

# Inflation Reduction Act: Overview and Updates





# The Inflation Reduction Act

- On August 16, 2022, President Biden signed Public Law 117-369, 136 Stat. 1818, commonly known as the Inflation Reduction Act of 2022 (IRA), into law.
- The IRA amended the Internal Revenue Code to add prevailing wage and Registered Apprenticeship requirements for taxpayers performing construction, alteration or repair, of qualified clean energy facilities, property, projects, or equipment to qualify for increased tax credit or deduction amounts.
- By pairing climate investment, with the creation of good paying jobs, the IRA's unparalleled investments to fight the climate crisis will help improve job quality in clean energy industries and incentivize the expansion of workforce training pathways into these jobs.
- The IRA codifies a direct connection between Tax and Labor Code



# IRA Guidance

- On November 30, 2022, Treasury published initial guidance on the IRA's apprenticeship and prevailing wage requirements in Notice 2022-61
  - The IRA PWA requirements apply to qualifying facilities, projects, property, or equipment for which construction began on or after **January 29, 2023**.
- On August 30, 2023, Treasury issued a Notice of Proposed Rulemaking (NPRM) on the IRA's prevailing wage and apprenticeship requirements.
- The public comment period is for 60 days, until October 29, 2023.
- Treasury requests that any comments be submitted in writing. Please visit [regulations.gov](https://www.regulations.gov) to file and view public comments.



# IRA Tax Benefits for Taxpayers

## **The IRA's prevailing wage and apprenticeship provisions apply to the:**

- Alternative Fuel Refueling Property Credit
- Production Tax Credit
- Credit for Carbon Oxide Sequestration
- Credit for Production of Clean Hydrogen
- Clean Fuel Production Credit
- Investment Tax Credit
- Advanced Energy Project Credit
- Energy Efficient Commercial Buildings Deduction

## **In addition, the IRA's prevailing wage provisions apply to the:**

- New Energy Efficient Home Credit
- Zero-Emission Nuclear Power Production Credit

# Prevailing Wage





# Wage and Hour Division and the Construction Industry



- Bipartisan Infrastructure Law
- CHIPS and Science Act
- Inflation Reduction Act
- Executive Orders



# Davis-Bacon and Related Acts

- The Davis-Bacon and Related Acts (DBRA) require payment of local prevailing wages to construction workers performing work on federally funded or assisted construction projects.
- DBRA ensures responsible contractors can compete for federally assisted construction contracts and that federal contracting does not depress wages.
- August 23: The DBRA final rule was published in Federal Register.
- October 23: The DBRA final rule goes into effect.



# IRA Prevailing Wage Requirements: Overview

Under the IRA NPRM, to meet the prevailing wage requirements with respect to any qualified facility, a taxpayer must ensure that any laborers and mechanics employed by the taxpayer (or any contractor or subcontractor) in:

- the construction, alteration or repair of such facility (generally for the 10-year period after the qualified facility is originally placed in service),
- are paid wages at rates not less than the prevailing rates based on the geographic area for the type of construction and the type of work performed, as determined by the Secretary of Labor.





# IRA Prevailing Wage Requirements: Wage Determinations

- A wage determination (WD) is the list of basic hourly wage rates and fringe benefit rates for each classification of laborers and mechanics (“labor classification”) in a predetermined geographic area for a particular type of construction, as determined by the Secretary of Labor.
- Taxpayers should use General Wage Determinations, which reflect wage rates determined by WHD to be prevailing in a specific geographic area for a certain type of construction and does not expire. ([www.sam.gov](http://www.sam.gov))
- Supplemental Wage Rates and Supplemental Wage Determinations



# DBRA versus IRA

- The Inflation Reduction Act is not a Davis-Bacon “Related Act.”
- Incorporates certain Davis-Bacon concepts, e.g., definitions of “site of the work” and “construction, alteration or repair.”
- Taxpayers subject solely to prevailing wage and apprenticeship provisions in the IRA (i.e., are not receiving DBRA covered federal funding) are not subject to the regulations implementing the Davis-Bacon Act and the Related Acts.

# Apprenticeship Requirements





# Inflation Reduction Act Impact

- Helps fulfill the Department's commitment to "good jobs" and equitable opportunities for all workers
- Drives the goals of expansion and quality
- Enhances opportunities for greater collaboration with SAAs
- Presents an opportunity for greater promotion and awareness of Registered Apprenticeship



# IRA Apprenticeship Requirements: Overview

Under the new rules enacted by the IRA, taxpayers (and their contractors and subcontractors) must employ qualified apprentices for work on qualified facilities if they want the 5x enhanced tax credit. The rules generally require a certain number of apprentice hours based on the percentage of overall hours on a project.

Specific rules include:

- **Qualified apprentice** means an individual who is participating in a registered apprenticeship program that has been recognized by the Department of Labor or a State apprenticeship agency.
- **Labor hours requirement** - A minimum percentage of the total labor hours of the construction, alteration, or repair work (including such work performed by any contractor or subcontractor) has to be performed by qualified apprentices
  - Escalating percentages: 12.5% for projects beginning in 2023, 15% starting in 2024
- **Ratio requirement** – The labor hours requirement is subject to any applicable requirements for apprentice-to-journeyworker ratios of DOL or the applicable State apprenticeship agency
  - This requirement is intended to ensure there are sufficient experienced workers to oversee apprentices
- **Participation requirement** - Each taxpayer (or contractor or subcontractor) who employs four or more workers to perform construction, alteration, or repair work on a qualified facility must employ one or more apprentices
  - Designed to prevent taxpayers from satisfying the labor hours requirement by only hiring apprentices to perform one type of work, encourages taxpayers to utilize apprentices across the full range of work performed with respect to the facility



# IRA Apprenticeship Requirements: Statutory Exceptions

The statute provides two exceptions to the apprenticeship requirements:

## Good Faith Effort Exception

- A taxpayer may be deemed to satisfy the apprenticeship requirements if a request for apprentices is made to a registered apprenticeship program, and:
  - Such request is denied provided that such denial is not the result of a refusal by the taxpayer (or any contractors) to comply with the established standards and requirements of the registered apprenticeship program, or
  - The registered apprenticeship program fails to promptly respond to such request

## Ability to Cure

- If a taxpayer fails to satisfy the labor hours requirement or the participation requirement, such taxpayer can cure such failures by paying the IRS a penalty equal to \$50 multiplied by the total labor hours for which the requirements were not satisfied with respect to the construction, alteration, or repair work on such qualified facility
  - The penalty payment may increase to \$500 x the labor hours in the case of intentional disregard



# IRA Apprenticeship Requirements: Compliance

- §1.45-8 provides that unless an exception applies, a taxpayer claiming or transferring (under section 6418) the increased credit amount under section 45(b)(6)(B)(iii) with respect to any qualified facility must satisfy the Apprenticeship Requirements of section 45(b)(8) and this section.
- The taxpayer is solely responsible for ensuring that the Apprenticeship Requirements are satisfied.
- Apprentice-to-journeyworker ratio:
  - §1.45-8(c) provides that the allowable ratio of apprentices-to-journeyworkers on the job site in any occupation and its corresponding classification on any day must comply with the applicable apprentice to journeyworker ratio of the registered apprenticeship program in accordance with 29 CFR part 29.
- If on any day the ratio of apprentices to journeyworkers exceeds the allowable ratio, and subject to the requirements of the registered apprenticeship program, the labor hours performed by any qualified apprentice in excess of the ratio may not be counted as hours performed by apprentices for purposes of the labor hours requirement.



## NPRM Rules for IRA Prevailing Wage

# §1.45-7(c): Curing a Failure to Satisfy the Prevailing Wage Requirements Penalty Payment

### ➤ **General rule for penalty payment:**

To cure a failure to satisfy the prevailing wage requirements, a taxpayer must pay the IRS a penalty of \$5,000 x the number of underpaid mechanics/laborers. The penalty is not subject to IRS deficiency procedures and must be paid to the IRS at the time of filing the tax return claiming the increased credit.

### ➤ **De minimis exception:**

The penalty payment is waived with respect to a laborer or mechanic employed in the construction, alteration, or repair of a qualified facility if the taxpayer makes the correction payment by the earlier of 30 days after the taxpayer became aware of the error or the date on which the increased credit is claimed, and

(1) The laborer or mechanic is paid wages at rates less than the amount required to be paid for not more than 10 percent of all pay periods of the calendar year (or part thereof) during which the laborer or mechanic was employed in the construction, alteration, or repair of the qualified facility during the calendar year; or

(2) The difference between the amount the laborer or mechanic was paid during the calendar year (or part thereof) and the amount required to be paid is not greater than 2.5 percent of the amount required to be paid.

### ➤ **PLA Exception:**

The penalty payment does not apply with respect to a laborer or mechanic employed in the construction, alteration, or repair work of a qualified facility if the work is done pursuant to a pre-hire collective bargaining agreement with one or more labor organizations that establishes the terms and conditions of employment for a specific construction project (Qualifying Project Labor Agreement) and any correction payment owed to any laborer or mechanic is paid on or before the date on which the increased credit is claimed.





## NPRM Rules for IRA Prevailing Wage §1.45-7(c): Curing a Failure to Satisfy the Prevailing Wage Requirements Intentional Disregard

- If the IRS determines that any failure to satisfy the prevailing wage requirements is due to intentional disregard—
  - (1) The correction payment is increased to three times the amount otherwise owed; and
  - (2) The penalty payment is increased to \$10,000 multiplied by the total number of laborers and mechanics who were paid wages at a rate below the prevailing rate.
- A failure to satisfy the prevailing wage requirements is due to intentional disregard if it is knowing or willful.
- If a taxpayer makes the correction and penalty payments before receiving notice of an examination from the IRS with respect to a claim for the increased credit under section 45(b)(6), the taxpayer will be presumed not to have intentionally disregarded the prevailing wage requirements.



# IRA Apprenticeship Requirements: Good Faith Exception

- The taxpayer, contractor, or subcontractor must submit a written request for qualified apprentices to at least one registered apprenticeship program which has a geographic area of operation that includes the location of the facility, or to a registered apprenticeship program that can reasonably be expected to provide apprentices to the location of the facility; trains apprentices in the occupation(s) needed to perform construction, alteration, or repair with respect to the facility; and has a usual and customary business practice of entering into agreements with employers for the placement of apprentices in the occupation for which they are training, pursuant to its standards and requirements. Such request must be in writing and sent electronically or by registered mail.

## **Content of request:**

- The request of the taxpayer, contractor, or subcontractor must include the proposed dates of employment, occupation of apprentices needed, location of the work to be performed, number of apprentices needed, the expected number of labor hours to be performed by the apprentices, and the name and contact information of the taxpayer, contractor, or subcontractor requesting employment of apprentices from the registered apprenticeship program.
- The request must also state that the request for apprentices is made with an intent to employ apprentices in the occupation for which they are being trained and in accordance with the requirements and standards of the registered apprenticeship program.

## **Duration of request:**

- If the taxpayer, contractor, or subcontractor submits a request and the request is denied or not responded to, the taxpayer will be deemed to have exercised a Good Faith Effort with respect to the request for a period of 120 days from the date of the request.
- The taxpayer will not be deemed to have exercised a Good Faith Effort beyond 120 days of a previously denied request unless the taxpayer submits an additional request.



# IRA Apprenticeship Requirements: Good Faith Exception Continued

## **Denial of request.**

- If a taxpayer, contractor, or subcontractor submits a request and the request is denied, the taxpayer will be deemed to satisfy the apprenticeship requirements, provided that such denial is not the result of a refusal by the taxpayer or any contractors or subcontractors engaged in the performance of construction, alteration, or repair work with respect to such qualified facility to comply with the established standards and requirements of the registered apprenticeship program.
- The denial of a request is only valid for purposes of establishing a Good Faith Effort with respect to the portion(s) of the request that were denied.

## **Failure to respond.**

- If the registered apprenticeship program fails to respond to a request submitted within five business days after the date on which such registered apprenticeship program received the taxpayer's (or its contractor or subcontractor) request, then such request is deemed to be denied.
- Acknowledgement, whether in writing or otherwise, by the registered apprenticeship program of receipt of such request submitted in accordance with the proposed rules is a sufficient response.



# Recordkeeping Under the IRA

- Taxpayers must maintain and preserve records sufficient to demonstrate compliance with the applicable prevailing wage and apprenticeship requirements.
- At a minimum, those records include payroll records for each laborer and mechanic (including each qualified apprentice) employed by the taxpayer, contractor, or subcontractor in the construction, alteration, or repair of the qualified facility.



# Records: Prevailing Wage

Records sufficient to demonstrate compliance with the applicable Prevailing Wage Requirements may include the following information for each laborer and mechanic (including each qualified apprentice) employed by the taxpayer, a contractor, or subcontractor with respect to each qualified facility:

- (1) Identifying information, including the name, social security or tax identification number, address, telephone number, and email address;
- (2) The location and type of qualified facility;
- (3) The labor classification(s) the taxpayer applied to the laborer or mechanic for determining the prevailing wage rate and documentation supporting the applicable classification, including the applicable wage determination;
- (4) The hourly rate(s) of wages paid (including rates of contributions or costs for bona fide fringe benefits or cash equivalents thereof) for each applicable labor classification;
- (5) Records to support any contribution irrevocably made on behalf of a laborer or mechanic to a trustee or other third person pursuant to a bona fide fringe benefit program, and the rate of costs that were reasonably anticipated in providing bona fide fringe benefits to laborers and mechanics pursuant to an enforceable commitment to carry out a plan or program described in 40 U.S.C. 3141(2)(B), including records demonstrating that the enforceable commitment was provided in writing to the laborers and mechanics affected;
- (6) The total number of labor hours worked per pay period;
- (7) The total wages paid for each pay period (including identifying any deductions from wages);
- (8) Records to support wages paid to any apprentices at less than the applicable prevailing wage rates, including records reflecting the registration of the apprentices with a registered apprenticeship program and the applicable wage rates and apprentice to journeyworker ratios prescribed by the apprenticeship program; and
- (9) The amount and timing of any correction payments and documentation reflecting the calculation of the correction payments.



# Records: Apprenticeship

Records sufficient to demonstrate compliance with the applicable Apprenticeship Requirements may include the following information for each apprentice employed by the taxpayer, a contractor, or subcontractor with respect to each qualified facility:

- Any written requests for the employment of apprentices from registered apprenticeship programs, including any contacts with the U.S. Department of Labor's Office of Apprenticeship or a State apprenticeship agency regarding requests for apprentices from registered apprenticeship programs;
- Any agreements entered into with registered apprenticeship programs with respect to the construction, alteration, or repair of the facility;
- Documents reflecting the standards and requirements of any registered apprenticeship program, including the applicable ratio requirement prescribed by each registered apprenticeship program from which taxpayers, contractors, or subcontractors employ apprentices;
- The total number of labor hours worked by apprentices; and
- Records reflecting the daily ratio of apprentices to journeyworkers.



# Treasury NPRM Quick Links

- **[Publication 5855](#)**
  - Inflation Reduction Act (IRA): Prevailing Wage & Registered Apprenticeship Overview
- **[NPRM: Prevailing Wage and Apprenticeship](#)**
  - Increased Credit or Deduction Amounts for Satisfying Certain Prevailing Wage and Registered Apprenticeship Requirements
- **[FAQs](#)**
  - Frequently asked questions about the prevailing wage and apprenticeship under the Inflation Reduction Act
- **[Prevailing wage and apprenticeship requirements](#)**
  - IRS Landing Page
- **[IR 2023-156 Prevailing Wage and Apprenticeship](#)**
  - IRS News Release



# DOL IRA Quick Links

- DOL webpage (<https://www.dol.gov/general/inflation-reduction-act-tax-credit>)
- Resources about complying with the IRA's prevailing wage provisions (<https://www.dol.gov/agencies/whd/IRA>)
- Resources about complying with the IRA's Registered Apprenticeship provisions (<https://www.apprenticeship.gov/inflation-reduction-act-apprenticeship-resources>)