

## **International Union of Operating Engineers Local 49**

The Honorable Janet L. Yellen  
Secretary  
Department of Treasury  
1500 Pennsylvania Avenue, N.W.  
Washington, D.C. 20220

Re: 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

Dear Secretary Yellen,

Thank you for the opportunity to provide comments in advance of guidance issued by the Department of Treasury (Treasury) and the Internal Revenue Service (IRS) on the implementation of the Inflation Reduction Act (IRA). The International Union of Operating Engineers Local 49 (IUOE Local 49) is a construction labor union representing 14,000 workers and their families in Minnesota, North Dakota and South Dakota. Our members perform construction and maintenance work on a wide array of energy infrastructure projects including pipelines, thermal power plants, wind, solar, and others. In our region, much of the energy infrastructure work has been performed by highly-skilled, unionized workers who have built, maintained, and operated a reliable and affordable electricity system that businesses and households benefit from. We applaud the passage of the IRA for its significant investments in clean energy infrastructure and its inclusion, for the first time, of prevailing wage requirements for energy developers, utilities and others seeking full tax credit benefits under the act.

The Davis-Bacon and Related Acts require that laborers and mechanics employed under federal contracts are paid no less than the local prevailing wage and fringe benefits for similar work in the area. These provisions help ensure that federal contracts do not effectively undermine the wages of local workers. By requiring prevailing wage in all federal contracts, the Davis-Bacon Act ensures that non-local contractors are not able to underbid local contractors to bring in lower-paid workers from other regions. Instead, work done under federal contracts will utilize local, skilled workers.

Until the IRA's passage, recipients of federal energy tax credits were under no obligation to comply with federal prevailing wage requirements, despite the significant subsidy these projects received from the federal government. As a result, clean energy projects often relied on lower-paid, non-local labor. The IRA corrected this by including prevailing wage requirements for developers seeking full tax credit under the act. Moreover, the IRA went even further in supporting workers by also including registered apprenticeship ratio requirements for developers seeking full tax credit benefits. Registered apprenticeship is well-recognized as the gold standard in workforce training, providing apprentices with an opportunity to "learn-while-they-earn" and ensuring they have a pathway towards a meaningful career in the construction

industry. The IRA provides significant new and expanded financial incentives to clean energy developers. The worker protections are a critical component of ensuring that they receive a fair portion of the benefits.

### Prevailing Wage

The IRA is unique in applying prevailing wage in the context of a tax credit. Typically, prevailing wage applies to construction contracts with the federal government (Davis-Bacon) or construction projects receiving federal assistance through a grant or a loan (Davis-Bacon Related Acts). It is notable that the IRA prevailing wage requirements apply to projects receiving one or both of investment tax credits and performance-based tax credits. As a result, it will be important for the Treasury Department to be thoughtful in its prevailing wage and apprenticeship requirement guidance to ensure that the entirety of the construction project that is benefiting from federal tax credits under the IRA is complying with the labor requirements. To the extent possible, the Treasury Department should mirror or refer directly to existing and anticipated future Davis-Bacon prevailing wage regulations and guidance. This will provide clarity and simplicity for workers and contractors. Furthermore, for taxpayers receiving a performance-based tax credit, all component infrastructure that is substantially dedicated to achieving the performance outcome the tax credits seek to incentivize should be covered by prevailing wage requirements. This will ensure that the purpose of the prevailing wage requirements of the IRA, that clean energy projects benefiting from federal incentives pay construction workers prevailing wages and benefits, is fulfilled.

Achieving this outcome will require revising, clarifying or supplementing previous definitions issued by the Treasury Department. For example, with regards to the 45Q tax credit, the initial guidelines defined carbon capture equipment more narrowly to exclude much of the transportation pipeline (with the exception of gathering and distribution lines). At the time these rules were written, no prevailing wage requirements were attached to the tax credit. As a result, the definitions served different purposes and were primarily focused on defining equipment for the purpose of ownership and taxpayer eligibility. With the passage of the IRA, carbon capture equipment should be defined more broadly for the purpose of prevailing wage requirements. Large carbon capture projects, including equipment to capture, transport, and sequester carbon are made feasible and financially supported by the IRA. The transportation pipeline is substantially dedicated to meeting the performance requirement of 45Q (sequestering the captured carbon) and serves no other substantive purpose than transporting captured carbon for tax eligible sequestration or use. Without the pipeline, the carbon would not be sequestered and the taxpayer could not earn the tax credit. As such, Prevailing Wage requirements should attach to the entirety of the transportation pipeline, along with equipment at the points of capture and sequestration.

While the above example is specific to the 45Q tax credit for carbon capture, a similar approach may be considered for other performance-based clean energy tax credits to ensure that all components of a project that are substantially dedicated to meeting a performance-based tax credit requirement are covered by prevailing wage requirements. Regardless of the specific test

applied, the Treasury Department should apply a broad interpretation of which equipment/components of a qualified project are covered by the Prevailing Wage requirements.

Lastly, the Treasury department should include decommissioning work and demolition within their definition of alternation and that work should be covered by prevailing wage requirements.

### Correction and Penalty Mechanism

If a taxpayer was notified by a labor organization or other worker advocate or representative that they were out of compliance with prevailing wage requirements and failed to correct the deficiency, they should be considered to have intentionally disregarded prevailing wage requirements and be subject to the increased penalties under the IRA section 45(b)(7)(B)(iii).

### Compliance

For compliance with prevailing wage requirements, the IRS should develop rules that are in alignment with existing requirements for federal prevailing wage statutes. This should include regular submittal of certified payroll and maintenance of records for a period of time after completion of construction. For taxpayers seeking a performance-based credit, they should be required to maintain payroll records at least through the length of time they are receiving the credit.

The Treasury Department may want to consider signed Collective Bargaining Agreements (CBA) with wages and benefits at or above prevailing wage requirements as an alternative format to demonstrate compliance, provided there is a process within the CBA for workers to bring forward and have disputes resolved regarding wages and benefits.

### Apprenticeship Requirements

We recommend the Treasury Department provide clear guidance around the good faith effort exception to the Apprenticeship requirement. This guidance should require that taxpayers request apprentices from all regional apprenticeship programs (registered at the state and federal level) that train apprentices in the appropriate craft, not just a single one. This guidance would help prevent the creation of “on-paper” apprenticeship programs that don’t have a record of training apprentices from providing a loophole to the apprenticeship ratio requirements of the IRA. Taxpayers and their contractors or subcontractors who are contacted by labor organizations or representatives of registered apprenticeship organizations and inform them that they have apprentices available should not qualify for the good faith effort exemption. In this case, they should also be determined to have intentionally disregarded the requirement.

Conclusion

Thank you for the opportunity to submit the above recommendations. We look forward to working as partners with clean energy developers and other stakeholders as we work to build out our nation's clean energy economy.

Respectfully,

A handwritten signature in black ink that reads "Jason George". The signature is written in a cursive style with a large, stylized initial "J" and "G".

Jason George  
Business Manger  
IUOE Local 49