



Increased IRA Tax Credit or Deduction Amounts for Satisfying Certain Prevailing Wage and Registered Apprenticeship Requirements

Docket Number: [REG-100908-23]

Agency: Internal Revenue Service (IRS), Treasury

Action: Notice of proposed rulemaking and public hearing

Comment Deadline: October 30, 2023; public hearing November 21, 2023, at 10 am.

Federal Register Page: [Here](#)

Email: Submit public comments via Federal eRulemaking Portal ([regulations.gov](https://www.regulations.gov))

Goal:

The proposed regulations amend and provide clarity to taxpayers wishing to claim increased credit or deduction amounts available by meeting prevailing wage and registered apprenticeship (“PWA”) requirements for clean and alternative energy-related projects established by the IRA under Sections 30C, 45, 45L, 45Q, 45U, 45V, 45Y, 45Z, 48, 48C, 48E and 179D.

Method:

The notice of proposed rulemaking solicits feedback from the public and other stakeholders in advance of a public hearing.

Authority:

Treasury and IRS oversee implementation of tax credit provisions established under the Inflation Reduction Act of 2022 (IRA). The proposed regulations follow recent [action](#) taken by the U.S. Department of Labor (DOL) to finalize regulations in the Davis-Bacon Act related to seeking “bonus credit” under the IRA.

Background: To qualify for increased credit or deduction amounts of certain clean energy tax incentives, taxpayers generally need to ensure that laborers and mechanics employed in the construction, alteration, or repair are paid no less than applicable prevailing wage rates and to employ apprentices from registered apprenticeship programs for a certain number of hours. By meeting the necessary IRA prevailing wage and apprenticeship requirements, taxpayers can increase the base amounts of many clean energy tax incentives by 5 times.

Overview:

The proposed regulations would incorporate Davis Bacon Act (DBA) statutory and regulatory guidance that is relevant for purposes of claiming the increased tax credit and consistent with sound tax administration. For example, the proposed regulations largely adopt DBA guidance relating to wage determinations and the meaning of pertinent terms such as “laborer” and “mechanic”; “construction, alteration, or repair”; “wages”; and “employed.” For example, individuals in primarily administrative, executive, or clerical roles—in other words, those whose work is not primarily physical—are not considered laborers or mechanics.

- *Prevailing Wage:*
DOL [determines the prevailing wage rates](#) for each classification of laborers and

mechanics in a predetermined geographic area (typically on a county basis) for a particular type of construction in accordance with the DBA. Determinations can apply retroactively, and in the absence of an applicable general wage determination, taxpayers may request a supplemental wage determination from DOL by emailing iraprevalingwage@dol.gov. However, DOL has advised Treasury that the available information should make this scenario unlikely. Whenever possible, supplemental wage determinations should be requested no more than 90 days prior to the beginning of the construction, alteration, or repair of the facility.

Taxpayers must use the general wage determination in effect when the construction of the facility begins. However, unless the laborer or mechanic's contract is substantially renegotiated, revised, or extended, taxpayers are not required to update the applicable prevailing wage rates if DOL publishes new general wage determinations after construction begins.

- *Registered Apprenticeship:*

Apprentices qualifying for the prevailing wage requirement must be performing relevant work as part of a registered apprenticeship program (i.e. certified by DOL's Office of Apprenticeship or a State apprenticeship agency).

A taxpayer must meet all three subrequirements—Labor Hours, Ratio, and Participation—to meet the Apprenticeship requirement. Each taxpayer, contractor, or subcontractor who employs 4+ workers to perform construction, alteration, or repair work on a facility must employ one or more qualified apprentices where requirements apply. In addition, a minimum percentage of the total labor hours of the work must be performed by qualified apprentices from a registered apprenticeship program: 12.5% for facilities beginning construction in 2023 and 15% for facilities beginning construction in 2024 or after.

- *Recordkeeping requirements:*

The proposed guidance clarifies that recordkeeping requirements are consistent with existing guidance in the DBA. The taxpayer is solely responsible for the PWA recordkeeping requirements. Taxpayers claiming to qualify for the tax credits must maintain and preserve records related to employment, such as each laborer or mechanic's hourly rates, hours worked, deductions from wages, and actual wages paid. Taxpayers must also maintain a record of corrections and penalty payments.

- *Corrections & Penalties:*

Under the proposed guidance, the taxpayer is solely responsible for correction and penalty provisions under the Prevailing Wage Requirements, and the Good Faith Effort Exception and penalty provisions under the Apprenticeship Requirements.

Taxpayers failing to meet PWA requirements may still be able to claim the increased tax incentive amounts by making certain correction and penalty payments, e.g. correction payments for any underpaid or missing wages, plus interest, to the affected laborers and mechanics—and Treasury and IRS expect that taxpayers will be able to establish

correction payments even when a former laborer or mechanic cannot be located.

Taxpayers may also owe a penalty payment to the IRS, though the proposed regulations contain a waiver provision encouraging taxpayers to self-correct: IRS may choose to exercise its discretion to issue a limited penalty waiver (if failures to pay prevailing wages were small in amount or occurred in a limited number of pay periods) in the interest of sound tax administration. Likewise, the penalty payment requirement may be waived if the taxpayer paid back wages and interest at least 30 days before they became aware of the mistake or before they filed the return claiming the credit *and* the laborer/mechanic was underpaid for 10% or fewer pay periods *in a calendar year*.

Once the IRS makes a final determination (in the form of a notice) that a taxpayer has failed to satisfy the Prevailing Wage Requirements, the taxpayer must make the correction and penalty payments within 180 days after the final determination to be eligible for the increased credit.

IRS can determine that failures to meet the Prevailing Wage Requirements is determined to be intentional, knowing, or willful based on criteria listed on p. 60028. To demonstrate that a failure was not due to intentional disregard, taxpayers would need to maintain and preserve records sufficient to document the failure and the actions they took to prevent, mitigate, or remedy the failure (p.60036). Likewise, the proposed regulations state that the IRS will take a presumption against a finding of intentional disregard if the taxpayer makes the correction and penalty payments before receiving a notice of an examination with respect to a return that claimed the underlying increased credit.

Contractors who have been found to have disregarded their obligations to employees and subcontractors, including by violating prevailing wage requirements, may also be subject to debarment from future Federal contracts under 40 U.S.C. 3144(b) and 29 CFR 5.12. However, the proposed regulations also provide that a taxpayer would have no obligation to comply with the correction and penalty provisions if the IRS later determines that the taxpayer was not entitled to the increased credit amount. Additionally, if the taxpayer does not correct and, therefore, is not subsequently granted the increased credit amount, no penalty is assessed under section 45(b)(7)(B).

- *Exceptions:*

All facilities beginning construction 60 days after August 29, 2023 are subject to the requirements described by the proposed regulations.

Generally, if a taxpayer satisfies the PWA requirements or meets one of the two exceptions, the amount of credit or deduction is equal to the otherwise determined amount of the underlying credit or deduction multiplied by five.

- *One Megawatt Exception:* A qualified facility with a maximum net output of less than one megawatt—as measured in alternating current—is eligible for the increased credit amount.

- *Beginning of Construction (BOC) Exception:* If a qualified facility began construction before January 29, 2023, the facility is eligible for the increased credit. Prior IRS Notices describe two methods of establishing that construction of a facility has begun: the *Physical Work* test (starting physical work of a significant nature), and the *Five Percent Safe Harbor* test (paying or incurring at least 5% of the total cost of the facility).

A taxpayer can meet the good faith effort exception for the apprenticeship requirement if:

- The taxpayer's request for apprentices from a registered program was denied for reasons other than the applicant's refusal to comply with the program's standards and requirements, or
- The program failed to respond within five business days of receiving a request.

Instructions for what to include in a request can be found on p.60030. The proposed regulations also require that taxpayers submit a second request 120 days after the first rejection and note that the program must reject the taxpayer's request in its entirety (i.e. they cannot provide any apprentices to do any of the requested work, not just part of the work) to qualify for the Good faith exception.

A taxpayer can continue to qualify for the credits by meeting certain *Continuity Requirements* determined by the facility's relevant facts and circumstances.

Relevant Credits

- *Alternative Fuel Vehicle Refueling Property Credit (§ 30C) | Fuel credit, no application.* For alternative fuel vehicle refueling and charging property (electricity, ethanol, natural gas, hydrogen, and biodiesel), located in low-income and non-urban areas. Credit Amount: 6% of basis for businesses; 30% if PWA requirements are met (five-fold increase).
- *Advanced Energy Project Credit (§ 48C) | Manufacturing credit, application required.* For investments in advanced energy projects. \$10 billion allocated, not less than \$4 billion of which is allocated to projects in certain energy communities. Credit Amount: 6% of taxpayer's qualified investment; 30% if PWA requirements are met (five-fold increase).

The proposed regulation's effects on each Section are described on pp. 60032-35.

Other Summaries:

- [Holland & Knight](#)
- [IRS Prevailing Wage & Apprenticeship](#)