



CREATING GOOD JOBS, A CLEAN ENVIRONMENT, AND A FAIR AND THRIVING ECONOMY

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REG-100908-23 Increased Credit or Deduction Amounts for Satisfying Certain Prevailing Wage and Registered Apprenticeship Requirements

On behalf of the BlueGreen Alliance (BGA), a coalition of labor unions and environmental organizations collectively representing millions of members and supporters, we thank President Biden, Secretary Yellen, and Commissioner Werfel for proposing a strong rule that supports high-quality union jobs in the clean economy. Specifically, we write today to demonstrate our strong support for the prevailing wage and registered apprenticeship standards associated with the clean energy tax credits passed in the historic Inflation Reduction Act released in the proposed rule REG-100908-23. The clean energy tax credits will help to solve today's environmental challenges in ways that create and maintain quality, union jobs and build a stronger, fairer economy.

The proposed rule will help accomplish creating high quality, union jobs in the clean economy. We provide the following comments and recommendations in response to the proposed rule:

Prevailing Wage

We thank the U.S Department of the Treasury (Treasury) for updating its guidance on the use of prevailing wage for the increased credit amount in the clean energy tax credits. With the inclusion of all W-2 employees as well as contractors and subcontractors, the Internal Revenue Service (IRS) has extended prevailing wage certainty to nearly every worker doing construction, alteration, or repair of all qualified projects. We appreciate that Treasury has considered that labor performed at the construction site or at a secondary location will receive prevailing wage. It is crucial to ensure that every eligible employee on a clean energy project receives prevailing wages, and by acknowledging the diverse nature of the covered technologies, all stages of construction will be covered. This is a vital provision for projects that have construction and staging at distinct locations.

We encourage Treasury to closely adhere to and defer worker classifications to the updated prevailing wage rule from the U.S. Department of Labor (DOL),

published in August of 2023.ⁱ This rule contains specific recommendations for prevailing wage classifications, including new definitions of geographic localities and broader definitions of construction to better reflect work on clean energy projects. Further, we encourage Treasury to deploy resources in coordination with DOL to offer technical assistance to developers. Treasury could do this by adopting a front-end compliance monitoring system to prevent fraud—similar to the DOL’s compliance monitoring system, which requires that weekly payroll certifications are submitted.

The importance of prevailing wage on any construction project—particularly for clean energy projects—is evident by the demonstrable benefits to workers. Higher wages on a given project can attract high-road contractors employing skilled professionals who perform high quality work, helping projects meet construction milestones on time and safely, and often without increasing total construction costs. Higher wages can have long-term economic benefits to a community and create a longstanding professional workforce for future projects. Adherence to prevailing wage requirements is essential for promoting fair compensation and high-quality work in the construction industry.

Registered Apprenticeships

We appreciate Treasury’s further guidance on the use of a registered apprenticeship program (RAP) associated with the clean energy tax credits. This updated guidance reflects the intention of the law, which was to create opportunity and ease in accessing equitable careers in the clean economy. We are supportive of the updates to the ‘good faith’ waiver, which clarify that a taxpayer seeking apprenticeship labor must continue to request apprenticeship labor even after an initial request is either a) unable to be met by the registered apprenticeship program or b) the developer does not get a response back from the apprenticeship program. However, we encourage Treasury to develop further guidance for a developer seeking a registered apprenticeship program, which specifies that the developer must reach out to all eligible apprenticeship programs in the region before claiming the good faith waiver. By clarifying that the ‘good faith’ waiver has a specific time-bound exemption of 120 days, the IRS is ensuring that RAPs will at the time of request or shortly thereafter have the opportunity to meet the labor demand of the project developer. Further, we encourage Treasury to adopt a monthly reporting system for developers to report apprenticeship hours on any given project. This reporting system should be consistent with DOL’s apprenticeship reporting system.

RAPs are a key mechanism for building career pathways and increasing access to high quality jobs in the construction industry. RAPs offer workers a combination of classroom and on-the-job skills training. These training programs offer wrap-around services to support trainees through the programs and help ensure that workers have a clear path towards skills advancement and career development. Incentivizing these programs can also help promote equity and fairness in the workplace by providing opportunities for individuals from underrepresented groups to access training and career advancement. In particular, pre-apprenticeships provide individuals with the basic skills and knowledge needed to succeed in a particular trade or occupation. These programs may include classroom instruction, hands-on training, and mentorship opportunities, and they can help individuals build relationships with potential employers and apprenticeship sponsors. Pre-apprenticeships are often targeted towards individuals who may face barriers to entry into apprenticeships and/or certain populations such as low-income workers, workers of color, women, and other disadvantaged communities. Additionally, these programs can help promote a more skilled and capable workforce, supporting the economic development and prosperity of communities across the country. It is critical, however, that quality pre-apprenticeship programs are used that have articulation agreements with RAPS.

To help maintain high-quality, on the job training in apprenticeship programs, Treasury should either support or require employers seeking tax credits to be registered training agents and provide a demonstration of proof of status with an applicable RAP. This ensures that not only is a program registered with DOL as an eligible training program, but also that the employers of these programs administering the education have the skills and background to provide high-quality education for apprentices.

Project Labor Agreements (PLAs)

We applaud the inclusion of PLAs in the proposed rule. Incentivizing the use of a PLA by reducing or eliminating penalties for erroneous misreporting of prevailing wage or apprenticeship hours creates opportunity for labor organizations and developers to create a contract that fits the needs of both parties and the community involved. PLAs can establish the terms and conditions of employment of workers on specific construction projects, including wages and fringe benefits, hours, working conditions, and dispute resolution methods. By incentivizing PLAs, Treasury can ensure that construction projects are completed on time, on budget, and with high-quality standards.

Further, BGA urges Treasury to ensure a broad definition of pre-hire collective bargaining agreements can qualify under this provision in the rule. Agreements that contain union labor participation in addition to community engagement should qualify for the reduction or exemption of penalties in this proposed rule similar to a PLA. Specifically, a community benefits agreement (CBA) should also qualify under the rule. CBAs not only contain agreements from labor organizations, but also with community groups representing historically marginalized groups, economic development organizations, or community groups who can help developers deliver on agreements.

Enforcement

While the updates to the clean energy tax credits in the Inflation Reduction Act will spur high-quality jobs, and deep community engagement, the ability for Treasury to enforce the new rule will determine its success. While other federal agencies can assess certain project requirements through the use of applications or other programmatic safeguards, Treasury has the ability to audit taxpayers to assess the accuracy, legitimacy, and authenticity of the prevailing wage and apprenticeship requirements.

BGA recommends that Treasury explore how it can partner with the DOL as well as state agencies to support enforcement of these provisions. This could include mechanisms to determine the authenticity of the payroll certification for the purposes of validating prevailing wage payments and authenticating the reported apprenticeship hours on any given project within that state's jurisdiction. An audit process of any given clean energy project utilizing the clean energy tax credits in the Inflation Reduction Act should include verifying and cross-referencing state labor offices' documents to ensure prevailing wage and apprenticeship standards are met. Treasury should ensure that an audit process and other enforcement mechanisms are done in a transparent, accessible manner and with close engagement with other agencies.

In addition, Treasury should establish a mechanism for stakeholders and state agencies to report evidence of violations, such as wage misclassification or erroneous apprenticeship labor. This could be in the form of an anonymous hotline or email address at the IRS wherein an individual with legitimate knowledge of labor violations may contact the agency to ensure bad actors are investigated in a timely manner. Such reporting should not be subject to retaliatory measures from the taxpayers.

Finally, BGA recommends that Treasury produce additional guidance outlining the specific record-keeping necessary to satisfy the prevailing wage and apprenticeship standards, as well as a template for a PLA or other pre-hire collective bargaining agreement. This will ensure that projects utilizing the tax credits and the PLA provision of the proposed rule will be satisfying the same requirements across the country and will account for inconsistencies that may arise in states that have fewer labor protection laws.

The most beneficial PLAs include targeted hire and local hire provisions and additional language addressing the specific needs of underrepresented groups in the respective communities impacted by the project. For instance, some PLAs include percentage requirements for BIPOC, women, and specific hire of locally under-represented groups. PLAs may be used with CBAs and community workforce agreements in order to maximize community and worker benefits.

Conclusion

The Inflation Reduction Act is a game-changing law that is already reshaping the clean economy for the better. The success of the law, in large part, is dependent on the exacting implantation of the agencies responsible for administering this law. The clean energy tax credits are the center piece to that success and will leverage billions of dollars of private investment geared towards deploying renewable and clean energy projects across the country. Treasury and the IRS are now tasked with ensuring that this quickly growing clean economy has high-quality, equitable union jobs at its heart. Given the provisions in the proposed rule, we are confident that Treasury will ensure that these projects pay a fair wage, expand career pathways to marginalized groups through RAPs, and center the needs of communities hosting these projects. We look forward to reviewing the final guidance affirming these recommendations.

ENDNOTES

ⁱ U.S. Department of Labor, *Final Rule: Updating the Davis-Bacon and Related Acts Regulations*, August 23, 2023. Available online: <https://www.dol.gov/agencies/whd/government-contracts/construction/rulemaking-davis-bacon>