INDEPENDENT ELECTRICAL CONTRACTORS

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October 30, 2023

Douglas W. O'Donnell
Deputy Commissioner for Services and Enforcement
U.S. Department of the Treasury
Internal Revenue Service
1111 Constitution Ave. NW
Washington, DC 20224

Re: Increased Credit or Deduction Amounts for Satisfying Certain Prevailing Wage and Registered Apprenticeship Requirements; Notice of Proposed Rulemaking (RIN:1545-BQ54; REG-100908-23)

Dear Mr. O'Donnell:

The Independent Electrical Contractors (IEC) offers the following comments in response to the Internal Revenue Service (IRS) Notice of Proposed Rulemaking (NPRM) implementing the prevailing wage and apprenticeship requirements for the increased tax incentive for energy projects included in the Inflation Reduction Act (IRA) of 2022.

Established in 1957, Independent Electrical Contractors is a trade association representing over 3,800 members with more than 50 chapters and training centers nationwide. Headquartered in Arlington, Va., IEC is the nation's premier trade association representing America's independent electrical and systems contractors. IEC National aggressively works with the industry to establish a competitive environment for the merit shop—a philosophy that promotes the concept of free enterprise, open competition, and economic opportunity for all.

IEC & Apprenticeship

For 65 years, IEC has been at the forefront of the industry by providing highly skilled electricians through its registered apprenticeship program. An IEC apprentice is able to earn while they learn, incurs little to no debt, and enters into a well-paying job upon graduation. In addition to being certified by the Department of Labor's (DOL) Office of Apprenticeship and 38 State Apprenticeship Councils, the American Council on Education (ACE) has recommended that students that graduate the IEC apprenticeship program be eligible for 46 semester hours of college credit.

IEC is also a member of DOL's Registered Apprenticeship – College Consortium (RACC), a national network of postsecondary institutions, employers, unions, and associations working to create opportunities for apprentice graduates who may want to further enhance their skills by completing an associate or a bachelor's degree. RACC members have their programs evaluated by a third-party organization to determine the college credit value of the apprenticeship completion certificate. During the 2023–2024 school year, IEC's merit shop contractors and chapters will educate over 16,000 electrical apprentices across the country. Our number one goal is to make sure we have the best qualified electrical workforce that abides by the highest safety standards in the industry.

IEC Apprenticeship & IRA Good Faith Effort Exception

IEC appreciates the efforts by IRS to implement the unprecedented merger of labor and tax law as enacted through the IRA. However, IEC is concerned with many of the NPRM's requirements as it relates to the Good Faith Effort Exception (GFEE). In its letter dated November 4, 2022 to Commissioner Rettig, IEC urged IRS to hold listening sessions with various stakeholders so as to completely understand the law's impact on industry. To our knowledge, no such listening sessions were held. Unfortunately, the proposed GFEE provisions in the NPRM appear to not take into account the IEC model of registered apprenticeship, in which a registered apprentice is already employed by the contractor and receives his/her classroom instruction from a local chapter's registered apprenticeship program (RAP). Rather, the proposed guidelines appear to be tailored to contractors that obtain apprentices from registered apprenticeship programs affiliated with a union. Therefore, it is unclear if there is a scenario where an IEC contractor could qualify for the GFEE. For IRS to seemingly ignore how registered apprenticeship operates within the likes of programs like IEC and its chapter network for the purposes of the GFEE is unacceptable.

§1.45–8 Apprenticeship requirements.

Apprentice-to-Journeyworker Ratio

NPRM

(c) Application of apprentice-to- journeyworker ratio—

(1) In general. The labor hours requirement under paragraph (b) of this section is subject to any applicable requirements for apprentice-to-journeyworker ratios of the U.S. Department of Labor or the applicable State apprenticeship agency.

(2) Ratio. 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.

(3) Failure to meet ratio requirements. For purposes of section 45(b)(8)(B), if on any day the ratio of apprentices to journeyworkers exceeds the ratio established in accordance with paragraph (c)(2) of this section, 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 of paragraph (b) of this section.

(d) Participation requirement. Each taxpayer, contractor, or subcontractor who employs four or more individuals to perform construction, alteration, or repair work with respect to the construction of a qualified facility must employ one or more qualified apprentices to perform work with respect to the construction, alteration, or repair of the facility.

IEC Comment

IEC has concerns with requiring a taxpayer, contractor, or subcontractor to comply with the apprentice to journeyworker ratio of the RAP. By their very nature, ratio requirements constrain the workforce pipeline of more individuals into the trades, which would seem to go against the spirit of the IRA's apprenticeship mandates. In addition, the ratio a nonunion contractor must follow is public and usually dictated by the either the U.S. Department of Labor, state apprentice agency or a local government entity. Contrast this with a union ratio that is included in its collective bargaining agreement, which the public typically doesn't have access to and consequently, can put a signatory contractor at a competitive advantage.

In addition, ratio requirements vary by jurisdiction. In some states and localities, an apprentice to journeyworker ratio is not required for private sector projects where apprentices are utilized. Since the IRA provides increased tax incentives for private sector construction, IEC requests IRS make clear that a taxpayer, contractor, or subcontractor need only follow the ratio requirement of the registered apprenticeship program in those states and localities that specifically prescribe them for private sector projects.

Good Faith Effort Exception

NPRM

A) Request for apprentices. The taxpayer, contractor, or subcontractor must submit a written request for qualified apprentices to at least one registered apprenticeship program, as defined in paragraph (f)(4) of this section, 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.

IEC Comment

Under standards of the U.S. Department of Labor, a RAP is given the ability to operate in very specific areas of the country and therefore, if the project falls into that area, then it is clear it is eligible to potentially provide apprentices. That being said, it will be difficult for contractors to know about all the qualified apprenticeship programs that are eligible to provide apprentices to a given project. IEC recommends IRS address this issue in consultation with DOL.

Also, stating that a taxpayer, contractor, or subcontractor must contact a RAP *"that can reasonably be expected to provide apprentices to the location of the facility"* is extremely ambiguous and subjective. What is considered reasonable to IRS may not be considered reasonable to the taxpayer, contractor, or subcontractor for various reasons and such an ambiguous statement will only lead to further confusion. Distance is one of the variables IRS should address in its final rule when considering whether it's reasonable to expect a program to provide apprentices. IEC would like to make it clear that it's unreasonable to expect a nonunion contractor to contact a union program for apprentices should that be the only RAP in the area. IEC requests IRS to acknowledge this in its final rule as it relates to satisfying the GFEE.

NPRM

(1) 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.

(2) Duration of request. If the taxpayer, contractor, or subcontractor submits a request in accordance with paragraph (e)(1)(i)(A) of this section 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.

IEC Comment

IEC rejects the IRS proposal that, should the Good Faith Effort Exception be met, that it only lasts for 120 days and urges IRS to remove it from the final rule since it is unwieldy, unworkable, overly bureaucratic and was not included in the statutory language of the Inflation Reduction Act.

The IRA is very clear as to the timeline required to meet the GFEE. It states that if "the registered apprenticeship program fails to respond to such request within 5 business days after the date on which such registered apprenticeship program received such request," then the taxpayer, contractor, or subcontractor will have satisfied the timeline component of the GFEE requirement for the project for which apprentices are being requested. There is no mention in the statutory language of the IRA of revisiting this process and making another request at any point during the project should the GFEE be met by virtue of the RAP not being able to meet the request or there's no response within five business days. Congress was clear with the five-business day requirement and therefore, the rules implementing this portion of the IRA need no clarification from IRS.

In addition to not being part of the statutory language of the IRA, it is also not completely clear if the taxpayer, contractor, or subcontractor must make a third request 120-days after the second, and so on, should it not hear back from the apprenticeship program in five business days or does not receive apprentices as requested. The NPRM also does not make it clear if the five-business day timeline included as part of the initial request is reapplied to the subsequent request as proposed.

Additionally, the NPRM includes a requirement that a taxpayer claiming or transferring the increased tax credit must ensure that the total labor hours performed by registered apprentices of a qualifying project must be as high as 15 percent. But it also states that the *"taxpayer will nonetheless be deemed to have satisfied the Apprenticeship Requirements if the taxpayer has made a good faith effort to meet the Apprenticeship Requirements as described in paragraph (e)(1) of this section (the "Good Faith Effort Exception") or made the penalty payment provided in paragraph (e)(2) of this section for any failures to which the Good Faith Effort Exception does not apply."*

IEC interprets the NPRM as stating that a taxpayer, contractor, or subcontractor will have deemed to have satisfied the apprenticeship labor hour requirement should it meet the GFEE. However, requiring a taxpayer, contractor, or subcontractor that meets the initial GFEE requirement to submit a request for apprentices 120 days later will complicate the 15 percent labor hour requirement. The NPRM does not make it clear whether the taxpayer, contractor, or subcontractor will then be required to meet the labor hour requirement should the second request be fulfilled. If it is, it could very well prove impossible and impractical for the taxpayer, contractor, or subcontractor to have apprentices perform the requisite labor hours depending on how close the project is to completion.

Furthermore, the 120-day requirement adds unnecessary bureaucracy for the taxpayer, contractor, or subcontractor. Large construction projects require companies to devote a tremendous amount of time and precious resources to complying with local, state and federal regulations, in addition to those related to the IRA. Adding this needless provision will further burden businesses, especially small businesses. Furthermore, this provision unnecessarily disrupts a contractor's labor plan midstream that could then have a domino effect on other projects as it seeks to properly assign workers in order to meet the complex requirements of the IRA.

For IRS to propose that a taxpayer, contractor, or subcontractor resubmit an apprenticeship request 120 days after the GFEE is met clearly adds an additional level of unnecessary complexity to the IRA. Nowhere in the statutory language does it state the GFEE is temporary, nor does it provide an additional time component. Consequently, for all the reasons articulated above, IEC requests that IRS not include the need for a taxpayer, contractor, or subcontractor to renew its request every 120 days and that the GFEE is deemed to be met for the life of the project should the RAP not respond after five business days or not be able to satisfy the initial request.

NPRM

(B) Denial of request. If a taxpayer, contractor, or subcontractor submits a request in accordance with paragraph (e)(1)(i)(A) of this section and the request is denied, the taxpayer will be deemed to satisfy the requirements of section 45(b)(8)(A) through (C), 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.

IEC Comment

IEC is concerned that IRS does not provide additional clarity as it relates to the ability of a taxpayer, contractor, or subcontractor to qualify for the GFEE if it does not agree to the *"standards and requirements*" of the registered apprenticeship program. This gives a disproportionate amount of power and control to the RAP and appears to leave virtually no room for negotiation by requiring the taxpayer, contractor, or subcontractor to submit to whatever the RAP demands. It's unreasonable for the government to implement a "take it or leave it" approach where the taxpayer, contractor, or subcontractor is at the mercy of the RAP. As stated earlier, it is unreasonable to expect a nonunion contractor to request apprentices from a union RAP but if it did, this could lead to the signing a collective bargaining agreement or a project labor agreement (PLA) in order to obtain apprentices, which nonunion contractors will not do. IEC requests IRS to provide additional flexibility to provide room for negotiation between the taxpayer, contractor, or subcontractor and RAP.

NPRM

(C) Failure to respond. If the registered apprenticeship program fails to respond to a request submitted in accordance with paragraph (e)(1)(i)(A) of this section 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 paragraph (e)(1)(i)(A) of this section is a sufficient response for purposes of this paragraph (e)(1)(i)(C).

IEC Comment

The NPRM requires the request by the taxpayer, contractor, or subcontractor to be in writing, so should the response by the RAP, in order to better document communication between the RAP and the taxpayer, contractor, or subcontractor in the case of an audit by the IRS. The NPRM appears to give entirely too much flexibility in what constitutes a response from the RAP. Therefore, IEC requests that IRS change *"Acknowledgement, whether in writing or otherwise," to "Acknowledgement in writing."*

In addition, the NPRM implies that an autogenerated response would qualify for the purposes of a response from the RAP based on Example 1, in which *"the registered apprenticeship program responds three days later, but reply emails from the registered apprenticeship program are auto forwarded to taxpayer A's spam or junk mail folder."* Whether the interpretation that an autogenerated email suffices as a response is an accurate assumption or not, IEC believes that, since the NPRM requires the taxpayer, contractor, or subcontractor request for apprentices to be specific, so too must the response from the RAP.

IEC also requests that IRS require the RAP's written response be within five business days of the request and to specifically address whether it can provide the number of apprentices requested, during the dates of employment provided in the request, in the location of the work to be performed and for the number of labor hours expected, in order to satisfy the response timeline outlined in the law. This would also reduce the likelihood of the email ending up in a spam or junk mail folder. Anything less and the taxpayer, contractor, or subcontractor shall have satisfied the GFEE requirements for the duration of the project.

NPRM

(2) Penalty payment —(i) In general. The taxpayer must pay the Internal Revenue Service (IRS) a penalty equal to $50 multiplied by the total labor hours for which the requirements described in paragraph (b) or (d) of this section were not satisfied with respect to the construction, alteration, or repair work on such qualified facility to retain the increased credit.

(v) Project labor agreements. The penalty payment required by paragraph (e)(2)(i) of this section to cure a failure to satisfy the Apprenticeship Requirements in paragraphs (b) and (d) of this section shall not apply with respect to the construction, alteration, or repair work of a qualified facility if the work is done pursuant to a Qualifying Project Labor Agreement as defined in § 1.45–7(c)(6)(ii).

IEC Comment

IEC adamantly opposes the proposal to exempt a taxpayer from a penalty payment that fails to satisfy the Apprenticeship Requirements of the IRA due to its signing of a project labor agreement and urges IRS to remove this proposal from the final rule.

A PLA is a jobsite-specific collective bargaining agreement unique to the construction industry that typically requires companies to agree to recognize unions as the representatives of their employees on that job, use the union hiring hall to obtain most or all construction labor, exclusively hire apprentices from union-affiliated apprenticeship programs, follow union work rules and pay into union benefit and multiemployer pension plans that nonunion employees can't access. This forces employers to pay "double benefits" into their existing plans and union plans, puts them at a significant competitive disadvantage and exposes them to unfunded multiemployer pension plan liabilities. In addition, PLAs typically require construction workers to pay union dues and/or join a union if they want to receive union benefits and work on a PLA project. If they do not satisfy these stipulations, nonunion workers lose an estimated 34% of their wages and benefits to union coffers and benefits plans—making them the victims of wage theft.

When mandated, coerced or encouraged by government agencies and lawmakers on traditionally private construction projects, PLAs exacerbate the construction industry's estimated skilled labor shortage of more than half a million workers in 2023 by unfairly discouraging competition from quality nonunion contractors and their employees, who comprise 88.3% of the private U.S. construction industry workforce.

That being said, IEC supports the ability of a contractor to voluntarily sign a PLA if it so chooses. However, nowhere in the statutory language of the IRA does it mention PLAs and the IRS should not be taking it upon itself to incentivize or coerce the signing of PLAs at the prospect of possibly avoiding a potential penalty or receiving any added benefit. This arbitrary recommendation is a prime example of IRS proposing to create a two-tiered system in which a contractor could receive an additional punishment simply because it chooses not to sign a PLA. Contractors that violate the law should receive equal punishment regardless of whether there is a PLA in place or not.

§1.45–7 Prevailing wage requirements.

NPRM

(7) *Apprentices* —(i) *Rate of pay.*

If the apprentice is working in a classification that is not part of the occupation of the registered apprenticeship program, the apprentice must be paid at the full applicable wage rate determination for laborers or mechanics working in that classification. Any individual listed on payroll at an apprenticeship wage, who is not registered with a registered apprenticeship program, must be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed to satisfy the Prevailing Wage Requirements. In the event DOL's Office of Apprenticeship or a State apprenticeship agency recognized by DOL's Office of Apprenticeship withdraws approval of an apprenticeship program, the taxpayer, contractor, or subcontractor will no longer satisfy the Prevailing Wage Requirements by paying apprentices less than the applicable predetermined rate for the work performed until an acceptable program is approved.

IEC Comment

IEC is concerned with the NPRM stating that the taxpayer, contractor, or subcontractor would not be in compliance with the prevailing wage requirement for apprentices if DOL or the state apprenticeship agency withdraws approval of a RAP. Should this approval be removed, it would likely be due to the failure of the RAP and not the taxpayer, contractor, or subcontractor since they do not have control over the day-to-day operation of the RAP for which it draws apprentices for each individual project. Consequently, the taxpayer, contractor, or subcontractor should not be penalized should the recognition be withdrawn since this will result in significant cost increase since the taxpayer, contractor, or subcontractor did not budget for this at the outset nor should this be something that's expected as a contingency. IEC recommends that IRS permit the taxpayer, contractor, or subcontractor the ability to continue to pay the apprenticeship prevailing wage rate so long as the taxpayer, contractor, or subcontractor can find a program for the apprentices already employed within 90 days from the date the taxpayer, contractor, or subcontractor is notified in writing that the program lost its registered status. This may involve enrolling the apprentices in a RAP that offers remote learning, which IRS should specifically cite as an option in the final rule.

NPRM

(iii) Apprenticeship ratio.

Any apprentice performing work on the job site in excess of the ratio permitted under the registered program or the ratio applicable to the geographic area of the facility pursuant to 29 CFR 5.5(a)(4)(i) must be paid not less than the applicable wage rate on the wage determination for the work actually performed to satisfy the Prevailing Wage Requirements.

(iv) Reciprocity of ratios and wage rates.

If a taxpayer, contractor, or subcontractor is performing construction alteration, or repair work on a facility in a geographic area other than the geographic area in which an apprenticeship program is registered, the ratios and wage rates (expressed in percentages of the journeyworker's hourly rate) applicable within the geographic area in which the construction, alteration, or repair work is being performed must be observed. If there is no applicable ratio or wage rate for the geographic area of the facility, the ratio and wage rate (expressed in percentages of the journeyworker's hourly rate) specified in the registered apprenticeship program standard must be observed.

IEC Comment

As it relates to the scenario outlined under *"(iv) Reciprocity of ratios and wage rates,"* IEC recommends that IRS permit the taxpayer, contractor, or subcontractor the ability to determine the most appropriate ratio and wages to be paid so as to provide the most flexibility.

NPRM

(ii) Meaning of intentional disregard.

A failure to ensure that any laborer or mechanic employed in the construction, alteration, or repair of a qualified facility is paid wages at the prevailing wage rate is due to intentional disregard if it is knowing or willful.

(iii) Facts and circumstances considered.
The facts and circumstances that are considered in determining whether a failure to satisfy the Prevailing Wage Requirements is due to intentional disregard include, but are not limited to—

(A) Whether the failure was part of a pattern of conduct that includes repeated or systemic failures to ensure that the laborers and mechanics were paid wages at or above the applicable prevailing wage rate;
(B) Whether the taxpayer failed to take steps to determine the applicable classifications of laborers and mechanics;
(C) Whether the taxpayer failed to take steps to determine the applicable prevailing wage rate(s) for laborers and mechanics;
(D) Whether the taxpayer promptly cured any failures to ensure that laborers and mechanics were paid wages not less than the applicable prevailing rates;
(E) Whether the taxpayer has been required to make a penalty payment under paragraph (c)(1)(ii) of this section in previous years;
(F) Whether the taxpayer undertook a quarterly, or more frequent, review of wages paid to mechanics and laborers to ensure that wages not less than the applicable prevailing wage rate were paid;
(G) Whether the taxpayer included provisions in any contracts entered into with contractors that required the contractors and any subcontractors retained by the contractors to pay laborers and mechanics at or above the prevailing wage rates and maintain records to ensure the taxpayer's compliance with recordkeeping requirements set forth in § 1.45–12;
(H) Whether the taxpayer posted in a prominent place at the facility or otherwise provided written notice to laborers and mechanics during the construction, alteration, or repair of the facility, of the applicable wage rate(s) as determined by the U.S. Department of Labor for all classifications of work to be performed for the construction, alteration, or repair of the facility, and that in order to be eligible to claim certain tax benefits, employers must ensure that laborers and mechanics are paid wages at rates not less than such wage rates; and
(I) Whether the taxpayer had in place procedures whereby laborers and mechanics could report suspected failures to pay prevailing wages and/or suspected failures to classify workers in accordance with the wage determination of workers to appropriate personnel departments or managers without retaliation or adverse action.

IEC Comment

IEC is concerned that the above *"Facts and circumstances considered"* offered to prove intentional disregard will put a taxpayer in a difficult position in part because the list is not finite, giving IRS wide latitude to assert that any oversight was intentional without the taxpayer knowing what it should have done to disprove such an accusation. IEC urges IRS to provide a distinct and finite list of clear and concise facts and circumstances to provide the taxpayer with a level of much needed certainty.
In addition, many of the facts and circumstances listed are ambiguous. Of those offered, IEC believes the following are left open to interpretation:

(A) Whether the failure was part of a pattern of conduct that includes repeated or systemic failures to ensure that the laborers and mechanics were paid wages at or above the applicable prevailing wage rate;

(B) Whether the taxpayer failed to take steps to determine the applicable classifications of laborers and mechanics;

(C) Whether the taxpayer failed to take steps to determine the applicable prevailing wage rate(s) for laborers and mechanics;

(F) Whether the taxpayer undertook a quarterly, or more frequent, review of wages paid to mechanics and laborers to ensure that wages not less than the applicable prevailing wage rate were paid.

It is unclear what constitutes a *"pattern of conduct"* referenced in (A). IEC requests IRS explain and expand upon what constitutes a pattern of conduct and how can something like this be proved or disproved.

It is also unclear what sort of steps a taxpayer would take for both (B) and (C). IEC requests IRS expand upon this and how this would be documented.

Lastly, IEC urges IRS to provide specifics on how a taxpayer could demonstrate it took *"quarterly"* or *"more frequent"* reviews of wages paid as stated in (F).

NPRM

(6) Waiver of the penalty—

(i) Availability of waiver. The penalty payment required by paragraph (c)(1)(ii) of this section to cure a failure to satisfy the Prevailing Wage Requirements in paragraph (a) of this section is waived with respect to a laborer or mechanic employed in the construction, alteration, or repair of a qualified facility during a calendar year if the taxpayer makes the correction payment required by paragraph (c)(1)(i) of this section by the earlier of 30 days after the taxpayer became aware of the error or the date on which the increased credit is claimed under section 45(b)(6), and:

(A) The laborer or mechanic is paid wages at rates less than the amount required to be paid under paragraph (b) of this section 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; or

(B) 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 under paragraph (b) of this section is not greater than 2.5 percent of the amount required to be paid under paragraph (b) of this section.

> *(ii) Project labor agreements. The penalty payment required by paragraph (c)(1)(ii) of this section to cure a failure to satisfy the Prevailing Wage Requirements in paragraph (a) of this section shall 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 under section 45(b)(6).*

IEC Comment

IEC generally supports the proposed process to enable the taxpayer the ability to cure a failure to satisfy the Prevailing Wage Requirements. However, as stated earlier, IEC adamantly opposes the IRS proposing that a penalty payment be dismissed altogether for taxpayers with projects that operate under a PLA.

Again, nowhere in the statutory language of the IRA does it mention PLAs and the IRS should not be taking it upon itself to incentivize or coerce the signing of PLAs at the prospect of possibly avoiding a potential penalty or receiving any added benefit. This arbitrary recommendation is a prime example of IRS proposing to create a two-tiered system in which a contractor could receive an additional punishment simply because it chooses not to sign a PLA. Whether it is a penalty payment for not complying with the apprenticeship or prevailing wage requirements of the IRA, contractors that do not comply with the law should receive equal punishment regardless of whether there is a PLA in place or not.

§1.45–12 Recordkeeping and reporting.

NPRM

(a) In general. The increased credit must be claimed in such form and manner as may be prescribed in Internal Revenue Service forms or instructions or in publications or guidance published in the Internal Revenue Bulletin. See §601.601 of this chapter. Consistent with sections 45 and 6001, a taxpayer claiming or transferring (under section 6418) an increased credit under section 45(b)(6)(A) must retain records sufficient to establish compliance with the applicable requirements in section 45(b)(6)(B), as applicable. In the case of any increased credit transferred under section 6418, the requirement to maintain and preserve sufficient records demonstrating compliance with the applicable prevailing wage and apprenticeship requirements remains with the eligible taxpayer that determined and transferred the credit. For definitions of terms used in this section, see §1.45–7(d) with respect to the prevailing wage requirements, and §1.45–8(f) with respect to the apprenticeship requirements.

IEC Comment

IEC supports IRS placing the recordkeeping onus on the taxpayer since they are the beneficiary of the tax incentives provided by the IRA.

NPRM

(c) Recordkeeping for prevailing wage requirements. In addition to payroll records otherwise maintained by the taxpayer, records sufficient to demonstrate compliance with the applicable prevailing wage requirements in §1.45–7 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:

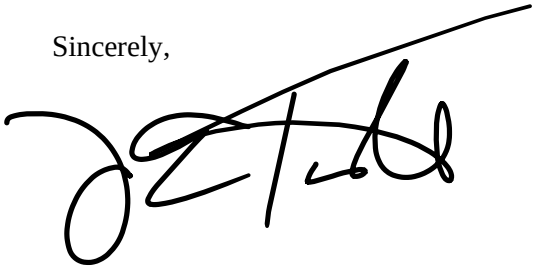
(1) Identifying information, including the name, social security or tax identification number, address, telephone number, and email address;
(2) The location and type of qualified facility;
(3) The labor classification(s) the taxpayer applied to the laborer or mechanic for determining the prevailing wage rate and documentation supporting the applicable classification, including the applicable wage determination;
(3) 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;
(4) 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;
(5) The total number of labor hours worked per pay period;
(6) The total wages paid for each pay period (including identifying any deductions from wages);

(7) 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
(8) The amount and timing of any correction payments and documentation reflecting the calculation of the correction payments.

IEC Comment
IEC largely agrees with IRS in its proposal of the types of records a taxpayer may maintain that would be sufficient to demonstrate compliance with the applicable prevailing wage requirements. However, IEC requests IRS replace *"social security number"* with *"last four digits of the social security number"* due to privacy concerns that could lead to identify theft since the taxpayer will likely not be employing the workers. Additionally, IEC requests the IEC eliminate the need to provide address, telephone number, and email address, for privacy reasons as well.

Conclusion
On behalf of the members of the Independent Electrical Contractors, I hope you'll heed our concerns as you continue implementation of the prevailing wage and apprenticeship requirements of the Inflation Reduction Act of 2022. It is our intention to participate in the public hearing included in the Notice of Proposed Rulemaking scheduled for November 21, 2023, at 10 a.m. ET during which we intend to address many of the same concerns outlined in this comment letter.

Sincerely,



Jason E. Todd
Vice President, Government Affairs
Independent Electrical Contractors