



TODD STAFFORD, EXECUTIVE DIRECTOR



ELECTRONICALLY SUBMITTED

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

RE: Docket No. IRS-2022-0025, Request for Comments on Prevailing Wage, Apprenticeship, Domestic Content, and Energy Communities Requirements under the Act Commonly Known as the Inflation Reduction Act of 2022 [Notice 2022-51]

The Electrical Training Alliance (the “Alliance”) hereby submits the following public comments (the “Comment Letter”) to the U.S. Department of Treasury (“Treasury Department”) and Internal Revenue Service (“IRS”) in response to the above-referenced notice and request for comments published on Oct. 5, 2022. Under the Inflation Reduction Act of 2022 (the “IRA”), taxpayers may qualify for increased credit amounts under Internal Revenue Code (“Code”) sections 30C, 45, 45Q, 45V, 45Y, 45Z, 48, 48C, and 48E or an increased deduction amount under Code section 179D if certain prevailing wage and apprenticeship requirements are satisfied. In addition, taxpayers may claim an increased credit amount under Code sections 45L and 45U for satisfying prevailing wage requirements (collectively, the “IRA Tax Credits and Deductions”). Below are a series of comments and proposals for implementing the prevailing wage and apprenticeship requirements related to the IRA Tax Credits and Deductions, along with accompanying commentary explaining the requested guidance.¹

¹ See § 13404(d) of the IRA for the prevailing wage and apprenticeship requirements under Code § 30C(g); § 13101(f) of the IRA for the prevailing wage and apprenticeship requirements under Code § 45(b)(7); § 13104(d) of the IRA for the prevailing wage and apprenticeship requirements under Code § 45Q(h)(3) and (h)(4); § 13204(a)(1) of the IRA for the prevailing wage and apprenticeship requirements under Code § 45V(e)(3) and (e)(4); § 13701(a) of the IRA for the prevailing wage and apprenticeship requirements under Code § 45Y(g)(10); § 13704(a) of the IRA for the prevailing wage and apprenticeship requirements under Code § 45Z(f)(7); § 13102(k) of the IRA for the prevailing wage and apprenticeship requirements under Code § 48(a)(10) and (a)(11); § 13501(a) of the IRA for the prevailing wage and apprenticeship requirements under Code § 48C(e)(5) and (e)(6); § 13702(a) of the IRA for the prevailing wage and apprenticeship requirements under Code § 48E(c)(3) and (c)(4); and Code § 13303(a)(1) of the IRA for the prevailing wage and apprenticeship requirements under Code § 179D(b)(4) and (b)(5); § 13304(d) of the IRA for the prevailing wage requirement under Code § 45L(g) and § 13105(a) for the prevailing wage requirements under Code § 45U(d)(2).

About the Electrical Training Alliance

In 1941, the Alliance was established by the National Electrical Contractors Association (“NECA”) and the International Brotherhood of Electrical Workers (“IBEW”). The Alliance works in cooperation with the Department of Labor, Employment and Training Administration to maintain the National Apprenticeship Standards for the Electrical Construction Industry (the “Standards”). Those Standards have evolved over the last several decades alongside technology. They now incorporate both classroom and on the job training and provide for a blended learning program that allows apprentices to complete aspects of the training remotely. In addition to maintaining the Standards, the Alliance continues to educate training plan fiduciaries, develop curriculum, and promote excellence in training plan instruction and practices.

IBEW-NECA jointly administered trusts (“JATCs”) independently adopt their individualized Standards. More than 300 IBEW-NECA JATCs across the country provide the training to apprentices and journey workers in the electrical industry. Those JATCs provide training without any cost to taxpayers and, in most instances, without cost to apprentices. The apprentices earn while they learn. Each year, JATC apprentices pay more than 600 million dollars in taxes.

IBEW-NECA JATCs provide a path to steady middle-class employment for countless workers. Many IBEW-NECA apprentices came into the JATC programs from dead-end, unsafe jobs. In addition to meaningful employment, these workers now have employer-sponsored health care coverage for not only themselves, but for their entire families. They also have pension plans and benefits to look forward to when the time comes to retire. Over 350,000 electrical apprentices have been trained to become current journey workers by these NECA-IBEW affiliated registered apprenticeship programs. These 350,000 success stories are a direct result of that gold standard of registered apprenticeship plans utilizing the highest national Standards developed by the Alliance in conjunction with the DOL. With this distinctive experience, the Alliance is uniquely qualified to identify, understand, and comment upon the significance of the Treasury Department’s and IRS’ efforts to ensure compliance related to prevailing wage and apprenticeship utilization requirements.

Treasury Guidance

The Treasury Department issues guidance through “notices” that involve substantive interpretations of the Internal Revenue Code and other provisions of law. Further, section 13101(9) of the IRA grants the Secretary of Treasury broad discretion to issue regulations or other guidance to carry out the purposes of the IRA Tax Credits and Deductions.² Accordingly, the Treasury Department and IRS should issue guidance addressing our general comments below

² § 13101(9) of the IRA provides “[t]he Secretary shall issue such regulations or other guidance as the Secretary determines necessary to carry out the purposes of this subsection, including regulations or other guidance which provides for requirements for recordkeeping or information reporting for purposes of administering the requirements of this subsection.” 117 P.L. 169, 136 Stat. 1818.

regarding the prevailing wage and apprenticeship requirements on all covered IRA Tax Credits and Deductions. Further, the Treasury Department and IRS should include in that guidance the five specific proposed provisions clarifying certain aspects of the apprenticeship utilization requirements. Most importantly, because the prevailing wage and apprenticeship requirements do not become operative until 60 days after the Treasury Department issues guidance, it is absolutely imperative that the Treasury Department and IRS give priority to the development and publication of this guidance.³ Every day that goes by without the guidance is a day that takes a living wage and quality training away from the hard working men and women who are the backbone of the United States middle class and who deserve the benefits the IRA was intended to provide them.

General Comments

The Alliance provides General Comments and commentary on the following topics with respect to their relation to the prevailing wage and apprenticeship requirements in the IRA.

1. Davis-Bacon and Related Acts

The Treasury Department can adopt and tailor the U.S. Department of Labor's ("DOL") well-established regulatory framework and contract clause requirements under the Davis-Bacon and Related Act ("DBA") to implement and administer the prevailing wage and apprenticeship provisions of the IRA. In particular, it is important that the Treasury Department adopt DOL's system of trade and craft classifications under the DBA.

Absent the adoption and enforcement of DOL's classifications, there is a significant risk that contractors and sub-contractors will seek to rely upon low-wage workers or use improperly trained or mismatched workers and apprentices for projects. First and foremost, appropriately classified workers and apprentices should have the proper training for their jobs, which will reduce safety hazards and risks on construction sites and increase the on-time and within-budget completion of construction projects. Second, appropriately classified workers will receive family-sustaining wage rates and benefits commensurate with their trade and type of work performed. Third, proper classifications of workers and apprentices will create a pipeline of diverse, in-demand, well-trained apprentices and workers to fill the construction jobs of the future, and will prevent the de-skilling of crafts and trades. This is also important because the race-to-the-bottom dynamic of employing under-skilled workers and apprentices for types of work that they do not traditionally perform cheats workers, employers, and apprenticeship programs out of their investment in training that qualifies the workers and apprentices to safely, efficiently, and correctly perform the type of work appropriate to their trade and disincentivizes future investment in that training. It is crucial that apprenticeship programs and jobs offer attractive pay and training to a young, diverse workforce to ensure that in-demand skilled

³ See Executive Order No. 14082, Implementation of the Energy and Infrastructure Provisions of the IRA, Sec. 2(f) (Sept. 12, 2022) (directing agencies to prioritize implementation of IRA prevailing wage and apprenticeship requirements); 26 U.S.C. §§45(b)(6)(B)(ii), 48(a)(9)(B)(ii).

workers are available, and the application of DBA's proper trade classifications for types of work performed system will help incentivize the creation of this pipeline.

As a related matter, a number of terms in the IRA are undefined, and explicit adoption of DBA guidance will help provide readily-available, well established, and easily adoptable guidance to taxpayers in a short time-frame. For example, the Department of Treasury and IRS should confirm that the terms "construction, alteration, and repair" or "laborer and mechanic" have the same meanings under the Code for purposes of the IRA Tax Credits and Deductions as they do under the DBA. Such explicit adoption and confirmation will reduce compliance costs for taxpayers and ensure the timely introduction of IRS guidance.

2. Signed Declarations under Penalties of Perjury

It is also important that taxpayers seeking an IRA Tax Credit or Deduction submit a signed declaration under the penalty of perjury with the taxpayer's timely filed tax return, certifying compliance with prevailing wage and apprenticeship requirements. The Alliance believes annual submission of a signed declaration with a taxpayer's tax return will serve as a strong compliance incentive for taxpayers.

3. Apprenticeship Utilization Requirements Anti-Abuse Provisions

The Department of Treasury and IRS should issue anti-abuse provisions when implementing the rules governing the apprenticeship utilization requirements under Code section 45(b)(8)(A). In particular, the Alliance is worried that taxpayers may sub-divide contracts in order to avoid or game the apprenticeship utilization requirements. Thus, the Alliance requests that Department of Treasury and IRS implement rules preventing the subdivision of such contracts.

Specific Proposed Language

The Alliance requests that five specific provisions be included in the guidance issued by the Treasury Department and the IRS addressing implementation of the apprenticeship utilization requirements. In addition to this specific language numerically set forth below, commentary explaining why the Alliance believes such language should be incorporated into the guidance follows the recommended text.

1. Participating Qualified Apprentice. Code section 45(b)(8)(E)(ii) defines a "qualified apprentice" as "an individual who is employed by the taxpayer or by any contractor or subcontractor who is participating in a registered apprenticeship program, as defined in section 3131(e)(3)(B)." The qualified apprentice will be considered "participating" in a registered apprenticeship program only if (1) the apprentice has entered into an apprenticeship agreement with the registered apprenticeship program for an apprenticeable occupation, (2) the employing entity (or with respect to the good faith waiver, would-be employing entity) (i.e., the taxpayer, contractor, or sub-contractor) of the qualified apprentice contributes to the trust that funds the registered apprenticeship

program which trains apprentices employed by the employing entity for the type of work to be performed by the apprentice consistent with the classifications under the Davis Bacon and Related Acts, and (3) the contributions by the employing entity are required pursuant to a written agreement.

Commentary: The Alliance believes that absent contractual requirements and sufficient funding for registered apprenticeship programs, registered apprenticeship programs may be unable to provide an adequate pool of apprentices to employers. Contractual arrangements and required contributions will ensure that registered apprenticeship programs are able to plan for and provide sufficient training to apprentices. Further, the Alliance believes that it is vitally important that the funding go specifically to train the type of apprentice being requested by the employing entity in order to ensure the registered apprenticeship program is able to train the specific type of apprentices demanded by employing entities. Absent these protections, there may be shortages of apprentices in the most in-demand, sophisticated, and highly paid trades that are crucial to a growing economy and increased investment in clean energy.

2. Good Faith Effort Waiver. The IRA provides that a taxpayer, contractor, or subcontractor may qualify for a “good faith effort” waiver of the apprenticeship utilization requirement where the registered apprenticeship program denies their request for qualified apprentices. Such a denial, however, must not be the result of a refusal by the taxpayer or any contractor or subcontractor “to comply with the established standards and requirements of the registered apprenticeship program.” *See, e.g.*, U.S.C. § 45(b)(8)(D)(ii). The phrase “established standards and requirements of the registered apprenticeship program” shall be broadly construed and includes the requirement that the employing entity (e.g., the taxpayer, contractor, or subcontractor) of the qualified apprentice contribute to a trust that funds the registered apprenticeship program which trains apprentices employed by the employing entity for the type of work to be performed by the apprentice consistent with the classifications under the Davis Bacon and Related Acts and whose contributions are required pursuant to a written agreement. In addition, where a taxpayer, contractor, or subcontractor requests a specific number of qualified apprentices and the registered apprenticeship program is not able to fully satisfy that request, the taxpayer, contractor, or subcontractor must utilize whatever number of qualified apprentices are offered. The fact that a registered program is unable to satisfy the request in full is not grounds for requesting a good faith effort waiver.

Commentary: If an employer is able to qualify for a good faith waiver when it does not receive all of the qualified apprentices which it requests, employers will be incentivized to inflate the numbers of apprentices it requests from registered apprenticeship programs. Moreover, an “all or none” good faith waiver standard would be bad public policy. The IRA’s apprentice utilization provisions are intended to promote the use of qualified apprentices and the registered apprenticeship programs that train them. If taxpayers and their associated employers are permitted to obtain the higher tax credit without employing the qualified apprentices available to them from a registered apprenticeship program, neither of those public policy objectives will be realized. Again, it is crucial that the Department of Treasury and IRS immediately issue

guidance with respect to the implementation of the IRA, and that guidance should state that where a taxpayer, contractor, or subcontractor requests a specific number of qualified apprentices and the registered apprenticeship program is not able to fully satisfy that request, the taxpayer, contractor, or subcontractor does not qualify for a good faith waiver and must utilize whatever number of qualified apprentices are offered.

In addition, the Alliance also believes it is crucial that the Department of Treasury and IRS clarify that any funds contributed to a trust to fund a registered apprenticeship program are used to train apprentices employed by the employing entity and properly classified in the trade appropriate for the type of work to be performed by the apprentice. This clarification is essential to maintaining a safe workplace, encouraging individuals to enter registered apprenticeship programs, and to ensure registered apprenticeship programs have the information and funding to be able to adequately provide training for the most in-demand skills.

In order to discourage attempts to abuse the availability of increased tax credits for apprentice utilization, the Department of Treasury and IRS should adopt requirements that registered apprenticeship programs have a prior record of operation as well as a prior record of meeting certain graduation rates, provided that alternative standards to meet those requirements are also available. In addition to record of operation and graduation rate requirements, registered apprenticeship programs that adopted DOL approved national standards submitted by an entity that operated for the same required period of time or that are a successor or affiliate to a registered apprenticeship program that can meet the years of operation or graduation rate requirements should also be deemed to satisfy both requirements. In any event, the required minimum graduation rates should be applied to new registered apprenticeship programs on a going forward basis beginning on the first day of the year following the year in which the program's first class of apprentices would be able to graduate under its approved apprenticeship standards.

3. Contract Clauses. To qualify for a bonus credit or deduction under the IRA, the taxpayer shall use such means as may be necessary to ensure that any and all solicitations, contracts and subcontracts for construction of a Qualified Facility⁴ include the following clauses:
 - a. "All contractors and subcontractors engaged in the performance of construction, alteration, or repair work on a Qualified Facility shall ensure that not less than [10, 12.5, or 15]⁵ percent of the total labor hours of such work be performed by qualified apprentices."

⁴ For purposes of the guidance, the term "Qualified Facility" refers to all facilities, buildings, equipment, and structures covered by the IRA's prevailing wage and apprenticeship requirements, including those described in the following sections of the Internal Revenue Code: 30C; 45; 45L; 45Q; 45U; 45V; 45Y; 45Z; 48; 48C; 48E; and 179D.

⁵ As set forth in 26 U.S.C. § 45(b)(8)(A)(ii), the applicable percentage will depend on the year construction commenced.

- b. “Each contractor and subcontractor who employs four (4) or more individuals to perform construction, alteration, or repair work on a Qualified Facility shall employ one (1) or more qualified apprentice to perform such work.”
- c. “While the construction activity is ongoing, the contractor shall include with each payment application to the taxpayer a report containing the following information:
 - i. The names of all qualified apprentices, the names of their Registered Programs, and their apprentice registration or identification number.
 - ii. The number of qualified apprentices and labor hours worked by them, categorized by trade or craft and noting the type of work performed.
 - iii. The number of journey level workers and labor hours worked by them, categorized by trade or craft.
 - iv. Where applicable, a written declaration justifying an exception to the apprenticeship utilization requirement (see subsection e.).

Where a contractor is not subject to progress billing, the contractor shall submit the periodic reports within a comparable time frame.”

- d. “Within 60 days after concluding work on the contract, the contractor shall submit to the taxpayer a verified statement of the total journey worker and apprentice hours performed on the project and, where applicable, any written declarations and documentation justifying an exception to the apprenticeship utilization requirement. The contractor and subcontractors shall maintain all records relating to the above-referenced reporting requirements for a period of at least three years after final completion of the work.”
- e. “A taxpayer, contractor, or subcontractor seeking a ‘good faith effort’ waiver of the apprenticeship utilization requirement shall prepare a specific written declaration, made under the penalties of perjury, detailing its efforts to secure qualified apprentices. Such efforts must include documented outreach to all the registered apprenticeship programs that train qualified apprentices with the proper trade classification for the type of work to be performed by the qualified apprentice and the jurisdiction of which covers any area within a 75-mile radius of the Qualified Facility, including joint labor-management apprenticeship programs. The requests must be made directly to the training director of the registered apprenticeship program (or a functionally similar individual). The declaration shall include the name and address of each registered apprenticeship program contacted, the name and title of the person(s) contacted, the means of contact (e.g., e-mail, letter, fax), dates of contact, and the response (if any). The taxpayer shall submit such declarations to the Treasury Department, and provide the documentation supporting its contacts with the registered apprenticeship programs to the individual contacted at the registered apprenticeship program or, in the event no response was received, to the program’s governing body.

Commentary: The above contract provisions will increase compliance with the IRA’s apprenticeship utilization requirements at the least cost to the government, registered apprenticeship programs, and the taxpayer. In particular, the Alliance believes that any required outreach associated with satisfying the “good faith effort” waiver should be limited to registered apprenticeship programs that train qualified apprentices with the proper trade classification for the type of work to be performed by the qualified apprentice. This limitation would reduce compliance costs for taxpayers, contractors, and sub-contractors, as well as ensure that the appropriate registered apprenticeship programs are being contacted for any work. Further, any outreach should be made directly to the training director or a similar official to ensure that any such outreach to secure qualified apprentices is received.

Sunlight is often the most effective and lowest cost means of enforcement. Thus the contract clause, record keeping, and required sharing of the information with the registered apprenticeship program that the employing entity purportedly contacted will better ensure that the good-faith exception is meaningfully complied with and the IRA policy goals of promoting apprenticeship through registered apprenticeship programs are achieved.

4. Investigations. Upon receipt of a complaint or its own initiative, the Secretary of Treasury shall request and review the records referenced in Section 3 of contractors and subcontractors engaged in the performance of construction work on a Qualified Facility and interview individuals employed by such contractors, to determine whether the requirements set forth in this notice, including the clauses in Section 3, have been met. The taxpayer, its contractors and subcontractors, shall immediately submit, upon request of the Secretary of Treasury, the records described in Section 3. Failure to produce such records shall result in administrative penalties.

Commentary: The Alliance believes that such enforcement clauses are essential to ensuring compliance with any corresponding requirements and should be coordinated with the Department of Labor and any other interested agencies.

5. Indemnification. The taxpayer is encouraged to protect itself from liability by entering into indemnification agreements with its contractors and with additional insured endorsements to the contractors’ liability insurance.

Commentary: Contractual indemnification and insurance provisions between the taxpayer receiving the increased tax credits and its down-stream agents are the most cost efficient method of increasing compliance because the entity receiving the increased tax credits will have the most incentive to ensure that the apprentice utilization requirements are met. Such contract provisions help to address the agency disconnect between the taxpayers who wish to obtain the increased tax credits and the employers who actually employ qualified apprentices.

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The Alliance appreciates the Treasury Department and IRS' request for comments in developing guidance as an essential step towards implementing the prevailing wage and apprenticeship requirements under the IRA. We welcome the opportunity to further explain or answer any questions about our comments.

Sincerely,



Todd Stafford
Executive Director

