



The following are the comments of the Maine Labor Climate Council to the 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 Maine Labor Climate Council (MLCC) is an association of 16 labor unions from the public and private sectors. We were formed in 2022 to serve as the voice of Maine labor in simultaneously addressing global climate change and income inequality. Our comments will address sections 3.01 and 3.02 within the RFI.

Fundamentally, the intent of the Act regarding renewable energy projects is multifaceted: increase the amount of clean, renewable power available to Americans, do it with high quality labor standards, and build up the manufacturing capacity of the United States.

These goals can best be accomplished by relying on existing entities, transparency in all stages of the work, and good data collection.

Existing entities such as state Departments of Labor already have expertise in enforcing labor law, as well as an excellent understanding of prevailing wage and apprenticeship. Unions, not-for-profits, worker's centers, legal advocacy organizations, and others are invaluable resources available and willing to assist the federal government with ensuring proper enforcement of the Act.

Transparency from the application stage to the final payout/tax credit phase of the project is paramount in importance. This will ensure the ability of NGO's to assist with enforcing the Act and the rules promulgated to put the Act into action. Consistent, regular reporting by the taxpayer combined with easy public access to those reports should be the goal at all times.

Good data collection will go hand-in-hand with transparency. A taxpayer receiving any of the credits specified in the Act should be required to thoroughly and regularly report on each factor that was required to receive said tax credit to ensure that the benefits of the Act are going to the workers performing the work and to building our workforce of the future.

For example, if a taxpayer is taking the 30% ITC and needs to meet the apprenticeship utilization percentage there should be a requirement, at a minimum, similar to what Maine does for our [current apprenticeship utilization requirement](#) (in Maine, a developer building a renewable energy generation station must employ apprentices at a rate of 10% of the total workforce on a qualifying renewable energy project). Maine's Department of Labor requires

responsible entities to submit three reports at different points in time detailing how this requirement *will* be met before construction starts, then how it *is* being met midway through the project, and how it *was* met after the project ends.

There is one meaningful exception to this idea of good data collection. When a taxpayer enters into a bona fide Project Labor Agreement (PLA) signed by a labor organization, the intent of the Act's labor provisions will be met by contract, and so long as that relationship continues no other reporting is necessary. Union wages are always higher or equal to Davis-Bacon rates, and unions consistently contribute a majority of the registered apprentices in the construction industry nationally. Therefore, we urge Treasury to allow taxpayers who substitute a bona fide PLA, signed by a labor organization, to be exempted from the reporting requirements for Davis-Bacon prevailing wage and apprenticeship requirements.

.01 Prevailing Wage Requirement:

**.01 (1) Is guidance necessary to clarify how the Davis-Bacon prevailing wage requirements apply for purposes of § 45(b)(7)(A)?**

In developing its regulations to implement the labor provisions of the ACT, the Department must take notice of the enforcement challenge it faces. More specifically, there will likely be tens of thousands of energy projects starting every year for the life of the incentives. Ensuring compliance of all these projects will be extremely challenging given the limited resources of the Agency. While hiring more compliance agents will be necessary, it is unrealistic to base the enforcement program solely on a new army of compliance agents. The mismatch between the number of projects and number of agency staff can be addressed in other ways. Specifically, as detailed below, the agency can rely upon information sharing, transparency, and participation by stakeholders such unions and not for profits in the compliance process.

1. A Strategy for Information Sharing and Transparency
  - a. Taxpayers Should be Required to File a Public Notice Declaring a Taxpayer's Intention to Claim Bonus Tax Credits by Paying Prevailing Wage and Using Apprentices.

At least 60 days prior to the beginning of construction, the Secretary should require taxpayers to file a notice of their intention to claim bonus tax credits by meeting the law's prevailing wage requirements. The notice should be filed with the IRS and made public via the IRS website. The Secretary should require the following information to be included in the taxpayer's declaration of intention to claim benefits:

- i. Information about the taxpayer, including the following:
  1. Name and contact information including their physical address, email address, and phone number
  2. Whether the taxpayer is currently affiliated with or participates in a registered apprenticeship program. If so, provide the name and contact information of the registered apprenticeship program and the number and type of apprentices received from the registered apprenticeship program

- ii. Information about the taxpayer's contractors or subcontractors (if hired at the time of submission), including the following:
  - 1. Name and contact information including their physical address, email address, and phone number
  - 2. Whether the contractor or subcontractor is currently affiliated with or participates in a registered apprenticeship program. If so, provide the name of the registered apprenticeship program(s) and the number and type of apprentices received from the registered apprenticeship program.
- iii. Information about the qualified facility or facilities for which the taxpayer is receiving a tax credit, including the following:
  - 1. The type of energy the qualified facility or facilities will be producing (i.e. solar energy, wind energy, hydro energy, etc.)
  - 2. The location of the qualified facility
  - 3. The type of work that will be performed on the qualified facility (i.e. construction, alteration, or repair)
  - 4. The estimated start and end date of construction
  - 5. An estimate of the total number of labor hours needed to complete the project
- iv. A description of the project's workforce, including the following:
  - 1. An estimate of the total number of construction employees that will be hired
  - 2. An estimate of the total number of apprentices that will be hired, in which trades they will work and the rates of pay they will be paid, and the name and description of the apprenticeship program they will be enrolled in
  - 3. An estimate of the total number of journeypersons that will be hired and in which trades they will work and the rates of pay they will be paid
  - 4. The types of construction crafts that will be needed to complete the project
  - 5. Taxpayers can meet the obligations of paragraphs b and c by providing a copy of an agreement or agreements, including a project labor agreement, that will show that they will meet the labor standards (prevailing wage and apprenticeship program) that are prerequisites for obtaining the tax credit.
- v. A description of the Workforce Development Plan
  - 1. The taxpayer's plan for locating and employing a sufficient number of qualified apprentices and journeypersons to meet the required apprenticeship labor hours.
  - 2. If applicable, the contractors or subcontractors plan for locating and employing a sufficient number of qualified apprentices and journeypersons to meet the required apprenticeship labor hours.

3. Taxpayers can meet the obligations of paragraphs 1. and 2. by providing a copy of an agreement or agreements, including a project labor agreement, that will show that they will meet the labor standards (prevailing wage and apprenticeship program) that are prerequisites for obtaining the tax credit.

**.01 (2) 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?**

The Treasury Department and the IRS should consider factors including the gross amount of wages and benefits not correctly paid, the duration of the deficiency, and frequency of the occurrence. Prior deficiencies should also be taken into account. The provision allowing for interest to be charged on all wages lost should be applied to all deficiencies.

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

The Secretary should require that taxpayers, their contractors, and subcontractors that are subject to the Act's labor requirements submit certified payrolls and a sworn labor compliance report, with appropriate documentation.

The compliance reports should be submitted to the IRS at the end of each month and made publicly available via the IRS website. Davis-Bacon reporting on certified payroll should apply to taxpayers subject to the Act's labor requirements, and the IRS should make these reports publicly available via the IRS website as well.

Improving transparency so that members of the public can view certified payrolls will be an effective method for facilitating compliance without requiring an increase in compliance staff proportional to the substantial increase in labor compliance cases that the Inflation Reduction Act will create, protecting law abiding employers from being undercut by noncomplying entities.

The following information should be included in the compliance report:

1. 1. Information about the taxpayer, including the following:
  - a. Name and contact information including their physical address, email address, and phone number
  - b. Whether the taxpayer is affiliated with or participates in a registered apprenticeship program. If applicable, provide the name and contact information of the registered apprenticeship program and the number and type of apprentices received from each registered apprenticeship program.
2. 2. Information about the taxpayer's contractors or subcontractors, including the following:
  - a. Name and contact information including their physical address, email address, and phone number

- b. Whether the contractor or subcontractor is affiliated with or participates in a registered apprenticeship program. If applicable, the name of the registered apprenticeship program(s) and the number of and type of apprentices received from the program.
3. Information about the qualified facility or facilities for which the taxpayer is receiving a tax credit, including the following:
  - a. The type of energy the qualified facility or facilities will be producing (i.e., solar energy, wind energy, hydro energy, etc.)
  - b. The location of the qualified facility or facilities
  - c. The type of work that will be performed on the qualified facility or facilities (i.e., construction, alteration, or repair)
  - d. The start date of construction and the estimated end date of construction
  - e. The total number of labor hours completed on the project at the time of submission
  - f. An estimate of the total number of labor hours that will be needed to complete the project
4. A description of the project's workforce at the time of submission, including the following:
  - a. The total number of construction employees that have been hired
  - b. The total number of apprentices that have been hired
  - c. The total number of journeypersons that have been hired
  - d. The total number of labor hours worked by qualified apprentices and journeypersons
  - e. The amount of hourly wages being paid to workers on the project.

#### .02 Apprenticeship Requirement

**.02 (1) 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?**

**.02 (2) (a) What, if any, clarification is needed regarding the good faith effort exception?**

The Good Faith Effort provision of the Act's Apprenticeship Requirement states that if a taxpayer's request for qualified apprentices from an apprenticeship program is denied, for reasons such as the program lacking sufficient apprentices to satisfy the request, then the taxpayer will have made a Good Faith Effort and will not lose its eligibility for bonus tax incentives.

In such cases, the apprenticeship program should have the continuous right to offer to the employer the qualified apprentices solicited in the taxpayer's initial request, at any time while the construction of the facility is ongoing. To continue satisfying the Good Faith Effort provision, if

the employer has job openings on the project that apprentices offered by the apprenticeship program are qualified for, then the employer must employ those apprentices.

Additionally, the Secretary should issue regulations or guidance that further clarifies what efforts a taxpayer must take to avail themselves of the good faith efforts exception. The regulations or guidance should require the following:

1. Taxpayers and their contractors and subcontractors must make every reasonable effort to meet the required number of labor hours that must be performed by qualified apprentices. A reasonable effort means that the taxpayer and their contractors and subcontractors have contacted a specified number of registered apprenticeship programs before applying for a waiver under the good faith exception.
2. If apprentices are not available for dispatch at the beginning of the project, it is expected that the taxpayer or its contractor or subcontractors will contact a specified number of registered apprenticeship programs every month until satisfying the apprenticeship labor hours requirement.
3. Taxpayers that are unable to meet the apprenticeship labor hours requirement must submit an application for a Good Faith Efforts (“GFE”) Waiver. An applicant for a GFE waiver must submit the following information:
  - a. Name and contact information of the taxpayer receiving the tax credit as well as any contractors or subcontractors that fail to satisfy the apprenticeship labor hours requirements.
  - b. Evidence demonstrating that the taxpayer and its contractors or subcontractors contacted the required number of apprenticeship programs and the reasons for why they were unable to receive the number of apprentices needed to meet the apprenticeship labor hours requirement. If no apprentices are available, the contractor will document their contacts with apprenticeship programs (such as copies of e-mails or letters requesting apprentices and the response from the program/s stating by letter or e-mail that no apprentices are available).
  - c. The steps the taxpayer or its contractors and subcontractors are intending to take to come into compliance, including submitting a plan to either check back with apprenticeship programs that it already reached out to or searching for new apprenticeship programs.
4. If granted, the GFE waiver will only excuse the taxpayer from meeting the required apprenticeship labor hours for the 3 months immediately preceding the date of approval. Once a GFE waiver has expired, the taxpayer will need to reapply for a new GFE waiver.
5. A taxpayer’s completed GFE waiver and the Treasury’s decision to grant or deny the waiver must be made publicly available via the IRS website.

**.02 (2) (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?**

The Secretary should work with existing databases that list registered apprenticeship programs in each state, including RAPIDS. To be included in the database, registered apprenticeship programs should be required to demonstrate the following:

1. Regularly graduate apprentices to journeyperson status
2. Regularly recruit diverse apprentices including minorities, women, and low-income individuals
3. Has entered into a formalized agreement with a pre-apprenticeship training program that permits pre-apprenticeship graduates to enter directly into the registered apprenticeship program
4. Provides a minimum of 30 hours of Occupational Safety and Health Training
5. Utilizes functioning training facilities

The database should list the following information for each registered apprenticeship program:

1. Name and contact information including phone number, email address, physical address, and hours of operation
2. Whether the apprenticeship program is registered with U.S. DOL or a state apprenticeship agency
3. The types of construction crafts available
4. Apprenticeship graduation rates
5. Union affiliation, if applicable