

Alert | Labor & Employment



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Proposed Treasury Rules on Prevailing Wage and Apprenticeship for Clean Energy Credits Incentivize Use of Project Labor Agreements

On Aug. 30, 2023, the U.S. Department of the Treasury published proposed regulations ([Proposed Rules](#)) addressing the prevailing wage and apprenticeship requirements imposed by the Inflation Reduction Act of 2022 (IRA) that taxpayers must satisfy to claim the full credit amount of certain U.S. federal income tax credits if the related facility, property, project, or equipment does not satisfy the one-megawatt exception or has not begun construction before Jan. 29, 2023.

Among other guidance, the Proposed Rules provide incentives for taxpayers to use project labor agreements. A project labor agreement (PLA) is a pre-hire collective bargaining agreement typically entered into by a contractor or project owner with one or more building trade unions establishing terms and conditions for a specific construction project.

The Proposed Rules (along with the related [IRS FAQs](#) and [Publication 5855](#)) provide welcome clarity for taxpayers applying the prevailing wage and apprenticeship requirements and supplement IRS [Notice 2022-61](#), which was released last year.

Prevailing Wage

To comply with the prevailing wage requirement, taxpayers must pay certain workers at least the prevailing wage based on the geographic area and type of work performed, as determined by the U.S. Department of Labor (DOL). The Proposed Rules require that all laborers and mechanics are paid wages

for construction, alteration, or repair of the applicable facility that are not less than the “prevailing wage” for that type of work. The Proposed Rules clarify that “construction, alteration, or repair” should be construed broadly, but that ordinary maintenance work, including maintenance after the facility is placed in service, is not covered by the prevailing wage requirement. The definition of “construction, alteration, or repair” that is subject to the prevailing wage requirement applies to work performed at the physical site of the facility, and at secondary sites, established specifically or dedicated exclusively for a specific period of time to the construction, alteration, or repair of the facility.

Apprenticeship

The Proposed Rules provide guidance with respect to the IRA’s three apprenticeship requirements (labor hours, apprentice ratios, and level of apprentice participation). The labor hours requirement specifies that for a facility on which construction begins in 2023, the required percentage of labor hours that must be performed by qualified apprentices is 12.5%, with that percent rising to 15% for a facility that begins construction in 2024 or later. The required apprentice-to-journey worker ratio will be set by the DOL or applicable state agency. The participation requirement mandates that each contractor or subcontractor that employs four or more individuals to perform construction, alteration, or repair work on a qualified facility must employ one or more qualified apprentice(s).

Project Labor Agreements

The IRA provides for correction and penalty payments to cure a failure to satisfy the prevailing wage or apprenticeship requirements. However, under the Proposed Rules, the penalty payments would not be required if the work was being performed pursuant to a qualifying PLA, and, in the case of prevailing wage, if a correction payment was made to the affected laborer or mechanic prior to the date when the increased U.S. federal income tax credit was claimed.

The Proposed Rules define a “qualifying” PLA as an agreement that must meet, at minimum, the following requirements:

- Bind all contractors and subcontractors on the construction project through the inclusion of appropriate specifications in all relevant solicitation provisions and contract documents;
- Contain guarantees against strikes, lockouts, and similar job disruptions;
- Set forth effective, prompt, and mutually binding procedures for resolving labor disputes arising during the term of the project labor agreement;
- Contain provisions to pay prevailing wages;
- Contain provisions for referring and using qualified apprentices consistent with the IRA apprenticeship requirements and related guidance; and
- Meet the definition of a collective bargaining agreement for building and construction employees under the National Labor Relations Act.

The Proposed Rules may be relied on with respect to construction or installation of a facility, property, project, or equipment beginning on or after Jan. 29, 2023, and until final Treasury Regulations are published; provided, that as of Oct. 29, 2023, taxpayers follow the Proposed Rules in their entirety and in a consistent manner.

The Treasury Department is accepting comments on the Proposed Rules.

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