January 1, 2023), 48E(d)(4), and 179D(b)(5) apply rules similar to those under § 45(b)(8).

SECTION 3. GUIDANCE FOR COMPLIANCE FOR CONTRACTORS AND SUBCONTRACTORS

.01 Section 2.02 of this notice provides that the taxpayer must ensure that any laborers and mechanics employed by the taxpayer or any contractor or subcontractor shall be paid wages at rates not less than the prevailing rates for construction, alteration, or repair in the locality in which such facility is located. Section 2.03 of this notice provides that certain

number of qualified apprentices must be engaged and certain percentage of labor hours must be performed by qualified apprentices to satisfy the apprenticeship requirement.

.02 For ease of administration and auditability to document compliance for contractors and subcontractors, each contractor or subcontractor is required to report employee wage and apprenticeship information through a government verification system (e.g., Department of Labor Form WH-347) or a secure third-party verification system (e.g., eMars), consistent with existing compliance practices under the Davis-Bacon Act. Each contractor or subcontractor is required to maintain documentation to support compliance with these requirements.

SECTION 4. PREVAILING WAGE REQUIREMENT

.01 Section 2.02 of this Notice provides that the taxpayer must ensure that any laborers and mechanics employed by the taxpayer, or any contractor or subcontractor shall be paid wages at rates not less than the prevailing rates for construction, alteration, or repair in the locality in which such facility is located as most recently determined by the Secretary of Labor, in accordance with subchapter IV of chapter 31 of title 40, United States Code.

The requirement to provide wages at rates not less than the prevailing rates is described in section 3142(b) of title 40, United States Code. For the avoidance of doubt, the remainder of the requirements imposed under subchapter IV of chapter 31 of title 40, United States Code, including the stipulations required in contract described in section 3142(c) of title 40, United States Code, are not incorporated by reference into the prevailing wage requirements under the IRA.

.02. Section 2.02 of this notice provides that the taxpayer must ensure that any laborers and mechanics employed by the taxpayer or any contractor or subcontractor shall be paid wages at rates not less than the prevailing rates. Laborer or mechanic is defined as follows:

- (1) 29 CFR 5.2(m) defines the term *laborer* or *mechanic* to include at least those workers whose duties are manual or physical in nature (including those workers who use tools or who are performing the work of a trade), as distinguished from

mental or managerial. The term *laborer* or *mechanic* includes apprentices, trainees, helpers, and, in the case of contracts subject to the Contract Work Hours and Safety Standards Act, watchmen or guards. The term does not apply to workers whose duties are primarily administrative, executive, or clerical, rather than manual. Persons employed in a bona fide executive, administrative, or professional capacity as defined in 29 CFR 541 are not deemed to be laborers or mechanics. Working foremen who devote more than 20 percent of their time during a workweek to mechanic or laborer duties, and who do not meet the criteria of 29 CFR 541, are laborers and mechanics for the time so spent.

(2) The following are some of the worker classifications of laborers or mechanics covered under the Davis-Bacon Act which also applies for purposes of the IRA:

- a. Carpenters.
- b. Electricians.
- c. Plumbers.
- d. Ironworkers.
- e. Flaggers.
- f. Craftsmen.
- g. Welders.
- h. Concrete Finishers.
- i. Longshoremen.
- j. Power Equipment Operators.
- k. Helpers.
- l. Workers participating in a special program that has not established specific wage rates and other compensations for the participants

A taxpayer will be considered as meeting the requirement of the prevailing wage cure, if the taxpayer either: (1) mails the corrective payment to the last known address of the laborer or mechanic who is entitled to receive the payment, or (2) makes the payment to

the Secretary by sending it to [insert instructions for payment] if the taxpayer does not know the last known address of the laborer or mechanic who is entitled to receive the payment.

SECTION 5. APPRENTICESHIP REQUIREMENT

.01 Section 2.03 of this notice provides that the apprenticeship requirement will be deemed satisfied if the taxpayer can demonstrate that it has engaged in a good faith effort to meet the requirements.

Taxpayer, and its contractors and subcontractors will be treated as having engaged in a good faith effort to meet the apprenticeship requirement if (a) there is no available registered apprenticeship program (as defined in § 3131(e)(3)(B)) within the 50-mile radius of the location of the project at the time the project starts construction or when the repair or alternation work is required, or (b) the registered apprenticeship program within the 50-mile radius of the location of the project is unable to provide a sufficient number of qualified apprentices needed for the project.

In the event that the Taxpayer, its contractors or subcontractors are unable to identify a registered apprenticeship program that can refer qualified apprentices who reside at the locality of the project or within reasonable commuting distance from the project for a trade it deems necessary to perform the work, the Taxpayer shall notify the Secretary in writing of its good faith efforts and its inability to identify such a program. The Taxpayer shall be deemed to have satisfied the exception under § 45(b)(8)(D) by taking these actions.

.02 Taxpayer may reasonably rely on certifications provided by contractors and subcontractors that they have engaged in a good faith effort to comply with the apprenticeship requirements.

SECTION 6. GENERAL GUIDANCE

.01 Taxpayers need to document their compliance with the prevailing wage and apprenticeship rules to confirm they are eligible to claim the increased tax credit rate (multiplied by 5) for their qualifying facilities. Documentation for compliance should be completed in accordance with section 3.02 of this notice for the Taxpayer, contractors and subcontractors by entering employee wage and apprenticeship information into a

government verification system (e.g., Department of Labor Form WH-347) or secure third-party verification system (e.g., eMars), consistent with existing compliance practices under the Davis-Bacon Act.

Taxpayers must maintain adequate documentation supporting their compliance, and the compliance of their contractors and subcontractors, with the prevailing wage and apprenticeship requirements.

.02 Sections 2.02 of this notice provides that taxpayer must ensure that any laborers and mechanics employed by the taxpayer, or any contractor or subcontractor shall meet the prevailing wage requirements for construction, alteration, or repair of facilities. The prevailing wage requirement must be met during the construction of the facility, during the life of the Production Tax Credit (PTC) period for alterations and repairs, and during the Investment Tax Credit (ITC) recapture period for alterations and repairs. Section 2.03 of this notice provides that certain percentages of labor hours with respect to the construction, alteration or repair work must be provided by qualified apprentices. For this purpose, the following definitions apply:

- (1) "Construction, alteration or repair" means all types of work done on a particular facility including, without limitation:
 - a. altering, remodeling or installation (where appropriate) at the facility of items fabricated off-site,
 - b. painting and decoration,
 - c. manufacturing or furnishing of materials, articles, supplies or equipment at the facility,
 - d. transportation between the facility and a site which is dedicated to the construction of the facility, and
 - e. transportation of portions of the facility between a site where a significant portion of such facility is construction and the physical place or places where the facility will remain.

The term "construction of the facility" does not include the construction or manufacture of components of the facility (e.g., a solar panel, a wind turbine, etc.).

Regularly recurring, routine maintenance or repair work performed at the qualified facility shall not constitute an “alteration or repair.” Construction, alteration, and repair only include work performed on a qualified facility (1) the costs of which the Taxpayer is required to capitalize into the facility under §§ 263 or 263A and the regulations promulgated thereunder, and (2) that results in the facility being treated as originally placed in service by the Taxpayer.

(2) “Facility” is defined as follows:

- a. The physical place or places where the building or work will remain, and any other site where a significant portion of the building or work is construction, provided that such site is established specifically for the performance of the project.
- b. Except as provided in c., below, job headquarters, tool yards, batch plans, borrow pits, and similar areas, are part of the facility, provided that they are dedicated exclusively, or nearly so, to the construction of the project, and provided that they are adjacent or virtually adjacent to the facility as defined in a. above; and
- c. Not included in the facility are permanent home offices, branch plant establishments, fabrication plans, tool yards, and similar areas, of a contractor or subcontractor whose location and continuance in operation are determined wholly without regard to a particular project. In addition, fabrication plans, batch plans, borrow pits, job headquarters, tool yards, and similar areas, of a commercial or material supplier, which are established by a supplier of materials for the project before opening of bids and not within the facility as defined in a., above, are not included in the facility. Such permanent, previously established sites are not part of the facility, even where the operations for a period of time may be dedicated exclusively to construction, alteration, or repair of the facility.

.03 Section 2.03 of this notice provides that each taxpayer, contractor, or subcontractor who employs four or more individuals to perform construction, alteration, or repair work with respect to the construction of a qualified facility must employ one or

more qualified apprentices to perform such work. For this purpose, the taxpayer (and the contractors and the subcontractors) need only to ensure that at least one qualified apprentice is employed to perform the relevant work throughout the duration of the related construction, alternation or repair work, but need not employ the same individual for such work.

.04 The prevailing wage and apprenticeship requirements are only applicable to work performed in the United States.

.05 The prevailing wage and apprenticeship requirements must be met for a qualified facility to be eligible for the increased tax credit rate (multiplied by 5). Taxpayers may have projects that include more than one clean energy credit facility, for instance a wind or solar generation project claiming a PTC coupled with a battery storage project claiming an ITC. In such situations, the prevailing wage and apprenticeship requirements are required to be met for each facility that generates a clean energy credit.

.06 The rules provided in this notice shall also apply to any prevailing wage or apprenticeship requirements that may apply to the Code sections listed in section 2 of this notice.