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Submitted electronically to pra.comments@irs.gov

Attn: Mr. Andres Garcia
Internal Revenue Service, Room 6526
1111 Constitution Avenue NW
Washington, D.C. 20224

Re: Proposed Collection; Comment Request for Forms 1065, 1066, 1120, 1120-C, 1120-F, 1120-H, 1120-ND, 1120-S, 1120-SF, 1120-FSC, 1120-L, 1120-PC, 1120-REIT, 1120-RIC, 1120-POL, and Related Attachments, Docket No. 2024-20568 [OMB Control Number 1545-0123]

Dear Mr. Garcia:

Groom Law Group, on behalf of a group of apprenticeship and training organizations, hereby submits the following comments to the U.S. Department of Treasury (“Treasury”) and the Internal Revenue Service (“IRS”) in response to the above-referenced notice and request for comments published on September 11, 2024. Our comments relate to the impact of the Inflation Reduction Act of 2022 (“IRA”) on Form 3800, General Business Credit, and the forms used to claim the energy-related investment and production tax credits and deductions that were extended, modified, and created by the IRA and codified at Internal Revenue Code (“Code”) sections 30C, 45, 45Q, 45V, 45Y, 45Z, 48, 48C, 48E, 179D, 45L and 45U (collectively, the “IRA Tax Credits and Deductions”), as well as the proposed instructions for such forms. Our comments suggest changes to ensure that these forms and instructions are fully aligned with the IRA’s prevailing wage and apprenticeship utilization requirements (“PWA Requirements”)¹ and Treasury’s final rules amending the Income Tax Regulations with respect to such requirements (“final rules”),² which must be met to claim the significantly increased credit and deduction

¹ See §13404(d) of the IRA for the prevailing wage and apprenticeship requirements under Code §30C(g); §13101(f) of the IRA for the prevailing wage and apprenticeship requirements under Code §45(b)(7); §13104(d) of the IRA for the prevailing wage and apprenticeship requirements under Code §45Q(h)(3) and (h)(4); §13204(a)(1) of the IRA for the prevailing wage and apprenticeship requirements under Code §45V(e)(3) and (e)(4); §13701(a) of the IRA for the prevailing wage and apprenticeship requirements under Code §45Y(g)(10); §13704(a) of the IRA for the prevailing wage and apprenticeship requirements under Code §45Z(f)(7); §13102(k) of the IRA for the prevailing wage and apprenticeship requirements under Code §48(a)(10) and (a)(11); §13501(a) of the IRA for the prevailing wage and apprenticeship requirements under Code §48C(e)(5) and (e)(6); §13702(a) of the IRA for the prevailing wage and apprenticeship requirements under Code §48E(c)(3) and (c)(4); and Code §13303(a)(1) of the IRA for the prevailing wage and apprenticeship requirements under Code §179D(b)(4) and (b)(5); §13304(d) of the IRA for the prevailing wage requirement under Code §45L(g) and §13105(a) for the prevailing wage requirements under Code §45U(d)(2).

² *Increased Amounts of Credit or Deduction for Satisfying Certain Prevailing Wage and Registered Apprenticeship Requirements*, 89 FR 53184, TD 9998 (June 24, 2024) (codified at 26 CFR Part 1).

amounts (“bonus credits”) made available under the IRA. Further, we believe our recommendations will help maximize the value of the IRS’ expanded enforcement efforts related to the clean energy provisions of the IRA for consumers, small businesses, communities, and industries, including by “quickly identify[ing] and address[ing] noncompliant activity, including fraud, to ensure credits are properly claimed by eligible taxpayers.”³

These comments are applicable to the following forms and instructions for the IRA Tax Credits and Deductions: Form 3648 (Sec. 48, Investment Credit, which will be replaced with Sec. 48E, Clean Electricity Investment Credit as of January 1, 2025), Form 8835 (Sec. 45, Renewable Electricity Production Credit, which will be replaced with Sec. 45Y, Clean Electricity Production Credit, as of January 1, 2025), Form 7211 (Sec. 45Y, Clean Electricity Production Credit), Form 7218 (Sec. 45Z, Clean Fuel Production Credit), Form 7210 (Sec. 45V, Clean Hydrogen Production Credit), Form 8933 (Sec. 45Q, Carbon Oxide Sequestration Credit), Form 7205 (Sec. 179D, Energy Efficient Commercial Building Deduction), Form 8911 (Sec. 30C, Alternative Fuel Refueling Property Credit), Form 8908 (Sec. 45L, Energy Efficient Home Credit), and Form 7213 (Sec. 45U, Nuclear Power Production Credit).

In addition, given the applicability of the PWA requirements to all of the IRA Tax Credits and Deductions, these comments are applicable regardless of whether the drafts of such forms or instructions have been published or included in the above-referenced notice. For example, while this notice does not request comments on Draft Instruction 3468, which was posted by the IRS on October 30, 2024, these comments are nevertheless applicable to such draft and should be considered if or when comments are requested. Similarly, while the IRS has not yet published a draft of the instructions applicable to Form 7211, these comments should be considered if or when such a draft is released.

To enhance the utility, quality, and clarity of the information collected regarding the PWA requirements, we are recommending changes that are necessary for the Treasury and the IRS to properly perform their functions with respect to correctly issuing the bonus credits. Particularly given the transferability and direct pay options, the bonus credits are highly lucrative financial tools for the entire energy industry, including taxpayers, tax insurers, investors, and project owners seeking a healthy return on investment. The Treasury – and indeed the entire U.S. economy – faces enormous financial risk if the bonus credits are issued erroneously to taxpayers who claim the credits but have, either intentionally or unintentionally, failed to meet them. Our recommendations will make it easier for the Treasury and IRS to determine whether a taxpayer has complied with the PWA requirements, which will promote greater efficiency and economy in enforcement.

³ Internal Revenue Service, *Inflation Reduction Act Strategic Operation Plan for FY2023- 2031* at pg. 63, available at: <https://www.irs.gov/pub/irs-pdf/p3744.pdf>.

I. Recommended Changes to Proposed Forms and Instructions on IRA Tax Credits and Deductions

Supreme Court Justice Louis Brandeis famously said, “Sunlight is said to be the best of disinfectants.” The disinfecting sunlight of improving and streamlining the information collected on the forms and instructions for the IRA Tax Credits and Deductions is the most cost-effective, economical, and efficient method of enforcement and compliance. We note that in the preamble to the final rules, Treasury expressed the view that commenters had overstated the usefulness of information regarding alleged tax violations in the pre-filing context, stating that “A laborer or mechanic might be paid wages at rates less than the applicable prevailing wage rates would require for such work, but that does not mean the laborer or mechanic was underpaid for purposes of section 45(b)(7)(A), *unless and until a tax return claiming the increased credit amount is filed.*”⁴ In contrast, in the context of the forms that taxpayers must file to claim the bonus credits, such information, as acknowledged by Treasury, is relevant and helpful.

All forms and instructions for the IRA Tax Credits and Deductions should collect substantially on the same information from taxpayers and should be largely identical in all respects unless absolutely necessary.⁵ The various proposed forms for claiming the IRA Tax Credits and Deductions vary widely in terms of the questions asked, instructions provided, and additional information and attestations requested regarding the PWA requirements. While the proposed forms and instructions require some minor differences between them, the PWA requirements otherwise apply uniformly regardless of which credit or deduction is being claimed. In addition, while we understand that some of the forms may have been drafted prior to the release of the final rules applicable to the PWA requirements, they are available now, and should be used to enhance the utility, clarity, and quality of information collected.

The proposed forms and instructions should be as uniform as possible for several reasons. First, collecting different information on the forms for the same requirements will lead to uneven, inefficient enforcement and compliance between projects that are all seeking to meet the exact same PWA requirements that are all subject to the same final rules. The differences are also likely to cause confusion for taxpayers, who may wish to claim different credits on different projects. Furthermore, simply requiring taxpayers to check “yes” that they have met the PWA requirements is not sufficient information collection that will allow the Treasury and IRS to know whether the bonus credits have been appropriately claimed. This risks the bonus credits being awarded to taxpayers who are not eligible for them, which will result in the opposite of “utility” and result in significant losses to the financial resources and revenue system of the federal government that are overseen and managed by the Treasury.

⁴ *Supra* fn. 2 at 53193 (emphasis added).

⁵ For example, because the beginning of construction exception is applicable only to the credits under Code sections 30C, 45, 45Q, 45V, 45Y, 48, 48E, and the deduction under 179D, only those forms and instructions need address it. Similarly, the One Megawatt Exception is only applicable to the credits under Code sections 45, 45Y, and 48E.

For example, if the IRS receives a complaint that the PWA requirements have been violated on a project, it will have no way of knowing whether the requirements were met without requesting and reviewing the taxpayer's records and performing a lengthy review and analysis of them (including, e.g., reviewing payroll records, interviewing workers, calculating the applicable ratio and labor hours requirements for apprentices). This will, of course, be a costly and overly burdensome method of enforcement. Instead, the forms should collect enough information for the IRS to determine whether and *how* the PWA requirements have been met *before* the bonus credits are issued.

We note that the credits under Code section 45L, Energy Efficient Home Credit, and Code section 45U, Nuclear Power Production Credit, do not include the apprenticeship utilization requirements; as such, the recommendations below that are specific to those requirements will not apply to those forms and instructions. Subject to these exceptions, below we offer recommendations for the information that should be collected from taxpayers claiming any of the IRA Tax Credits and Deductions that will assist Treasury and IRS in confirming that the taxpayer has complied with the statute and the final rules on the PWA requirements.

A. Questions

We recommend that all proposed forms for the IRA Tax Credits and Deductions be revised to include the following questions:

- 1. Does the project satisfy the prevailing wage and apprenticeship requirements? [Check yes/no]⁶**
 - a. Does the project satisfy the recordkeeping requirements associated with the prevailing wage and apprenticeship requirements? [Check yes/no]**

Reasoning: Generally, all of the proposed forms include either a) a yes/no check box that asks about compliance with the applicable sections of each statute that set forth the PWA requirements for that credit or deduction, or b) a yes/no check box that asks if the facility is eligible for the increased credit amount and directs taxpayers to the instructions for more information. To harmonize the various forms, all of them should include the same type of a yes/no check box that asks about compliance with the applicable sections of each statute. In addition, the forms should include an additional yes/no question about whether the recordkeeping requirements have been met to encourage taxpayers to fully comply with the requirements by maintaining appropriate records.

Corresponding Instructions: The proposed forms contain various instructions explaining the PWA requirements. Draft Instruction 7210 should be used as a model for the others with respect to the basics of the PWA requirements, as it provides a clear and comprehensive overview and directs taxpayers to review the IRS' Frequently Asked

⁶ As noted above, certain forms require additional questions regarding, e.g., whether construction began before January 29, 2023. Such questions should be preserved in the final version of the forms to the extent they are applicable.

Questions on the topic. In addition, some of the proposed instructions (e.g., Draft Instruction 7205) contain the following language: “You must maintain and preserve sufficient records, including books of account or records for work performed by laborers to install the property, to establish that you satisfied the prevailing wage and apprenticeship requirements to claim the increased tax benefit.” This language should be utilized on all instructions related to the PWA requirements.

- 2. Is there a qualifying project labor agreement (as defined in the applicable section of 26 CFR Part 1) in place on the project? [Check yes/no].⁷**
- a. If yes, attach attestations by all counterparties that the taxpayer is in compliance with the terms of the qualifying project labor agreement.**

Reasoning: Ample support for collecting this information is set forth in Treasury’s final rules on the PWA requirements, which state that qualifying project labor agreements (defined at 26 CFR §1.45-7(b)(5)) “can help ensure compliance with the PWA requirements,” and that Treasury will “take into account on examination whether a taxpayer has a qualifying project labor agreement in place and would consider books and records substantiating a that a qualifying project labor agreement is being complied with as an indication of compliance with the PWA requirements.”⁸ In fact, Treasury specifically states that, “[f]or example, records that would support substantiating PWA compliance could include attestations by all counterparties that a taxpayer is in compliance with the terms of the qualifying project labor agreement, including the provisions requiring the payment of prevailing wages [in accordance with subchapter IV of chapter 31 of title 40 of the United States Code] and the provisions for referring and using qualified apprentices consistent with section 45(b)(8)(A) through (C) and guidance issued thereunder.”⁹

Corresponding Instructions: The instructions associated with this question should mirror the definition of the term “qualifying project labor agreement” in 26 CFR §1.45-7(b)(5) and include the following language from the IRS’s Frequently Asked Questions: “In general, the requirements to ensure payment of no less than the applicable prevailing wage rates and to satisfy the apprenticeship requirement applies to all taxpayers that claim an increased credit or deduction amount. Penalties for failures to pay prevailing wages may not apply if a taxpayer employs laborers, mechanics, and apprentices under a qualifying project labor agreement that meets certain requirements, and the taxpayer timely corrects the failure to pay prevailing wages. Penalties for failures to satisfy the

⁷ As noted above, the Nuclear Power Production Credit available under Code section 45U is subject to a modified definition of qualifying project labor agreement because the credit has prevailing wage requirements for alteration or repair work of a qualified nuclear power facility, but not during construction. As such, this modified version of the question and attestation proposed in section a) above should be added for purposes of proposed Form 7213.

⁸ *Supra* fn. 2 at 53202.

⁹ *Id.*

apprenticeship requirements do not apply if the work is done pursuant to a qualifying project labor agreement that meets certain requirements.”¹⁰

**3. Are you claiming the Good Faith Exception to the apprenticeship requirements?
[Check yes/no]**

- a. If yes, check the basis on which you are claiming the exception:
 - i. The request for qualified apprentices was denied for reasons other than the taxpayer, contractor, or subcontractor’s refusal to comply with the established standards and requirements of the registered apprenticeship program, or
 - ii. The registered apprenticeship program failed to respond within five business days of receiving a request for qualified apprentices.
- b. If yes, attach a statement including the following information for any registered apprenticeship program(s) that you contacted to request qualified apprentices:
 - i. Name and address of the registered apprenticeship program(s)
 - ii. Contact(s) name, phone, and email address
- c. If yes, how did you make your request for apprentices? [Check applicable box]
 - i. Electronically, or
 - ii. By registered mail
- d. If yes, did your request include: [Check yes/no]
 - i. Proposed dates of employment?
 - ii. Occupation of qualified apprentices needed?
 - iii. Location of the work to be performed?
 - iv. Number of qualified apprentices needed?
 - v. Number of labor hours to be performed by the qualified apprentices?
 - vi. The name and contact information of the taxpayer, contractor, or subcontractor requesting employment of qualified apprentices?
 - vii. A statement that the request for qualified apprentices was made with an intent to employ the qualified apprentices in the occupation for which they are being trained and in accordance with the requirements and standards of the registered apprenticeship program and to employ the qualified apprentices consistent with the number of hours and dates of employment specified in the request? (If the employer of the requested qualified apprentices is not the same as the taxpayer, contractor, or subcontractor submitting the request for qualified apprentices, a statement that the request included the name of the employer.)
- e. If yes, with respect to each registered apprenticeship program you contact, include a statement that specifies:

¹⁰ See Internal Revenue Service, *Frequently asked questions about the prevailing wage and apprenticeship under the Inflation Reduction Act* (Updated June 18, 2024), available at <https://www.irs.gov/credits-deductions/frequently-asked-questions-about-the-prevailing-wage-and-apprenticeship-under-the-inflation-reduction-act#practices>.

- i. The date of your initial request.
- ii. The date the qualified apprentices were requested to start work.
- iii. The date(s) of any subsequent request(s) for qualified apprentices made to each registered apprenticeship program that you contacted.

Reasoning: Ensuring that taxpayers do not exploit the Good Faith Exception to the apprenticeship utilization requirements is essential for proper implementation of the IRA. Conversely, allowing taxpayers to exploit the exception will contribute to the historic and unprecedented demand for skilled labor in the construction industry, rather than building the skilled workforce necessary to meet that demand, as intended by Congress in enacting the IRA. The Good Faith Exception is designed to provide flexibility when genuine, documented efforts to comply with apprenticeship requirements have been made but unforeseen obstacles arise. However, if taxpayers misuse this exception by claiming it without making legitimate efforts to meet these requirements, it frustrates the purpose of the IRA with respect to expanding apprenticeship opportunities and fostering skilled labor development. This not only distorts the competitive landscape for businesses that follow the IRA's compliance standards but also devalues the commitment of those who genuinely support workforce training and growth. The IRS and Treasury's vigilance in monitoring and enforcing proper use of the exception helps preserve the IRA's intended economic and social benefits, ensuring that taxpayers contribute fairly and ethically to its goals. Preventing taxpayers from exploiting the Good Faith Exception will further the Treasury and IRS's ability to properly and meaningfully fulfill their functions under the IRA and, furthermore, ensure that the U.S. is not harmed by the associated loss of important tax revenue.

Corresponding Instructions: The instructions associated with this question should mirror the text in the final rules detailing the application of the Good Faith Exception and direct taxpayers to the IRS FAQs on this topic.

B. Attestations

In addition to the changes set forth above, we recommend that all of the proposed instructions require an attestation from the taxpayer similar to the one found in Draft Instruction 8933 for any taxpayer that checks "yes" to meeting the PWA requirements and claims the increased credit or deduction amount, which requires taxpayers to attach a statement to the form that includes the following information. Below, we have summarized the elements of the attestation in Draft Instruction 8933 that, at minimum, should be incorporated into the instructions for the rest of the forms.

To improve the utility of the information collected, in addition to the elements from Draft Instruction 8933, we recommend including certain additional elements in the attestations which are drawn from the factors set forth in the final rules to show that the taxpayer did not

intentionally disregard the PWA requirements¹¹ as well as the methods for taxpayers to correct failures to meet the PWA requirements and other practices “encouraged” to “facilitate compliance” with the requirements set forth in the IRS FAQs.¹²

Elements from Attestation in Draft Instruction 8933

1. Name and taxpayer identification number and the facility or equipment description and IRS-issued registration number (if applicable).
2. [If applicable] If construction began before January 29, 2023, a statement that you met the Continuity Requirement under the Physical Work Test or the Five Percent Safe Harbor to establish the beginning of construction (alteration or repairs).
3. [If applicable: If construction began on or after January 29, 2023, include the following.] [If not applicable: Include the following.]
 - a. The applicable wage determinations.¹³
 - b. The wages paid (including any correction payments as defined in section 45(b)(7)(B)(i)(I)) and hours worked for each of the laborer or mechanic classifications engaged in the construction (alteration or repairs) of the facility or equipment.
 - c. The number of workers who received correction payments.
 - d. The wages paid and hours worked by qualified apprentices for each of the laborer or mechanic classifications engaged in the construction (alteration or repairs) of the facility or equipment.
 - e. The total labor hours for the construction (alteration or repairs) of the facility or equipment installed at a facility by any laborer or mechanic employed by the taxpayer or any contractor or subcontractor.
4. A declaration, applicable to the statement and any accompanying documents, signed by you, or signed by a person currently authorized to bind you in such matters, in the following form: “Under penalties of perjury, I declare that I have examined this statement, including accompanying documents, and to the best of my knowledge and belief, the facts presented in support of this statement are true, correct, and complete.”

Recommendations for Additional Elements for Attestations

¹¹ See 26 CFR §1.45-7(c)(3)(iii) and 26 CFR §1.45-8(f)(2)(ii)(C) for the facts and circumstances considered in determining whether a failure to satisfy the PWA requirements is due to intentional disregard.

¹² See fn. 9.

¹³ Draft Form 8933 directs taxpayers to Notice 2022-61 for more information on wage determinations and includes the following definition: “Applicable wage determinations mean the wage listed for a particular classification of laborer or mechanic on the applicable wage determination for the type of construction and the geographic area or other applicable wage as determined by the Secretary of Labor.” Rather than cross-referencing to Notice 2022-61, which was replaced by the final rules, the instructions should refer taxpayers to 26 CFR §1.45-7(b) and direct them to the IRS FAQs linked in fn. 9, which include several questions regarding wage determinations.

1. A statement detailing any failures to meet the prevailing wage or apprenticeship requirements during the construction, alteration, or repair of the facility, including whether any such failures have been corrected as of the date of this filing.
2. If applicable, include a statement that you have:
 - a. Regularly reviewed payroll records, including an explanation of the method and frequency of review.
 - b. Ensured any contracts you have entered with contractors require that their subcontractors adhere to the prevailing wage and apprenticeship requirements.
 - c. Regularly reviewed compliance with the prevailing wage and apprenticeship requirements (including the proper worker classifications of laborers and mechanics, the applicable prevailing wage rates, and the percentage of labor hours performed by qualified apprentices), including an explanation of the method and frequency of review.
 - d. Posted information about paying prevailing wages in a prominent and accessible location, or otherwise provided written notice regarding the payment of prevailing wages to all workers.
 - e. Established procedures for individuals to report suspected failures to comply with the prevailing wage and apprenticeship requirements without fear of retaliation or adverse action, including an explanation of such procedures.
 - f. Investigated any reports of suspected failures to comply with the prevailing wage and apprenticeship requirements.
 - g. Contacted the U.S. Department of Labor's Office of Apprenticeship or relevant state apprenticeship agency for assistance in locating registered apprenticeship programs.

II. Recommended Changes to Proposed Form and Instruction 3800, General Business Credit

Form 3800 is used to claim any of the general business credits, including the IRA Tax Credits and Deductions. Draft Instruction 3800 provides that those transferring the credit or deduction must attach a "Transfer Election Statement" that includes information about the transfer and a "statement or representation from the eligible taxpayer that it has complied with all requirements of section 6418 and the eligible credit code section, including, but not limited to, prevailing wage, apprenticeship, and domestic content requirements (if applicable)." The collection of this information should not be limited solely to taxpayers that transfer the bonus credits. Like the differences between the forms and instructions discussed above, collecting additional information solely for those that transfer the credits will lead to uneven enforcement, confusion for taxpayers, and more difficult and costly enforcement for the IRS. As such, we recommend that Draft Form 3800 and Draft Instruction 3800 be revised to include the same questions, instructions, and attestation recommended above.

III. Conclusion

Failure to harmonize all of the forms and instructions for the various IRA Tax Credits and Deductions will make monitoring, enforcing, and issuing the bonus credits inefficient and costly to manage for the IRS and will fundamentally frustrate the purpose of the statute and undermine both Congressional intent and the requirements set forth by Treasury in the final PWA rules – all while cheating the U.S. out of vital tax revenue. We urge Treasury and IRS to consider the recommendations we have set forth in these comments in the interest of properly carrying out their statutory functions under the IRA and using the information collection process to streamline enforcement and reduce the associated costs and burdens on agency staff.

* * *

Thank you for your consideration of the foregoing comments. We welcome the opportunity to provide any additional information you may feel helpful.

Very truly yours,



James V. Cole II