



UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA

**Douglas J. McCarron**  
*General President*

November 4, 2022

**Via Federal eRulemaking Portal**

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

**Re: Internal Revenue Service Notice 2022-51**

Dear Sir or Madam:

The United Brotherhood of Carpenters and Joiners (“UBC”) respectfully submits these comments on the Internal Revenue Service’s Request for Comments on Prevailing Wage, Apprenticeship, and Energy Communities Requirements Under the Act Commonly Known as the Inflation Reduction Act of 2022 (“IRA”).

With a half-million members primarily in the construction industry, the UBC is North America’s largest building-trades union. We have a significant presence in the U.S. and Canada, including an international union headquarters in Washington, D.C. and over 450 local unions, as well as 24 regional councils, from coast to coast. The UBC represents employees of contractors engaging in the construction, alteration, and repair of a wide range of renewable energy facilities, including, among others, wind facilities, closed and open-loop biomass facilities, geothermal and solar energy facilities, nuclear facilities, and hydropower facilities.

The UBC strongly supports the IRA’s requirements for renewable energy facilities taking advantage of the IRA’s expanded and extended investment and production tax credits to build union and buy American. By building union, renewable energy developers are able to mobilize a stable, productive, well-trained, and safety-conscious workforce to support President Biden’s objectives of “investing [in] and building a clean energy economy that creates well-paying union jobs.” Executive Order 14008, Section 217 and 219 (January 27, 2021). Accordingly, our comments focus on Notice 2022-51’s questions regarding the IRA’s prevailing wage requirement and registered apprenticeship requirement, which we will address in order.

### 3.01 Prevailing Wage Requirement

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

Yes, guidance is necessary because a Davis-Bacon Act prevailing wage determination is generally secured by a federal contracting agency either from a pre-existing wage schedule or by filing a DBRA Standard Form 308, “Request for Wage Determination and Response to Request.” Federal law and regulations do not provide guidance on how a private sector owner/contractor should independently identify an appropriate prevailing wage(s) or request a wage determination(s).

Notably, as well, many of the specific construction jobs needed to construct, alter, or repair a renewable energy facility will need to be classified, as federal agencies generally do not contract to construct, alter, or repair renewable energy facilities. Guidance is thus required to assist taxpayers and their general contractors and subcontractors in determining prevailing wages in the absence of a contracting federal agency’s determination of, or role in determining, these wage rates.

Especially given the wide range of renewable energy projects subject to the IRA’s prevailing wage requirements, efficiency and ease of administration will be critical so that jobs are not held up, awaiting prevailing wage determinations. Treasury should thus consider whether an existing Davis-Bacon rate category can be used for these projects, even as a uniform nationwide standard. The Davis-Bacon commercial building rate represents a reasonable standard rate category.

- (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?

First, Treasury should work diligently to ensure that taxpayers, contractors, and subcontractors have detailed and advance knowledge of these requirements, so that inadvertent or otherwise unintentional violations are kept to a minimum. Instructions and all literature relating to these tax credits should identify the prevailing wage requirements up-front.

Section 45(b)(7)(B)(iii) requires enhanced repayment and penalty obligations in the case of any failure to pay the applicable prevailing wage due to “intentional disregard.” The Department should identify a list of factors to be considered in determining whether the failure to pay was intentional. These factors should include, but should not be limited to: (i) evidence of knowledge of the requirement to pay prevailing wages; (ii) an attempt to hide or conceal the failure to pay prevailing wages, (iii) a failure to correct such a violation after learning of it, (iv) the duration of any such failure, (v) the absolute and relative number of employees affected by such failure, (vi) whether employees were paid wages or fringe benefits in cash, (vii) whether labor brokers were used to procure employees for the job, (viii) whether other applicable taxes and benefits were withheld and paid by the employer on behalf of the employee(s), and (ix) existence of prior violations—any second offense by a taxpayer should automatically be considered “intentional disregard.”

The Treasury Department should also issue regulations providing for debarment, as per 29 C.F.R. § 5.12, if a taxpayer, or its contractor or subcontractor, engage in repeat or aggravated violations of these prevailing wage rates.

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

When seeking a tax credit for a renewable energy project, a taxpayer should be required to maintain the same level of documentation that a public contractor retains and reports on certified payroll reports on a Wage Hour Form 347 (WH-347). The Department should create a schedule supporting the tax credit that the taxpayer must file that summarizes the relevant wage and hour information.

- (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?

Congress in the IRA demonstrated a strong policy preference for the payment of prevailing wages on renewable energy projects, and thus the terms “alteration or repair” should be read broadly to include maintenance. In addition, a taxpayer seeking a tax credit for a year in which no construction, alteration, or repair was conducted on a qualifying facility should be required to certify under penalty of federal criminal false statements liability as part of its tax filing that no such construction, alteration, or repair work was performed.

### 3.02 Apprenticeship Requirement

- (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?

The Treasury Department and the IRS should consider the variable duration of construction jobs, many of which are of relatively short duration, both in general and within the renewable energy space. Thus, there should be no minimum or maximum duration for projects covered under the registered apprenticeship standards. Nor does the IRA provide for any such minimum or maximum periods.

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

In short, implementing guidelines should clarify that a taxpayer (and its contractors and subcontractors) should only be able to rely on the good faith exception if it pursues retention of the requisite number of registered apprentices in good faith. The IRA's requirement that a taxpayer and its contractors seek to hire registered apprentices under Section 45(b)(8) should not be susceptible to "check-the-box" exercises. Rather, IRS guidance should prescribe that Section 45(b)(8) requires a specific, diligent, and documented effort to identify registered apprenticeship programs and registered apprentices that are able and available to work and learn on these renewable energy projects.

As Congress recognized in the IRA, training the workers of tomorrow represents a critical undertaking to ensure a robust workforce that can be scaled to take on the challenges of constructing our energy future. With over 250 registered apprenticeship programs nationwide, the UBC stands ready to do its part to ensure registered apprentices are available and that a taxpayer's invocation of the good faith effort exception represents the exception, not the rule.

- (b) What factors should be considered in administering and promoting compliance with this good faith exception?

The relevant factors should be tailored to ensuring that the taxpayer and its contractors have made a diligent search for qualified registered apprentices. As an initial matter, the taxpayer must be able to document its request for registered apprentices. Any request should be in writing, and the taxpayer should be able to confirm the request was delivered to and received by the relevant registered apprenticeship program. Any subsequent denial by a registered apprenticeship program used to support a good faith exception should also be in writing and signed by an authorized official of the registered apprenticeship program.

Further, requests for registered apprentices should not be set up to fail. While it may seem elementary, the registered apprentices sought must be in the process of being trained for the craft or trade assigned the work. The registered apprentices sought, moreover, must be able to work within a jobsite's geographic location as a matter of union jurisdiction and reasonable proximity to the jobsite.

Requests for registered apprentices must also be reasonably specific. While the IRA defines an eligible registered apprentice program as one registered under the National Apprenticeship Act, *see* 26 U.S.C. § 3131(e)(3)(B), the taxpayer should be required to demonstrate that any registered apprenticeship program the taxpayer or its general or subcontractor solicits or utilizes has a track record of training, graduating, and securing employment opportunities for its registered apprentices.

- (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 the DOL's Registered Apprenticeship Partners Information Management Data System (RAPIDS) database or a State Apprenticeship Agency's database?

These sources are better used to demonstrate compliance with the IRA's registered apprenticeship requirements (see question 3.02(3)), rather than exercise of the good faith exception.


- (3) What documentation or substantiation do taxpayers maintain or could they create to demonstrate compliance with the apprenticeship requirements.

As explained above in response to question 3.01(3), a taxpayer should be required to maintain the same level of documentation that a public contractor retains and reports on certified payroll Forms WH-347, referenced above. Form WH-347 requires that each registered apprentice performing work under a contract must be reported. The certified payroll must include the current pay scale and provide a copy of the apprenticeship agreement. The Department should create a schedule supporting the tax credit that the taxpayer must file that summarizes the relevant apprenticeship employment information.

The information contained in this taxpayer documentation compiling and/or summarizing Form WH-347 information should also match with the requirements contained in the Work Process Schedule contained in Appendix A to the sponsoring organization's apprenticeship standards that have been approved and signed by a representative of the Department of Labor.

Thank you very much for your consideration of these comments. Please do not hesitate to contact Matthew Capece, at [matthew.capece@carpenters.org](mailto:matthew.capece@carpenters.org), if you have any questions or need additional information.

Respectfully submitted,



Douglas J. McCarron