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November 4, 2022

Charles P. Rettig, Commissioner  
Internal Revenue Service  
Room 5203  
P.O. Box 7604  
Ben Franklin Station  
Washington, D.C. 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)

Dear Commissioner Rettig:

On behalf of the Independent Electrical Contractors (IEC), I welcome the opportunity to offer this statement in response to the IRS Request for Comments on Prevailing Wage, Apprenticeship, Domestic Content, and Energy Communities Requirements. IEC is encouraged by IRS/Treasury's efforts to seek assistance from the public to help implement these policies, however, 30 days is not nearly enough time to ensure proper implementation and meaningful feedback for this unprecedented new law. Therefore, given the significance of these policy changes stemming from the Inflation Reduction Act (IRA) of 2022, IEC requests the IRS go through a formal Notice and Comment process in order to provide time for all stakeholders to offer thorough feedback to the agency.

Established in 1957, the Independent Electrical Contractors is a trade association representing over 3,700 members with more than 50 chapters and training centers nationwide. Headquartered in Arlington, Va., the IEC is the nation's premier trade association representing America's independent electrical and systems contractors. IEC National aggressively works with the industry to establish a competitive environment for the merit shop—a philosophy that promotes the concept of free enterprise, open competition, and economic opportunity for all.

For 65 years, IEC has been at the forefront of the industry by providing highly skilled electricians through its registered apprenticeship program. An IEC apprentice is able to earn while they learn, incurs little to no debt, and enters into a well-paying job upon graduation. In addition to being certified by the Department of Labor's (DOL) Office of Apprenticeship and 38 State Apprenticeship Councils, the American Council on Education (ACE) has recommended that students that graduate the IEC apprenticeship program be eligible for 46 semester hours of college credit. IEC is also a member of DOL's Registered Apprenticeship – College Consortium (RACC), a national network of postsecondary institutions, employers, unions, and associations working to create opportunities for apprentice graduates who may want to further enhance their skills by completing an associate's or a bachelor's degree. RACC members have their programs evaluated by a third-party organization to determine the college credit value of the apprenticeship completion certificate. During the 2022–2023 school year, IEC's merit shop contractors and chapters will educate nearly 15,000 electrical apprentices across the country. Our number one goal is to make sure we have the best qualified electrical workforce that abides by the highest safety standards in the industry.

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***The leading educator for merit shop electrical and systems contractors***

Many aspects of the prevailing wage and registered apprenticeship policies enacted by the IRA will have significant impact on IEC's merit shop electrical contractors. Given the unprecedented expansion of cumbersome and potentially anti-competitive labor policies on construction projects inserted through the federal tax code, it's critical that the IRS/Treasury take a deliberative approach to crafting rules and guidance implementing these provisions. If the complicated questions and scenarios put forth by the IRA are not handled properly, it could result in numerous unintended consequences for contractors, taxpayers, and the agency. Such difficult questions require careful and thoughtful consideration from stakeholders so that the rules governing the implementation of the green energy projects are rolled out in a fashion that provides flexibility to both the contractor and taxpayer.

Please find below IEC's response to many of the questions IRS and Treasury have asked related to the prevailing wage and apprenticeship requirements included in the IRA.

### **Prevailing Wage Requirement**

#### **IRS/Treasury**

(1) Section 45(b)(7)(A) provides that a taxpayer must ensure that any laborers and mechanics employed by the taxpayer, or any contractor or subcontractor, are paid wages at rates not less than the prevailing wage 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, which is commonly known as the Davis-Bacon Act (DBA). Is guidance necessary to clarify how the Davis-Bacon prevailing wage requirements apply for purposes of § 45(b)(7)(A)?

#### **IEC Response**

Clear guidance is necessary to clarify how the Davis-Bacon prevailing wage requirements apply for purposes of §45(b)(7)(A). Under the current law, contractors on federally funded construction contracts must pay the prevailing wage and document this through weekly submission of certified payroll reports.

IRS/Treasury must make clear whether similar bureaucratic requirements demonstrating proper payment of wages will be required. IEC would suggest that any requirements imposed on the contractor employing the laborers and mechanics or the taxpayer taking advantage of the deduction or credit be as simple and straight forward as possible with limited red tape. Additionally, IEC believes that regular reporting intervals would be overly bureaucratic and unnecessary for the purposes of implementing the IRA.

In construction, contracts are often signed but not executed until months later. IRS/Treasury must make clear what wage should be paid should there be a new wage determination after a proposal is formally agreed to but before a project's completion. IEC recommends that only one wage determination be in effect for the life of the contract.

IEC also requests that IRS/Treasury clearly delineate how the prevailing wage requirement for employees working on different types of projects and for different tasks. For example, under Davis-Bacon, the prevailing wage paid to an electrician working on a residential project is different than highway or heavy construction project. IRS/Treasury must make this clear for purposes of the IRA. In addition, IRS/Treasury must provide proper clarity on wage categories for worker classification purposes in order for contractors to pay the applicable prevailing wage for the appropriate job.

**IRS/Treasury**

(2) Section 45(b)(7)(B)(i) generally provides a correction and penalty mechanism for failure to satisfy prevailing wage requirements. What should the Treasury Department and the IRS consider in developing rules for taxpayers to correct a deficiency for failure to satisfy prevailing wage requirements?

**IEC Response**

IEC recommends IRS/Treasury hold listening sessions with stakeholders to fully comprehend how potential rules involving penalties for failure to satisfy the prevailing wage requirement could impact both contractors and taxpayers before moving forward.

**IRS/Treasury**

(3) What documentation or substantiation should be required to show compliance with the prevailing wage requirements?

**IEC Response**

IEC recommends IRS/Treasury should develop standard language or a statement that a contractor can use to certify the laborers and mechanics employed on the project are being paid prevailing wage rates. Contractors should not be required to turn over payroll information to a taxpayer or IRS in order for the taxpayer to qualify for the increase credit/deduction.

**IRS/Treasury**

(4) Is guidance for purposes of § 45(b)(7)(A) needed to clarify the treatment of a qualified facility that has been placed in service but does not undergo alteration or repair during a year in which the prevailing wage requirements apply?

**IEC Response**

IEC believes IRS/Treasury must develop specific guidance for stakeholders to provide comment on for how prevailing wage requirements should be handled in this scenario.

**IRS/Treasury**

(5) Please provide comments on any other topics relating to the prevailing wage requirements for purposes of § 45(b)(7)(A) that may require guidance.

**IEC Response**

IEC has always expressed concern with the uneven process for making precarious Davis-Bacon prevailing wage determinations. Currently, the Wage and Hour Division (WHD) within the Department of Labor is responsible for issuing surveys, collecting data, and determining the prevailing wage for federally funded construction projects. Unfortunately, WHD is an enforcement agency. Instead, IEC welcomes the untainted use of statistical data from the Bureau of Labor Statistics (BLS). At least one [study](#) has also shown that measurements conducted by WHD regularly exceed those of the BLS, costing taxpayers millions of dollars. Therefore, IEC urges IRS/Treasury to work with DOL to consider using sound, scientific data collection methods, such as those used by BLS.

In addition, DOL is currently considering significant changes to the rules governing Davis-Bacon, to include how the wage is calculated and expanding the types of tasks covered. While IEC expressed resistance to most of the proposed changes in its May 17, 2022 comment [letter](#), IEC urges IRS/Treasury to specifically reject the expansion to the policy known as “Site of Work.” IEC believes the site-of-the-work rules under current law should be followed by IRS/Treasury for purposes of the IRA. The DBA expressly states that its coverage is limited to construction performed at the “site of the work” and numerous court cases have upheld this interpretation. For

IRS/Treasury to expand upon the current definition would be illegal and could result in costly and unnecessary litigation.

Lastly, since most construction contractors do not engage in federal contracting and therefore are not familiar with the rules governing Davis-Bacon, IRS/Treasury must undergo an education campaign and work to draft easy to understand guidance to help educate these firms. The more confusing and bureaucratic the compliance process, the more difficult and longer it will take to implement these clean energy projects.

## **Apprenticeship Requirement**

### **IRS/Treasury**

(1) 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 a qualified facility must employ one or more qualified apprentices from a registered apprenticeship program to perform that work. What factors should the Treasury Department and the IRS consider regarding the appropriate duration of employment of individuals for construction, alteration, or repair work for purposes of this requirement?

### **IEC Response**

In addition to requiring a qualified apprentice perform work when four or more individuals are employed on a project, the IRA requires that the taxpayer ensure that a qualified apprentice perform no less than the applicable percentage of total labor hours of the project. The applicable percentage for purposes of this requirement is 10% for projects in which construction begins in 2022. This rate is increased to 12.5% in 2023, and 15% thereafter. IEC believes IRS/Treasury should add no additional limitations or arbitrary requirements to the status of the qualified apprentice because the statute is perfectly clear that tax incentives are conditioned on total labor hours of the project.

Given the workforce shortages faced by the construction industry, IEC believes that contractors need maximum flexibility to manage employees while also satisfying the requirements of the IRA. IEC opposes suggestions that qualified apprentices be employed by a contractor and/or be enrolled in a registered apprenticeship program for an arbitrary amount of time. Such unnecessary restrictions will only exacerbate the industry's workforce shortages and limit its ability to meet clean energy construction demands.

### **IRS/Treasury**

(2) Section 45(b)(8)(D)(ii) provides for a good faith effort exception to the apprenticeship requirement.  
(a) What, if any, clarification is needed regarding the good faith effort exception?

### **IEC Response**

IEC firmly believes IRS/Treasury must provide clear guidelines to define a good faith effort exception as provided in the IRA. In order to accomplish this, IEC believes IRS/Treasury should work with the industry to address the eventual complexities of demonstrating a good faith effort. For example, in IEC's registered apprenticeship program, the apprentice is an employee of the contractor and takes classroom education at a local chapter, which is different from an apprentice in a union program. Each model presents different challenges as it relates to compliance with the IRA. IRS/Treasury should account for the differences in these business models and should hold listening sessions with both to fully understand how each operates prior to releasing binding rules or guidance implementing the IRA.

Below are a series of questions, scenarios, and concerns IRS/Treasury should take into consideration as it relates to what may qualify as a good faith effort.

- Section 45(b)(8)(D)(ii)(II) indicates a good faith effort is met if 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.
  - IRS/Treasury must clarify if this request must be made in writing, via email or some other way that includes a valid time stamp.
  - IRS/Treasury must also clarify how one documents the lack of response within 5 business days.
- If a contractor approaches either a union or merit shop registered apprenticeship program and there are no apprentices available or offered for the time for which the project is scheduled or for the project to meet the labor hour requirement, is that a good faith effort?
- Must a contractor consult with every registered apprenticeship program in a specific geographic area and if so, how would he/she know about all the programs? How big an area must he/she consult? Will IRS/Treasury provide an online directory of registered apprenticeship programs sorted by state or a geographic location that industry stakeholders can utilize and refer clean energy contractors to in order to satisfy these requirements?
- If a qualifying apprentice fails to show up for or leaves the project early, for reasons unrelated to the contractor, and a replacement is not available, does that qualify as a good faith effort?
- If a qualifying apprentice is justly fired and a replacement is not available, does that qualify as a good faith effort?
- If a qualifying apprentice graduates from a registered apprenticeship program prior to performing the requisite percentage labor hours provided by the IRA and the contractor is unable to find a replacement, does this meet the good faith effort?
- If only union apprenticeship programs are available in a given area and in order to obtain a qualifying apprentice a merit shop contractor must unionize, but refuses, does that meet the good faith effort? IEC recommends that this qualifies.
- Do qualifying apprentices have to come from registered apprenticeship programs in the same geographic area/radius from the project's location or in the same state or region?
- Regardless of the scenario, just how much of an effort must a contractor make to find a qualifying apprentice? How should attempts to obtain a qualifying apprentice be documented to satisfy the good faith effort requirement?

Certainly, these questions and concerns are not exhaustive and additional scenarios and circumstances will arise. Clearly, a good faith effort will be difficult to define, which only serves to further demonstrate the need for IRS/Treasury to go through the formal Notice and Comment process as well as hold stakeholder listening sessions before implementing these and the other elements of the IRA.

### **IRS/Treasury**

(2) Section 45(b)(8)(D)(ii) provides for a good faith effort exception to the apprenticeship requirement.  
(b) What factors should be considered in administering and promoting compliance with this good faith effort exception?

#### **IEC Response**

IRS/Treasury should take into account the well-documented workforce shortages the construction industry, to include electrical, continues to face. The recent [Occupational Outlook Handbook](#) published by BLS estimates approximately “79,900 openings for electricians are projected each year, on average, over the decade. Many of those openings are expected to result from the need to replace workers who transfer to different occupations or exit the labor force, such as to retire.” In addition, as the electrical workforce continues to age and retire, so do the apprenticeship instructors, which will only serve to exasperate the problem.

Though an IEC electrical apprenticeship program offers individuals the prospect of a high paying career with little to no debt upon graduation, our merit shop electrical contractors continue to find it difficult to recruit enough qualified individuals to the industry to meet the demand. One of IEC’s largest chapters reports that nearly 90% of their member companies need more apprentices. Even through the chapter’s aggressive recruitment outreach that includes full-time workforce recruiters, an online hiring platform, monthly job fairs, and a massive digital marketing campaign, qualified individuals are difficult to attract to the program.

Lastly, IRS/Treasury should also take into consideration certain structural dynamics that limit registered apprentice numbers. The size of an IEC registered apprenticeship program facility varies from chapter to chapter. Regardless, each places limits on class size in order to maintain an appropriate student-teacher ratio that’s in the best interest of the apprentice. Additionally, supervisory ratios that vary across the country and often define the maximum number of apprentices that can be accommodated within a registered apprenticeship program act as an additional constraint on the pipeline for apprentices seeking to enter the field.

### **IRS/Treasury**

(2) Section 45(b)(8)(D)(ii) provides for a good faith effort exception to the apprenticeship requirement.  
(c) Are there existing methods to facilitate reporting requirements, for example, through current Davis-Bacon reporting forms, current performance reporting requirements for contracts or grants, and/or through DOL’s Registered Apprenticeship Partners Information Management Data System (RAPIDS) database or a State Apprenticeship Agency’s database?

#### **IEC Response**

The Department of Labor already requires a Program Registration and Apprenticeship Agreement [form](#) be completed for each registered apprentice. IEC chapters maintain this form for each member contractor and could be used to document an apprentice’s status. Assuming each State Apprenticeship Agency requires something similar, this could be used for verification purposes in those states. If this or a substantially similar document is used, IRS/Treasury must consider privacy issues that will naturally arise and permit the contractor to redact the qualifying apprentice’s social security number and other sensitive information, such as their home address, phone number, and email.

### **IRS/Treasury**

(3) What documentation or substantiation do taxpayers maintain or could they create to demonstrate compliance with the apprenticeship requirements in § 45(b)(8)(A), (B), and (C), or the good faith effort exception?

**IEC Response**

IEC recommends IRS/Treasury develop standard language or a statement that a contractor/taxpayer can use to certify that it has met the qualifying apprentice requirement provided for in the IRA. Contractors should not be required to turn over payroll information to a taxpayer or IRS.

**IRS/Treasury**

(4) Please provide comments on any other topics relating to the apprenticeship requirements in § 45(b)(8)(B) that may require guidance.

**IEC Response**

Section 45(b)(8)(B) subjects contractors to any applicable requirements for apprentice-to-journeyworker ratios of the Department of Labor or the applicable State Apprenticeship Agency for purposes of satisfying requirements of the IRA. Given the myriad of ratios that govern different states, localities and specific apprenticeship programs, IRS/Treasury must provide clear guidance how these are accounted for when complying with the IRA.

**Additional Apprenticeship Concerns**

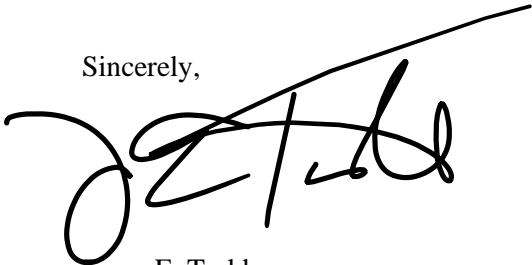
IEC also requests IRS/Treasury to clarify a situation should employees from multiple trades be working on a qualifying project, whether contractor needs to get one qualifying apprentice from each trade or will one apprentice in total be sufficient? IEC recommends the latter to ensure maximum flexibility and ensure consistency with the statute.

Finally, IEC believes that an apprentice that is registered through an online registered apprentice program should qualify and requests that IRS/Treasury clearly state this in its guidance.

**Conclusion**

IEC urges IRS/Treasury to take into consideration the various scenarios, concerns and questions into account outlined in this comment letter as it considers rules and guidance implementing the provisions enacted through the Inflation Reduction Act of 2022. Inserting labor provisions into the federal tax code is unprecedented and creates numerous complications that must be addressed judiciously which is why IEC recommends providing more time to stakeholders to offer input through listening sessions and a formal Notice and Comment period.

Sincerely,

A handwritten signature in black ink, appearing to read 'J. E. Todd', with a long horizontal line extending from the top of the signature.

Jason E. Todd  
Vice President, Government Affairs  
Independent Electrical Contractors