

Comment from National Roofing Contractors Association

The National Roofing Contractors Association comments on Notice 2022-51 - Prevailing Wage, Apprenticeship, Domestic Content, and Energy Communities Requirements Under the Inflation Reduction Act of 2022 - Docket (IRS-2022-0025).



November 4, 2022

Charles P. Rettig, Commissioner
Internal Revenue Service
Room 5203
P.O. Box 7604
Ben Franklin Station
Washington, D.C. 20044

Re: Notice 2022-51 - 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 Commissioner Rettig,

The National Roofing Contractors Association is submitting comments on Notice 2022-51 - Prevailing Wage, Apprenticeship, Domestic Content, and Energy Communities Requirements Under the Inflation Reduction Act of 2022 - Docket (IRS-2022-0025).

Established in 1886, NRCA is one of the nation's oldest trade associations and the voice of roofing professionals worldwide. Our nearly 4,000 member companies represent all segments of the industry, including contractors, manufacturers, distributors, consultants, and other employers in all 50 states and internationally. NRCA members are typically small, privately held companies with the average member employing 45 people and attaining sales of \$4.5 million per year. The U.S. roofing industry is an essential \$100 billion sector with nearly one million employees that provides critical materials and services to ensure home and business safety.

We recognize that 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. In measuring the appropriate duration of employment of these individuals, we believe the Treasury Department and the IRS should place no limitation on how long an apprentice from a registered apprenticeship program must be enrolled to qualify. The statute is clear that tax incentives are based on total labor hours of the project and not for each contractor. Our contractors need maximum flexibility to meet this challenging requirement as some may only be on a job for a short amount of time and it will not be feasible to comply with an arbitrary minimum time.

Our association applauds the inclusion of Section 45(b)(8)(D)(ii) in the Inflation Reduction Act which provides for a good faith effort exception to the apprenticeship program requirement.

However, this requirement must be clear and final once issued in order to provide the regulatory certainty needed for effective decision making by employers.

Many of our members are not in a state or region where workers that meet this requirement are readily available, and only a small component of roofing contractors currently utilize registered apprenticeship programs. In fact, according to the U.S. Bureau of Labor Statistics, just 12.6% of the U.S. construction workforce belonged to a union in 2021, and the comparable percentage within the roofing industry is considerably lower. We also anticipate that, due to the expected historic investment in these projects, workers with registered apprenticeship skills will be in very short supply due to the high demand. Moreover, in recent years NRCA has created new, state-of-the-art employee training and certification programs – ProCertification and Training for Roof Application Careers - that will help ensure that green energy projects that qualify for the revised tax credit are installed through the highest of standards while providing enhanced career pathways for roofing employees from all type of firms.

We believe that maximum flexibility under the good faith effort will be beneficial in ensuring energy efficiency and climate goals are met in a timely fashion. According to the U.S. Census Bureau, the average commute time for Americans in 2019 was just under 28 minutes or approximately one hour round trip. If a registered apprenticeship program is not available within the average U.S. commute time, or if a qualified individual is not available in the geographic region to provide the work, then a company could automatically be provided an exemption. We also ask that an automatic exemption be considered if there isn't a registered apprenticeship program with a business license in the state of work.

We also ask for additional clarification on how the good faith effort will be measured. We agree that employers should be incentivized to comply to the extent practical, and that the Department should work diligently to educate the industry on these exemptions as well as the penalties for non-compliance. We also hope that the paperwork to show compliance does not create unnecessary burden for employers, especially small businesses.

We request additional clarity on how the Davis-Bacon prevailing wage requirements, which currently only apply to certain federal construction projects, will apply for applicable private-sector projects. What agency will be responsible for regulating and enforcing these requirements? How will the Department of Labor integrate with the IRS's current enforcement efforts? The requirement to pay prevailing wages will likely preclude the opportunity for small businesses within the roofing industry to participate in projects that qualify for the enhanced tax credit due to the complexity of compliance.

Lastly, NRCA requests additional clarification on how the Department will measure an unintentional violation versus an intentional violation. How long will compliance outreach and education be available before the penalties begin? As the penalties increase exponentially, will there be an employer, employee, or a labor hour work limit for each infraction? At minimum, we recommend a cap on unintentional violation penalties be placed on penalties for businesses with fewer than 50 employees.

Thank you for your consideration of NRCA's views on this important issue. We agree with the intent of these tax credits to accelerate energy efficiency in the commercial building sector and believe that this goal will be achieved only if the requirements and enforcement efforts are clear and feasible for contractors. Please contact Deborah Mazol, director of federal affairs, (dmazol@nrca.net; 202-906-9431) should additional information be helpful for your review. We look forward to working together to implement relevant components of the Inflation Reduction Act.

Sincerely,

A handwritten signature in black ink, appearing to read "Duane L. Musser". The signature is fluid and cursive, with a long horizontal stroke at the end.

Duane L. Musser
Vice President of Government Relations