

Treasury and IRS Release Unclear Guidance on IRA Tax Credits, Davis-Bacon and Apprenticeship Requirements

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On Nov. 30, the U.S. Treasury Department and Internal Revenue Service released [guidance](#) regarding tax credits for private clean energy projects funded by the Inflation Reduction Act conditioned on compliance with prevailing wage and government-registered apprenticeship requirements. Treasury and the IRS also released FAQs to provide additional information on the [prevailing wage](#) and [apprenticeship](#) requirements.

The IRA, [opposed by ABC](#), was signed into law on Aug. 16, 2022, and provides over \$270 billion in tax credits for the construction of solar, wind, hydrogen, carbon sequestration, electric vehicle charging stations and other clean energy projects.

Developers/taxpayers can receive a bonus tax credit 500% greater than a baseline tax credit of 6%, but this is conditioned on requirements that project contractors pay Davis-Bacon prevailing wages and utilize apprentices enrolled in government-registered apprenticeship programs. This new policy is an unprecedented expansion of Davis-Bacon and registered apprenticeship requirements/enticements onto private construction projects via the federal tax code.

This fall, ABC conducted a [member survey](#) and submitted [comments](#) on Nov. 7 to Treasury regarding implementation of these tax credits, outlining concerns with the IRA's [unprecedented expansion](#) of prevailing wage and apprenticeship requirements and the lack of clear guidance through a formal notice and comment rulemaking.

ABC issued a Nov. 29 [statement](#) on the guidance's release, which was [picked up by Engineering News-Record](#) and other media outlets, stating in part:

"Developers, taxpayers, contractors and subcontractors need clear and specific guidance on how these new provisions will be implemented so developers can decide whether the tax credits are worth the significant risks and penalties, and large and small business contractors and subcontractors can decide whether to bid on and perform such work," said Ben Brubeck, ABC vice president of regulatory, labor and state affairs. "Today, this administration did not provide that clear guidance, which is likely to prevent stakeholders from taking full advantage of the tax credits and slow down clean energy infrastructure development."

The prevailing wage and apprenticeship provisions outlined in the guidance will now apply to projects that begin construction on or after Jan. 30, 2023—60 days after the guidance's publication in the Federal Register. Treasury [indicated it](#) "plans to issue additional proposed regulations with respect to these requirements in the coming months." This may provide additional information and clarity but could also create additional risk and uncertainty for developers looking to break ground and claim full tax credits in 2023 who may be fearful of additional regulatory changes and guidance that might undermine compliance efforts and the full value of tax credits.

Government-Registered Apprenticeship Provisions

In order to access full tax credits, developers of qualifying projects are required to use apprentices from **government-registered apprenticeship programs** for at least 15% of the total labor hours of the project in 2024, which phases in at 12.5% for construction work in 2023 and increases to 15% in 2024 and thereafter. Each contractor and subcontractor employing four or more individuals on a qualifying project must employ one or more apprentices from a government-registered apprenticeship program.

ABC supports government-registered apprenticeship programs as one key component of the industry's all-of-the-above workforce development strategy and offers more than 300 four-to-five-year GRAPs in more than 20 trades across the country. Yet the majority of contractors engaged in private construction activity upskill their workforce through community workforce development programs and/or proprietary skill-based programs that are not part of the government's registered apprenticeship system and accompanying red tape. Likewise, ABC has expressed concerns about the capacity of government-registered apprenticeship programs to meet industry demand in many markets.

Of note, taxpayers who have made a good faith effort to hire qualified apprentices with respect to the construction of a project are deemed to satisfy the requirement and are eligible for the bonus rate, assuming they have also met the prevailing wage requirement when required. A good faith effort is defined as requesting apprentices and receiving a denial or not receiving a response within five business days, as stated in the guidance:

"Under the Good Faith Effort Exception, the taxpayer will be considered to have made a good faith effort in requesting qualified apprentices if the taxpayer requests qualified apprentices from a registered apprenticeship program in accordance with usual and customary business practices for registered apprenticeship programs in a particular industry."

Davis-Bacon Provisions

Developers seeking the full bonus credit must require contractors and subcontractors to pay laborers and mechanics employed for the construction and alteration or repair of a qualifying project an hourly prevailing wage rate set by the U.S. Department of Labor via the Davis-Bacon Act. The guidance does not provide clarity on whether Treasury/IRS or the DOL will be enforcing compliance and the additional regulatory red tape and practices that typically accompany regulations related to the DBA, though this may be clarified in future regulations and guidance documents.

The guidance does clarify that contractors will be required to reach out to the DOL for a wage determination if one is not already available:

"To rely on the procedures to request a wage determination or wage rate, and to rely on the wage determination or rate provided in response to the request, the taxpayer must contact the Department of Labor, Wage and Hour Division via email at IRAPrevailingwage@dol.gov and provide the Wage and Hour Division with the type of facility, facility location, proposed labor classifications, proposed prevailing wage rates, job descriptions and duties, and any rationale for the proposed classifications. The taxpayer may use these procedures to request a wage determination, or wage rates for the unlisted classifications, applicable to the construction, alteration, or repair of the facility. After review, the Department of Labor, Wage and Hour Division will notify the taxpayer as to the labor classifications and wage rates to be used for the type of work in question in the area in which the facility is located."

Of note, the DOL **is currently engaged in a total rewrite of its regulations governing enforcement of the DBA** independent of the IRA, adding to the uncertainty over compliance issues.

Next Steps

ABC members with experience complying with the prevailing wage and apprenticeship regulations may find new opportunities in the clean energy market as a result of this law. However, firms, in particular small

businesses, with no experience in prevailing wage and apprenticeship regulations will likely avoid this work or incur additional compliance costs that may make them less competitive. ABC chapters should consider providing additional webinars, forums and educational content around prevailing wage compliance for membership to prepare for these changes. Likewise, ABC chapters and members with government-registered apprenticeship programs should prepare for new opportunities as a result of enactment of the IRA.

Of note, developers/taxpayers failing to comply with both of these requirements [face significant and varying penalties](#) that may undermine the value of the tax credits and/or discourage competition from contractors and subcontractors concerned about the regulatory certainty of these new policies.

For more information on this guidance, please register to ABC's upcoming webinar on Monday, Dec. 12 at 3:30 p.m. ET, "[Insights on New Treasury Guidance for Apprenticeship and Davis-Bacon Mandates on Private Clean Energy Projects](#)."

The DOL is also hosting educational webinars on the IRA's prevailing wage and apprenticeship requirements. The webinars are being offered at the following times:

- [Wednesday, Dec. 14 from 1-2:30 p.m. ET](#)
- [Thursday, Dec. 15 from 1-2:30 p.m. ET](#)