

Comment from Greenwork Inc.

Greenwork is a technology company building software at the intersection of climate action and the skilled trades. We are submitting the attached comments. We propose optional proactive electronic reporting of payroll, so the IRS can provide automated confirmation of compliance with the IRA's prevailing wage and apprenticeship requirements. We also ask several clarifying questions about implementation.

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Office of the Associate Chief Counsel
Passthroughs and Special Industries
Internal Revenue Service
1111 Constitution Avenue NW
Washington, DC 20224
November 4th, 2022

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

COMMENTS PROVIDED BY GREENWORK, INC. REGARDING THE NOTICE 2022-51 TO INFORM THE GUIDANCE AND RULEMAKING OF THE INFLATION REDUCTION ACT OF 2022 (IRA).

1 INTRODUCTION

Greenwork is a software company whose goal is to develop the skilled trades workforce in order to make a measurable impact on the climate crisis. We work with climatetech companies who are eager to deploy their novel solutions with the benefit of tax credits under the Inflation Reduction Act (IRA).

We applaud the ratification of the IRA, and in particular we support the application of increased tax credits to projects that meet prevailing wage and apprenticeship requirements, because this additional capital will attract more talent toward both the skilled trades and climatetech and ensure high-quality jobs in the industry.

Our comments in this document will focus on how data should be reported for compliance with prevailing wage and apprenticeship requirements. We advocate for electronic reporting via structured data fields so that software can automatically verify compliance. Further, we observe that if the IRS offered a portal for *optional proactive reporting* while work is being performed, taxpayers could get immediate feedback to reduce the risk of penalties or recapture.

2 GENERAL COMMENTS

As a software company we believe that documentation of clean energy investments via structured data, with an option to proactively report, will have many benefits:

- Immediate feedback on compliance (by having software review the data)
- Reduced uncertainty around future audit risk
- Transparency in understanding the impacts of tax credits on construction laborers and mechanics
- More data to measure the progress and “return on investment” for government incentive spending

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As such our comments will focus on how we could adopt software and structured data approaches that will help participants realize the four advantages bulleted above. We will bias our suggestions toward familiar patterns, drawing upon California Department of Industrial Relations (DIR) or Davis-Bacon patterns in order to build systems that feel familiar to contractors who have done public works projects in the past.

3 COMMENTS ON SPECIFIC ISSUES

.01 Prevailing Wage and .02 Apprenticeship:

Clarification requested on application of requirements

There are three areas where we have had discussions with parties that had varying interpretations.

- Could Treasury/IRS confirm whether or not prevailing wage and apprenticeship requirements apply to a project whose construction is already in progress at the time that the requirements take effect?
- Could Treasury/IRS confirm whether or not prevailing wage and apprenticeship requirements apply to construction or manufacturing or assembly work that takes place off-site (e.g. prefabrication work)?
- Could Treasury/IRS confirm whether or not the apprenticeship requirements could take effect at a different date from the prevailing wage requirements?

.01 Prevailing Wage

Guidance to clarify how the Davis-Bacon prevailing wage requirements apply

We request guidance on wage determinations and which occupations are deemed relevant for a particular construction project.

Our understanding is that under Davis-Bacon, wage determinations are typically specified by awarding bodies and included in contracts. For Inflation Reduction Act tax credit eligibility, does the taxpayer have any responsibility to enumerate (in an official contract or communication) the wage determinations and relevant occupations to contractors and subcontractors?

Further: is there any separate process for adding new occupation classifications to wage determinations? This will be a matter of interest for occupations that are particular to renewable energy technology.

Considerations in developing rules for taxpayers to correct a deficiency for failure to satisfy prevailing wage requirements

In cases where a deficiency or failure has been hidden from the taxpayer by a false or erroneous certified payroll report, the employer who signed the payroll report (instead of the taxpayer) should be held responsible for the corrective wages/interest/penalties.

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In cases where a prevailing wage rate changed during the course of a project and the employer failed to enact the wage rate change in their payroll system, Treasury / IRS should consider waiving the \$5,000 per worker penalty. Note that this situation can be avoided, or remedied promptly during a project, if the certified payroll submission portal performs wage rate validation.

Documentation or substantiation required to show compliance with the prevailing wage requirements

We request guidance around the reporting of payroll data, in particular regarding the **originators, format, cadence, recipients, and preservation** of the data. We have suggestions for how this could work.

We have the impression that under Davis-Bacon rules:

- certified payroll reports **originate** from the prime contractors (after having compiled reports from their subcontractors)
- the reports (along with a signed statement of compliance) are **formatted** as something resembling DOL Form WH-347 [footnote] (on paper or electronically)
- the reporter should submit these on a weekly **cadence**
- the **recipient** is the contracting agency / awarding body
- documents must be **preserved** for three years

We suggest that the rules be modernized as follows:

- reports **originate** from the prime contractors (after having compiled reports from their subcontractors)
- certified payroll reports are **formatted** as structured data similar to the California public works XML format [footnote]
- the reporter should submit these on a weekly **cadence**
- the **recipient** is the taxpayer. The taxpayer has the option to compile and forward the payroll reports proactively to Treasury or Labor (via a web portal that either highlights problems or provides a certificate of compliance)
- taxpayer must **preserve** the documents. Taxpayer may preserve certificates of compliance to reduce audit complexity, or to share with tax credit transferees.

.02 Apprenticeship:

Factors to consider regarding the appropriate duration of employment of individuals for construction, alteration, or repair work

We believe any duration of employment for a registered apprentice should be appropriate.

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For employers with four or more employees, we suggest that the “one or more apprentices” requirement should be considered met if at least half of the pay periods documented during the project involve an apprentice.

We further suggest that the “one or more apprentices” requirement should only apply to employers who employ workers on the job site for two weeks or more.

Clarifications, considerations, and methods around the good faith effort exception

We suggest that all requests for apprentices be submitted and documented via a single “source of truth” web portal per state. For states that recognize federal apprenticeships, this should be served through a federal web portal.

Documentation or substantiation for taxpayers to demonstrate compliance with the apprenticeship requirements or the good faith effort exception

In cases of compliance, the required information should be included in the certified payroll data submitted and will be documented there and automatically accessible to Treasury / Labor.

In cases of a good faith exception, the required documentation would already be present in RAPIDS or a state apprenticeship registry’s web portal.

4 CONCLUSION

Greenwork thanks the Department of Treasury and the IRS’ Office of the Associate Chief Counsel for the opportunity to comment. With clear guidance from the Department, taxpayers will be able to comply on the first try and reduce the risk of costly problems.

We are happy to discuss any of our proposals in detail with representatives of the Department.

Respectfully and sincerely submitted,



Sam Steyer
Chief Executive Officer
Greenwork, Inc.