

Alert | Energy Project Finance & Development



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Treasury Announces Initial Guidance on the Inflation Reduction Act's Labor Requirements for Renewable Energy Tax Credits and Incentives

The U.S. Department of the Treasury announced initial wage and apprenticeship guidance under the Inflation Reduction Act of 2022 (IRA) that applies to taxpayers in order to increase available credit amounts for federal tax incentives, including the Investment Tax Credit (ITC) and Production Tax Credit (PTC). The guidance relates to the prevailing wage and apprenticeship requirements, recordkeeping, and establishing the beginning of construction for federal income tax purposes. The guidance requirements will apply to qualifying facilities, projects, property, and equipment for which construction begins on or after Jan. 30, 2023.

To satisfy the prevailing wage requirement, taxpayers can use the prevailing wage determinations published online at www.sam.gov for the geographic area and type of construction applicable to the facility. When an applicable prevailing wage determination has not been published, taxpayers can request a wage determination or wage rate by contacting the Department of Labor Wage and Hour Division. Taxpayers should maintain sufficient records including work performed by contractors and subcontractors to establish that such laborers and mechanics were paid wages not less than the prevailing rates.

In relation to the apprenticeship requirement, taxpayers may qualify for a good faith effort exception by maintaining sufficient books and records establishing the taxpayer's request of qualified apprentices from

registered apprenticeship programs and the program's denial or non-response of such request. Registered apprenticeship programs can be found online at www.apprenticeship.gov/partner-finder.

The guidance preserves the beginning of construction guidance previously issued through IRS Notices (i.e., by starting physical work of a significant nature or by having paid or incurred five percent or more of the total cost of the facility and satisfying continuity requirements). Taxpayers satisfying either test will be considered to have established the beginning of construction.

The prevailing wage and apprenticeship requirements apply to the following tax incentives:

- Advanced Energy Project Credit
- Alternative Fuel Refueling Property Credit
- Credit for Carbon Oxide Sequestration
- Clean Fuel Production Credit
- Credit for Production of Clean Hydrogen
- Energy Efficient Commercial Buildings Deduction
- Renewable Energy Production Tax Credit
- Renewable Energy Property Investment Tax Credit

The prevailing wage requirements apply to the following tax incentives:

- New Energy Efficient Home Credit
- Zero-Emission Nuclear Power Production Credit

The Department of the Treasury and the IRS anticipate issuing proposed regulations and other guidance related to the prevailing wage and apprenticeship requirements. The initial wage and apprenticeship guidance is published in the Federal Register and can be found online at www.federalregister.gov/d/2022-26108.

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