



VIA ELECTRONIC SUBMISSION

November 4, 2022

Internal Revenue Service
CC:PA:LPD:PR (Notice 2022-51)
Room 5203
P.O. Box 7604, Ben Franklin Station
Washington, DC 20044

Re: Comments of ABC to the Treasury Department and Internal Revenue Service on Notice 2022-51 (Inflation Reduction Act Guidance)

To Whom It May Concern:

Associated Builders and Contractors submits the following comments to the U.S. Treasury Department and Internal Revenue Service in response to Notice 2022-51, issued on Oct. 5, 2022. The Notice requested public comments regarding what guidance that Treasury and IRS should issue prior to implementation of the prevailing wage, apprenticeship and domestic content requirements of the tax credit provisions of the Inflation Reduction Act. ABC appreciates the opportunity to provide feedback on this Notice.

About ABC

ABC is a national construction industry trade association representing more than 21,000 member companies. ABC and its 68 chapters help members develop people, win work and deliver that work safely, ethically and profitably for the betterment of the communities in which ABC and its members work. ABC and its members believe construction work, both private and public, should be performed on the basis of merit, through fair and open competition, regardless of labor affiliation. More than 87% of the U.S. construction industry workforce do not belong to a union and is employed by contractors who are not signatory to any union agreements.¹

ABC's membership represents all specialties within the U.S. construction industry and is comprised primarily of general contractors and subcontractors that perform work in the industrial and commercial sectors for government and private sector customers.² Many ABC members perform construction in all aspects of "clean" and renewable energy projects of the types incentivized by the IRA in sections 30C, 45, 45L, 45Q, 45U, 45V, 45Y, 45Z, 48, 48C, 48E and 179D of the updated Internal Revenue Code. These include solar, wind, geothermal, carbon sequestration, electric vehicle charging stations and other types of clean energy construction.

¹ See U.S. Bureau of Labor Statistics Table 3, Union affiliation of employed wage and salary workers by occupation and industry, accessed Oct. 4, available at: <https://www.bls.gov/news.release/union2.t03.htm>.

² For example, see ABC's 32nd Excellence in Construction Awards® program from 2022: <https://www.abc.org/Portals/1/2022%20Files/32ND%20EIC%20program--Final.pdf?ver=2022-03-25-115404-167>.

The vast majority of ABC's contractor members are also small businesses. This is consistent with the U.S. Census Bureau and U.S. Small Business Administration's Office of Advocacy's findings that the construction industry has one of the highest concentrations of small businesses (82% of all construction firms have fewer than 10 employees)³ and industry workforce employment (more than 82% of the construction industry is employed by small businesses).⁴ In fact, construction companies that employ fewer than 100 construction professionals comprise 99% of construction firms in the United States; they build 63% of U.S. construction, by value, and account for 68% of all construction industry employment.⁵ In addition, the vast majority of small businesses are not unionized in the construction industry.

In addition to small business member contractors that build private and public works projects, ABC also has large member general contractors and subcontractors that perform construction services for private, federal, state and local government customers procuring construction contracts subject to respective private and government acquisition policies and regulations. For example, ABC members won 57% of the \$128.73 billion in direct prime construction contracts exceeding \$25 million awarded by federal agencies during fiscal years 2009-2021. Winning ABC member federal contractors provided subcontracting opportunities to large and small contractors in the specialty trades and delivered taxpayer-funded construction projects safely, on time and on budget for their federal government customers.

Since most federally funded projects are governed by the Davis-Bacon Act, ABC members who perform such work are familiar with the burdensome and inflationary requirements of "prevailing wage" laws and regulations. But many ABC member contractors and others, particularly smaller construction firms, avoid bidding on prevailing wage projects, in part because DBA wage determination and enforcement by the U.S. Department of Labor discriminates against nonunion contractors and imposes significant administrative burdens and unacceptable risks on smaller nonunion contractors in particular, as discussed in Section II of ABC's response to this notice.

Many ABC members also participate in government-registered apprenticeship programs, and ABC chapters actively sponsor more than 300 GRAPs nationwide. Nevertheless, many ABC members believe that their private, nonregistered apprenticeship and/or workforce development programs do a better job of developing the skills needed to perform construction work of specific interest to a specialized contractor, including "clean" energy construction, because progress within these programs is anchored in required skill competency and advancement is not necessarily time-based as is the case in four to five-year GRAPs. Many

³ U.S. Census Bureau 2019 County Business Patterns: <https://data.census.gov/cedsci/table?q=CBP2019.CB1900CBP&n=23&tid=CBP2019.CB1900CBP&hidePreview=true> and <https://www.census.gov/programs-surveys/cbp/data/tables.2019.html>.

⁴ 2020 Small Business Profile, U.S. Small Business Administration Office of Advocacy (2020), at page 3, <https://cdn.advocacy.sba.gov/wp-content/uploads/2020/06/04144224/2020-Small-Business-Economic-Profile-US.pdf>.

⁵ U.S. Census County Business Patterns by Legal Form of Organization and Employment Size Class for the U.S., States and Selected Geographies: 2019, available at <https://thetruthaboutplas.com/wp-content/uploads/2021/07/Construction-firm-size-by-employment-2019-County-Business-Patterns-Updated-071321.xlsx>.

industry contractors also believe the government-registered apprenticeship system imposes unnecessary administrative burdens on contractors and codifies an outdated union apprenticeship model, which does not serve the industry well and is especially problematic as the industry already faces a significant shortage of skilled construction workers, as discussed in Section III of ABC's response to this notice.

ABC supports efforts to build a robust domestic supply chain of construction materials as the benefits are many. However, as discussed in Section IV of these comments, ABC is concerned that poorly crafted Buy America and domestic material content policies may needlessly increase risk, uncertainty and costs while delaying and stopping the construction of clean energy projects.

Notably, the passage of the IRA and the IRS's subsequent request for comment notice has been issued at a time when the U.S. construction industry faces significant headwinds in the form of severe supply chain disruptions,⁶ unprecedented materials cost inflation of 41% since the onset of the COVID-19 pandemic,⁷ declining investment in structures⁸ and a widespread shortage of 650,000 skilled workers in 2022 alone⁹ that is exacerbated by problematic Biden administration policies.¹⁰

It is important that forthcoming IRA guidance does not exacerbate these issues and further increase costs for contractors and taxpayers by needlessly restricting the pool of qualified bidders, excluding experienced and qualified nonunion construction workers and apprentices, and enacting complicated domestic supply chain policies.

For these and related reasons, ABC opposed the IRA¹¹ and authored multiple opinion pieces opposing anti-competitive and inflationary prevailing wage and government-registered apprenticeship requirements tied to federal tax credits for clean energy projects.¹²

As set forth in greater detail in ABC's analysis of the IRA discussed in this comment letter, the prevailing wage and government-registered apprenticeship requirements of the IRA impose unprecedented new mandates on private construction projects through the federal tax code. As a result, the IRA perversely discourages experienced contractors and 87% of the industry's workforce from performing clean energy projects covered by the IRA, thereby reducing competition for such projects and increasing the costs for taxpayers and developers seeking to build clean energy projects. These new policies undermine efficient taxpayer investment in clean energy projects and will result in added costs that may ultimately be passed along to

⁶ Sam Barnes, "[Missing Links](#)," *Construction Executive*, April 2022.

⁷ [ABC: Construction Input Prices Inched Down in September: Up 41% Since February 2020](#), ABC, Oct. 2022,.

⁸ "[Nonresidential Construction Spending Down 0.4% in August, Says ABC](#)," ABC, October 2022.

⁹ "[ABC: Construction Industry Faces Workforce Shortage of 650,000 in 2022](#)," ABC, February 2022.

¹⁰ For example, see www.TheTruthAboutPLAs.com, [Biden's Project Labor Agreement Schemes Exacerbate Construction Industry's Skilled Labor Shortage](#), June 29. See also "[ABC to Biden Administration: Withdraw the DOL's Davis-Bacon Proposed Rule](#)," ABC, May 2022.

¹¹ [Analysis—Democrats' Inflation Reduction Act Is a Reckless Tax-and-Spend Bill.pdf \(abc.org\)](#).

¹² See the Aug. 18 Fox Business [op-ed](#) "Sweetheart union deal will undermine Inflation Reduction Act's clean energy agenda" and the Sept. 6 [op-ed](#) "Biden's Davis-Bacon bloat undermines taxpayer infrastructure investments," in the Washington Examiner by ABC's Ben Brubeck.

energy ratepayers and consumers. In addition, these policies are likely to delay projects and result in fewer clean energy construction projects and private investment, which ultimately undermine the Biden administration’s clean energy goals of creating middle-class jobs for Americans while reducing carbon emissions.

Notwithstanding the foregoing concerns about its labor provisions, the IRA has now been enacted into law, and Treasury and the IRS are tasked with issuing “regulations and guidance” necessary to implement its provisions¹³ that will be effective 60 days from the date such guidance is issued. In doing so, ABC strongly urges Treasury and the IRS not to make a bad situation worse. The IRA should be interpreted to allow taxpayers flexibility in their good-faith efforts to comply with the prevailing wage and apprenticeship provisions. In particular, as further explained below, the IRS should retain jurisdiction over the enforcement and compliance process while limiting the DOL’s jurisdiction to only include setting prevailing wage rates of pay and registered apprenticeship standards, in accordance with the IRA’s plain language.

I. Treasury/IRS Should Engage in Notice and Comment Rulemaking

Before addressing the specific questions posed by Treasury and the IRS in the notice, ABC will highlight certain general comments on this proceeding. This is the first time Congress has seen fit to impose either prevailing wage or government-registered apprenticeship requirements on purely private construction projects, i.e., projects with no direct government funding. The DBA and the apprenticeship regulations were never intended to impose mandates on private construction projects and are not well-suited to that task. As a result, the issues presented to Treasury and the IRS for regulations and/or guidance pose complex inter-agency jurisdictional and practical issues.

For these reasons, ABC submitted an Oct. 21 letter requesting a 60-day comment extension of Treasury and the IRS’s Nov. 4 comment deadline.¹⁴ ABC was also one of 22 diverse organizations representing the interests of tens of thousands of companies and millions of skilled employees in the U.S. construction industry, as well as organizations representing thousands of companies developing and building clean energy projects across America, to sign an Oct. 31 letter to Treasury and the IRS requesting a 60-day comment deadline extension.¹⁵ In short, 30 days is simply not enough time for stakeholders to gather feedback from member companies, construction workers, contractors, organization affiliates, workforce development providers, supply chain partners and government regulators to fully understand the potential effects of the IRS’s requirements and provide meaningful comments to the agencies so that the initial guidance does not chill interest in developing clean energy projects. The IRS has not responded to either of these requests for more time from the regulated community.

In addition, ABC submits that the complexity of these issues, as further discussed in ABC’s response to this notice, strongly argues for the agencies to conduct a full notice and comment

¹³ IRA, Section 45(b)(9).

¹⁴ [ABC letter to IRS](#), Oct. 21, 2022.

¹⁵ [Industry Coalition Letter to IRS](#), Oct. 31, 2022.

regulatory proceeding, not merely partial guidance memos from Treasury and the IRS. The agencies should do rigorous outreach to affected stakeholders and engage in inclusive listening sessions to explore all unknowns and unintended consequences of these new IRA policies on small, women-, minority- and veteran-owned businesses with experience and/or interest in pursuing opportunities in this clean energy marketplace. To this end, Treasury and the IRS should develop ways to streamline the accompanying paperwork and legal compliance burdens of the IRA's labor provisions.

Taxpayers, contractors and subcontractors are entitled to clarification of every aspect of this novel imposition of labor mandates on taxpayer credits before they can be expected to begin construction and incur the substantial increased costs and administrative risks associated with prevailing wage and apprenticeship requirements.

ABC is specifically concerned that Section 3 of the Request for Comments in Notice 2022-51 implies that some aspects of the labor provisions will be addressed via "quick" guidance, while other aspects will be addressed separately as "important" guidance, and still others will be addressed via notice and comment rulemaking.¹⁶ To the contrary, ABC submits that the only legally tenable approach to this proceeding is for Treasury and the IRS to address all of the complex, interrelated issues posed by the IRA's labor provisions in a single rulemaking proceeding. All concerns raised by ABC and other commenters need to be evaluated and addressed at the same time and in the same manner. Taxpayers, contractors and subcontractors must understand fully how the prevailing wage and apprenticeships will be implemented, in their entirety, so investors can decide whether the tax credits are worth the significant risks posed by the labor policy requirements and significant noncompliance penalties established in the IRA, and contractors and subcontractors can decide whether it is worth the risks to bid on and perform such contracts.

In this regard, one of the fundamental issues requiring careful attention is jurisdictional in nature: specifically, which government department or agency will be primarily responsible for implementing the IRA. The IRA statute itself appears to vest primary authority in Treasury and the IRS but fails to clearly articulate how the overlapping but distinct responsibilities of the DOL will be carried out.

The IRA assigns only limited tasks to the DOL, the parameters of which are not well defined. The jurisdictional lines between Treasury and the DOL need to be carefully addressed with respect to the many different tasks involved in implementing the IRA's tax credit labor provisions.

Finally, ABC is also concerned with a lack of clarity regarding prevailing wage regulations due to ongoing rulemaking activity at the DOL, which is currently engaged in a sweeping revision of Davis-Bacon regulations.¹⁷ The DOL's proposal illegally rescinds almost 40 years of commonsense reforms and clarifications to DBA regulations, overturns precedent-setting legal

¹⁶ See Notice, Section 3, opening paragraph asking for comments on which guidance is needed most quickly as well as the most important issues on which guidance is needed. See also Section 3.01(2) referring to rulemaking.

¹⁷ See 87 Federal Register 15698: www.federalregister.gov/documents/2022/03/18/2022-05346/updating-the-davis-bacon-and-related-acts-regulations.

decisions and will dramatically change the scope of covered workers and other compliance requirements for the regulated community.¹⁸

The forthcoming DOL final rule is likely to create confusion and exacerbate many controversial issues with prevailing wage regulations described in this response and in ABC's comments on the DOL proposal that are sure to increase risk for contractors, artificially raise construction costs, increase administrative burdens on contractors and decrease the quantity of contractors submitting bids on projects receiving IRA tax credits.

The IRA's expansion of new prevailing wage requirements on an entirely new segment of the private construction industry while these significant changes to DBA regulations are still under consideration will compound the regulatory burden, risk and uncertainty on taxpayers seeking IRA tax credits.

With the foregoing general comments in mind, the remainder of ABC's comments focus on the numbered questions regarding prevailing wage, apprenticeship and domestic materials content posed by Treasury and the IRS in Section 3 of the Notice.

II. ABC Responses to IRS Section 3.01: Prevailing Wage Requirement

1. Is guidance necessary to clarify how the Davis-Bacon prevailing wage requirements apply for purposes of § 45(b)(7)(A) of the Code?

As discussed in general terms above, rulemaking is needed to clarify how the Davis-Bacon prevailing wage requirements apply for purposes of § 45(b)(7)(A) of the U.S. Code. The IRA text states: "Any laborers and mechanics employed by the taxpayer or any contractor or subcontractor [on covered projects] shall be paid wages at rates not less than the prevailing rates for construction, alteration, or repair of a similar character in the locality in which such facility is located as most recently determined by the Secretary of Labor, in accordance with subchapter IV of chapter 31 of title 40, United States Code." Notably, the IRA does not include the additional provisions set forth in most government-funded "related" acts incorporating by reference the DBA, i.e., the IRA does not incorporate Reorganization Plan No. 14 of 1950, the provision that gives DOL final jurisdictional authority over all aspects of Davis-Bacon compliance standards.¹⁹ The IRA also does not include any reference to the Copeland Act, 40 U.S.C. 276c, which is the statutory authority for imposing certified payroll requirements and other enforcement measures administered by DOL.²⁰ Again, these provisions were not

¹⁸ See [ABC's May 17 comments](#) on the proposed rule.

¹⁹ Reorganization Plan No. 14 of 1950 authorizes the Secretary of Labor to coordinate the administration of legislation relating to wages and hours on "federally financed or assisted projects," incorporating by reference 70 different "related acts." The Reorganization Plan by its terms does not apply to the IRA. *Compare, e.g.*, Housing and Community Development Act of 1974, 42 U.S.C. 5310; Federal Pollution Control Act, 33 U.S.C. 1372; and dozens of other Davis-Bacon related acts. The full list of related acts is published at 29 C.F.R. § 5.1(a).

²⁰ The Copeland Act authorizes the Secretary of Labor to make "reasonable regulations" for contractors and subcontractors engaged in construction of "public works or buildings or works financed in whole or in part by loans or grants from the United States, including a provision that each contractor and subcontractor shall furnish weekly a statement with respect to the wages paid each employee during the preceding week." Neither the Copeland Act, nor the DOL regulations enforcing it, have any application to the tax credit provisions of the IRA.

included in the IRA. Additionally, existing definitions of “federal financial assistance” subject to the DOL’s jurisdiction for Davis-Bacon enforcement fail to mention federal tax credits.²¹

Therefore, Treasury and the IRS should recognize and clarify the limited role of the DOL in implementing the prevailing wage requirements of the IRA. The DOL’s limited role is to determine the prevailing wages for certain job classifications of laborers and mechanics. As to the numerous other requirements for implementing IRA’s prevailing wage requirements, Treasury and the IRS must parse through each labor-related provision of the IRA and explain whether they or the DOL will exercise jurisdiction over each such assigned task.

For example, Treasury and the IRS should confirm at the outset that only those provisions of subchapter IV of title 40 that authorize the U.S. Secretary of Labor to determine prevailing rates for laborers and mechanics will be deemed applicable to projects receiving the IRA’s tax incentives. By way of example, Section 3142(a) of subchapter IV of title 40 deals only with application of the section to public buildings and public works, so clearly this subsection has no application to the IRA as the construction projects in question are clean energy projects procured by private entities. Likewise, Section 3142(c) deals with contract stipulations, posting requirements and provisions for withholding of funds on government contracts, which likewise should not apply to private clean energy projects covered by the IRA. Section 3143 refers to termination of work by a “contracting officer” of the federal government, which again has no application to this act. This is not a complete list.

Treasury and the IRS should also confirm that the IRA’s plain language specifies which “laborers and mechanics” are covered by the prevailing wage requirement; specifically that only those classifications of laborers and mechanics for whom prevailing rates have been “determined” by the DOL must be paid such prevailing rates.²² Treasury and the IRS should make clear that classifications of workers on covered projects for whom the DOL has not previously issued a prevailing wage determination may be paid by their employers at whatever rates the employers determine to be consistent with the needs of the project. The prevailing wage requirement should apply only to covered employees for whom wage determinations have been issued by the DOL under its preexisting DBA-covered contract wage determinations.

Treasury and the IRS should also confirm that covered employers need not pay prevailing wages to any classifications of employees other than laborers and mechanics engaged in “construction, alteration or repair” activity to qualify for the tax credits. Specifically, it should be made clear that employees who primarily perform maintenance work are not covered by the prevailing wage requirement.²³ Also exempt from inclusion should be those employees who

²¹ See 2 CFR § 200.40 for the Office of Management and Budget’s definition of federal financial assistance, which does not include tax credits. See also 24 CFR § 5.109 for the Department of Housing and Urban Development’s definition of the term, which expressly excludes tax credits, “Federal financial assistance means assistance that non-Federal entities receive or administer...but does not include a tax credit, deduction, or exemption.”

²² See IRA Section 45(b)(7)(A)(ii).

²³ See Treas. Reg. § 1.263(a)-3(i)(1)(ii), defining “routine maintenance” as including the “inspection, cleaning, and testing of the unit of property, and the replacement of damaged or worn parts of the unit of property with comparable and commercially available replacement parts.” Factors to be considered include “the recurring nature of the activity, industry practice, manufacturers’ recommendations, and the taxpayer’s experience with similar or identical property.”

hold exempt status as professionals, executives, administrators, computer professionals, etc., who are not covered by this act.²⁴

Treasury and the IRS should also confirm that covered employers need not pay prevailing wages to any employees who do not perform on the site of the construction, alteration or repair work performed on the project. Existing case law governing DBA applicability to the site of work should be adhered to in order to avoid costly litigation, delays, risk and uncertainty.²⁵

Treasury and the IRS should also confirm that the prevailing wage rates to be paid must be those rates paid to the covered classification of workers in the locality where the construction, alteration or repair work is to be performed.²⁶

Treasury and the IRS should also confirm that taxpayers, contractors and subcontractors can only be required to pay prevailing wage rates if they are given adequate advance notice of such rates for each classification of laborers and mechanics who perform work on the covered project.²⁷

Treasury and the IRS should also confirm that the applicable wage determinations are those mandated on a federal basis by the DOL. State wage determinations have no application to this act for purposes of qualifying for the relevant IRA tax credits.²⁸

Treasury and the IRS must also confirm that prevailing wages will be determined for apprentices based on the percentage of journey-level pay specified in the registered apprenticeship standards, pursuant to governing regulations²⁹.

2. What should Treasury and the IRS consider in developing rules for taxpayers to correct a deficiency for failure to satisfy prevailing wage requirements?

Treasury and the IRS should provide clear guidance to employers on the process to correct any deficiencies that may result from payroll, timekeeping, clerical or other administrative errors. As set forth in the IRA, employers should have the opportunity to cure deficiencies before the government finds them subject to penalties or ineligible for IRA tax credits.

In addition, Treasury and the IRS need to provide clear definitions and examples of unintentional versus intentional violations of this provision as the IRA imposes stiffer penalties

²⁴ See IRA Section 45(b)(8)(E) that references which construction activities are covered by apprenticeship requirements and excludes “persons employed in a bona fide executive, administrative, or professional capacity”. We recommend consistency between apprenticeship and prevailing wage requirements.

²⁵ See *Building and Construction Trades Department, AFL-CIO v. U.S. DOL Wage Appeals Board (Midway Excavators, Inc.)*, 932 F.2d 985 (D.C. Cir. 1991) (truck drivers transporting offsite materials to the project site not covered by Davis-Bacon); see also *Ball, Ball & Brosamer, Inc. v. Reich*, 24 F.3d 1447 (D.C. Cir. 1994) (workers in borrow pits and batch plants located two miles from construction site not covered by Davis-Bacon); *L.P. Cavett Co. v. U.S. DOL*, 101 F.3d 1111 (6th Cir. 1996) (truck drivers hauling asphalt from temporary batch plant to highway construction project not covered by Davis-Bacon).

²⁶ IRA Section 45(b)(7)(A).

²⁷ See Section V on pg. 50 of ABC’s [comments](#) to the DOL on NPRM [Updating the Davis-Bacon and Related Acts Regulations](#) (RIN: 1235-AA40).

²⁸ See IRA Section 13101(f)(7)(A).

²⁹ 29 C.F.R. Part 29.

on taxpayers for intentional violations compared to unintentional violations and there is no clear definition of unintentional or intentional conduct.³⁰

Further, an administrative appeal process must be created and provided to taxpayers/developers who are accused of unintentional and intentional violations of prevailing wage requirements and have been asked to pay a fine consistent with the penalties outlined in the IRA. In this regard, it should be noted that the IRA provides for entirely different penalties and correction methods than those currently enforced by DOL on government-funded construction work.³¹ Treasury and the IRS should therefore make clear that enforcement of the IRA's prevailing wage provisions is the sole province of Treasury and/or the IRS, and not the DOL. It would be intolerable for taxpayers, contractors and subcontractors to be subject to two separate regulatory enforcement regimes, particularly where the enforcement penalties are inconsistent with each other.

3. What documentation or substantiation should be required to show compliance with the prevailing wage requirements?

Treasury and the IRS should avoid burdening employers, including small businesses, with additional recordkeeping requirements to qualify for the tax credits. As noted above, the text of the IRA provides no authority for imposing DOL's DBA-related enforcement regime and recordkeeping burdens and red tape on taxpayers, contractors or subcontractors, such as the required submission of weekly certified payrolls. Employers can be required to maintain significant information about employee pay and timekeeping, as currently required under the Service Contract Act, Fair Labor Standards Act and many state laws that are not as complex and complicated as the DBA's recordkeeping process. Additional obligations to submit certified payrolls, such as those required by the Copeland Act³² (not incorporated by the text of the IRA) are not warranted for compliance with the IRA and should be avoided.

4. Is guidance needed for purposes of §45(b)(7)(A) to clarify the treatment of a qualified facility that has been placed in service but does not undergo alteration or repair during a year in which the prevailing wage requirements apply?

Treasury and the IRS should clarify that companies continue to qualify for IRA tax credits if the qualified facility has been placed in service but does not undergo alteration or repair during a year in which the prevailing wage requirements apply. The IRA does not impose an obligation to pay prevailing wages to qualify for tax credits, except when construction, alteration or repair work is performed. As noted above, Treasury and the IRS should specifically clarify that routine maintenance work is not covered by the prevailing wage requirements of the IRA.

5. Comments on other topics relating to the prevailing wage requirements for purposes of 45(b)(7)(A) that may require guidance.

³⁰ See Treasury Reg. 301.6721-1(f)(2) (equating "intentional disregard to "knowing or willful" failure for purposes of incorrect information returns).

³¹ IRA Section 45(b)(7)(B).

³² 40 U.S.C. 276c.

Consistent with the DBA, nothing in the IRA permits a “carveout” for unionized contractors whose rates have been established by a collective bargaining agreement. Union rates are typically favored by the DOL’s process for determining prevailing wage rates, so there is no need for a carve-out. Neither the DBA nor the IRA allows for any discrimination between unionized and nonunion contractors or taxpayers.

Treasury and the IRS should also clarify that the federal contractor minimum wage³³ does not apply to workers on projects receiving IRA tax credits, as they are not federal contracts. Finally, Treasury and the IRS should confirm that existing IRS guidance on independent contractor status should control any determination as to whether individuals are employees or independent contractors, since the IRA vests no authority in the DOL to make that determination.

III. ABC Responses to IRS Section 3.02: Apprenticeship Requirement

ABC has broad concerns that the current GRAP system cannot accommodate the influx of industry demand for participants in GRAPs in many regional marketplaces and trades. In the next five to 10 years, the construction industry is bracing for hundreds of billions of dollars of additional infrastructure spending and activity above baseline levels of annual spending as a result of the IRA, the Infrastructure Investment and Jobs Act, the American Rescue Plan Act of 2021 and other government and private investments in infrastructure, public buildings, housing and other construction activity across America.

According to data from the DOL,³⁴ in FY 2021, the construction industry’s federal government-registered apprenticeship system produced 24,822 completers of its four-to-five-year apprenticeship programs. In addition, construction industry apprenticeship programs registered with state governments produced an estimated 15,000 to 20,000 completers in FY 2021.³⁵ At current rates of completion, it would take 14 years for all government-registered construction industry apprenticeship programs to supply the estimated 650,000 construction workers needed just in 2022.³⁶ This figure doesn’t account for additional construction spending from the IRA or demand on GRAP programs, instructors and participants.

³³ See 29 CFR Parts 10 and 23.

³⁴ According to the DOL Office of Apprenticeship’s Registered Apprenticeship Partners Information Data System, in FY 2021 the construction industry’s 6,573 federal government-registered apprenticeship programs had 239,107 active apprentices and produced just 32,068 completers. There are a handful of states that do not contribute to the RAPIDS program, so ABC estimates roughly 40,000 to 45,000 apprentices completed programs in 2021. See data tables in www.TheTruthAboutPLAs.com, [Biden’s Project Labor Agreement Schemes Exacerbate Construction Industry’s Skilled Labor Shortage](https://thetruthaboutplas.com/wp-content/uploads/2022/08/Registered-Apprenticeship-Participants-Completers-and-Programs-for-Construction-Industry-in-RAPIDS-States-FY17-to-FY21-081722.xlsx), June 29, at <https://thetruthaboutplas.com/wp-content/uploads/2022/08/Registered-Apprenticeship-Participants-Completers-and-Programs-for-Construction-Industry-in-RAPIDS-States-FY17-to-FY21-081722.xlsx>.

³⁵ [ABC: Government-Registered Apprenticeship System Woefully Inadequate to Meet Construction’s Skilled Workforce Shortage](https://thetruthaboutplas.com/2022/06/29/bidens-project-labor-agreement-schemes-exacerbate-construction-industrys-skilled-labor-shortage/), ABC, June 30.

³⁶ See discussion and data here: <https://thetruthaboutplas.com/2022/06/29/bidens-project-labor-agreement-schemes-exacerbate-construction-industrys-skilled-labor-shortage/>.

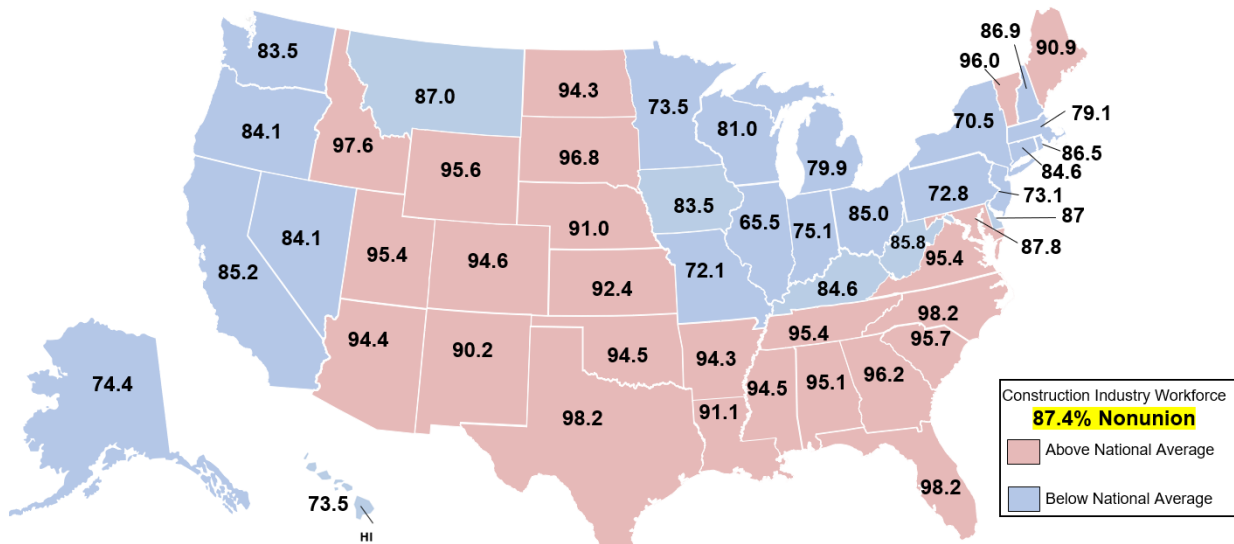
In addition, a 2015 report issued by construction unions³⁷ claims that, “among [government-registered program] construction apprentices, 74% are trained in the unionized construction sector known as the joint apprenticeship training committee (JATC) system,” according to DOL Employment and Training Administration data from 2014 referenced in the report.³⁸ If accurate, this means that roughly a quarter of all registered apprentices are enrolled in nonunion GRAPs.

These data demonstrate that the vast majority of upskilling and workforce development in the construction industry occurs outside of GRAPs (including both union and nonunion programs). In addition, an even greater percentage of construction industry workforce development and upskilling occurs in programs not affiliated with union GRAPs because union apprenticeship programs are almost all registered with the DOL or state equivalents and are captured in government GRAP data.

Coupled with the fact that just 12.6% of the U.S. construction workforce belongs to a union,³⁹ and in many states the union workforce membership is less than 5%,⁴⁰ there is a very real chance that GRAP requirements will create a host of problems for clean energy developers that will be even more problematic in certain regions of the country.



State-by-State Construction Industry Nonunion Workforce Density (2021)



Unionstats.com, Table III: Union Members, Coverage, Density and Employment by State and Sector

³⁷ See Page 6 of *Construction Apprenticeship, The “Other Four-Year Degree,”* by the North American Building Trades Unions available at https://partners.aflcio.org/system/files/2_bctd-appren-four-yr-degree-2015.pdf.

³⁸ Note: The DOL does not provide data on union vs. nonunion apprentices enrolled in registered apprenticeship programs to the public in an aggregate version/report. It is unclear if the DOL shared this data or if additional assumptions were made by report authors based on DOL data requested and calculated.

³⁹ “[Union Members – 2021](#),” Bureau of Labor Statistics, January 2022.

⁴⁰ See map: <https://thetruthaboutplas.com/wp-content/uploads/2022/10/State-by-state-Construction-Industry-Nonunion-Workforce-Density-2021.png>

For example, clean energy developers in the South who engage in carbon sequestration, solar, wind and other types of clean energy production are especially vulnerable to this anti-competitive provision in the IRA because there are few unions and few GRAPs in these markets.

Feedback from ABC contractors who do not participate in GRAPs indicate they prefer existing, industry-driven workforce development programs that produce a safe, competent and productive workforce through innovative and flexible learning models like just-in-time task training, competency-based progression and work-based learning. In addition, some contractors participate in workforce development programs through vocational and technical schools and community workforce development program partnerships that are not registered with the state or federal government, in order to attract minorities, women, veterans and other stakeholders in a community into the construction industry.

It is a common misperception by construction industry outsiders that GRAPs are the only way to attract new workers into the construction industry and educate a skilled, safe, productive and diverse workforce. In general, most workforce development is done in-house by contractors without the GRAP bureaucracy, and progression is based on skill, merit, competency and safety in contrast to progression through GRAPs based on time.

In short, construction industry workforce development is done through an all-of-the-above strategy relying on employers, unions, trade associations, colleges, trade schools and community workforce development partners. Many of these programs are not GRAPs. Treasury and the IRS should be cautious about GRAP requirement guidance needlessly limiting an all-of-the-above approach to workforce development. Such gatekeeping benefits a small minority of the construction industry and may undermine the overall goals of efficient clean energy construction.

In addition, Treasury and the IRS guidance should consider the reality that there are already credentials for certain types of clean energy construction tasks and activity (solar, EV charger installation, etc.) independent of GRAPs. Treasury and the IRS's guidance should consider inclusion of these programs and address why these programs do not count towards workforce development goals and registered apprenticeship utilization requirements when GRAPs satisfy these requirements regardless of whether they have a clean energy-specific construction curriculum or not.

1. What factors should Treasury and the IRS consider regarding the appropriate duration of employment of individuals for construction, alteration or repair work for purposes of this requirement?

Section 45(b)(8) of the IRA specifies that each taxpayer, contractor or subcontractor who employs four or more individuals to perform construction, alteration or repair work with respect to a qualified facility must employ one or more qualified apprentices from a GRAP to perform that work. In response to the notice's specific question, the apprenticeship requirement should only be invoked when the taxpayer, contractor or subcontractor employs four or more individuals at the same time on covered work.

As further noted above, the IRA requires that specific percentages of the total labor hours of the construction, alteration or repair work must be performed by qualified apprentices defined as participants in a registered apprenticeship program.⁴¹ Treasury and the IRS should confirm that the IRA does not require each and every taxpayer, contractor or subcontractor to employ apprentices in the percentage designated for total work hours on the project. All that is required by the act is that the overall percentage of total work hours be met or exceeded on the project as a whole.

Treasury and the IRS must provide clarity on the timeframe of the apprenticeship percentage utilization requirements—for example, is it per year of tax credits or the entire project? Clarification is needed to determine if the total labor hours are calculated separately for construction, alteration or repair of a qualifying project.

Treasury and the IRS should clarify and confirm that the apprenticeship percentage requirement does not include individuals whose work is not performed in an “apprenticeable trade.” Certain work, including clean energy job classifications, has not been recognized by federal or state apprenticeship agencies as apprenticeable, so that taxpayers, contractors and subcontractors cannot be expected to include such workers in the calculation of the total work force percentage. Certain states, such as California, delay or refuse to register new apprenticeship programs based on a so-called “needs” test that has been disavowed by the DOL.⁴² Treasury and the IRS should confirm that a state’s delay or refusal to register an apprenticeship program for clean energy construction covered by the IRA qualifies the project for the good faith exemption.

Likewise, Treasury and the IRS should clarify that the apprenticeship percentage requirements apply only to construction workers and not workers on a project who may be engaged in nonconstruction activity.⁴³

Treasury and the IRS should confirm that there are no limits on how long a construction apprentice must work on a covered project in order to satisfy the IRA’s percentage of total work hours requirement. Nor should there be any minimum or maximum time limit imposed on how long apprentices must be enrolled in a GRAP or employed by a contractor in order to be counted towards the total work hours percentage requirements.

Treasury and the IRS should not place any arbitrary limitations on what it defines as a qualified GRAP, such as the number of years a GRAP has been in existence, the number of graduates, the number of enrolled apprentices and a GRAPs’ graduation percentage. Such gatekeeping will only exacerbate the skilled labor shortage and eliminate stakeholders and workforce

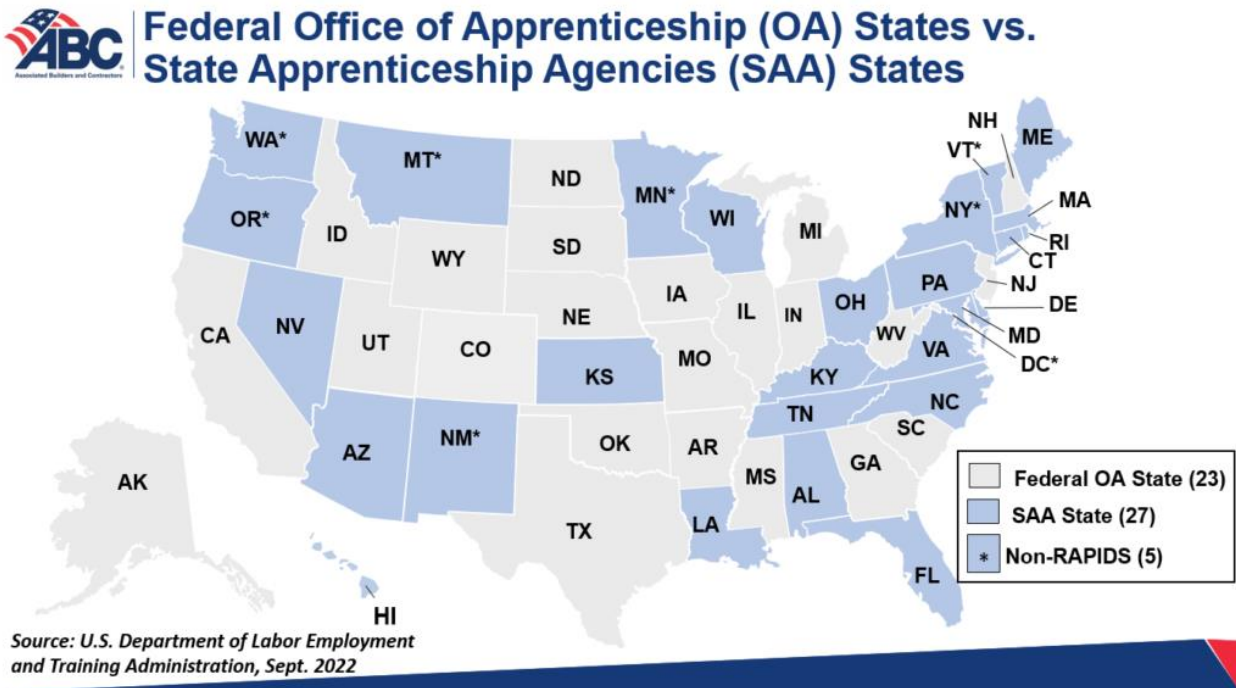
⁴¹ See IRA Section 1310(f)(8)(A)(i). The text of the provision is unclear with regard to whether the total labor hours percentage applies only to the “construction of any qualified facility,” or to the “construction, alteration, or repair work with respect to such facility.” See also subsection (C).

⁴² See U.S. Department of Labor v. California Department of Industrial Relations and California Apprenticeship Council, ARB No. 05-093, ALJ No. 2002-CCP-1 and 2003-CCP-1.

⁴³ See IRA Section 13101(f)(8)(E) that references which construction activities are covered by apprenticeship requirements and excludes “persons employed in a bona fide executive, administrative, or professional capacity.”

development providers looking to grow and expand their GRAPs and the creation of new GRAPs to satisfy the IRA's new requirements.

Treasury and the IRS should confirm that there are no limitations with respect to the location of GRAPs in order for participants to be counted toward the total work hours percentage on a covered project. It is possible that apprentices enrolled in a GRAP would be used on a project in close geographic proximity to a GRAP operating in another state with identical or different apprenticeship standards. To alleviate confusion and risk, provide regulatory clarity and facilitate the use of GRAP participants with specialized skills needed to meet industry needs, Treasury and the IRS should explicitly confirm participants in GRAPs, regardless of the location of the GRAPs, qualify towards the total work hours percentage on an applicable project. Likewise, Treasury and the IRS should clarify that GRAPs approved by State Apprenticeship Agencies qualify to satisfy this requirement and that a qualifying project can use both SAA-approved GRAPs and DOL Office of Apprenticeship-approved GRAPs⁴⁴ on a qualifying projects, regardless of the project's location, as these are private projects.



Treasury and the IRS must also clarify when the total percentage of apprenticeship hours will be calculated. The IRA text on its face appears to require that the calculation be made only at the conclusion of the project, or at least at the conclusion of the construction, alteration or repair portion of the project. Only then will the “total labor hours” of work performed on the project be known. Yet the work performed by contractors and subcontractors may only occur at specific stages of the project and will be completed and paid for long before the total labor hours on the project are known. Notably, the IRA does not impose a total labor hours percentage of apprenticeship workers on any individual contractor or subcontractor. Section

⁴⁴ Map available at: <https://thetruthaboutplas.com/wp-content/uploads/2022/11/Federal-Office-of-Apprenticeship-OA-States-vs-State-Apprenticeship-Agencies-States-Map-090122.png>.

45(b)(8)(C) makes clear that each individual taxpayer, contractor or subcontractor employing four or more individuals to perform construction, alteration, or repair work is only required to employ “1 or more qualified apprentices to perform such work.”

Likewise, Treasury and the IRS should explicitly state that penalties for failing to meet the project’s overall apprenticeship utilization percentage are the responsibility of the developer and penalties cannot be extended to each individual contractor and subcontractor. This will ensure the taxpayer/developer is the single point of accountability for compliance with this provision. It will also prevent construction firms from with the burdens of penalties and possible litigation that were not the result of their actions and/or are out of a contractor’s control.

2. (a) What, if any, clarification is needed regarding the good faith effort exception?

The IRA allows a “good faith” exception to the IRA’s apprenticeship requirement if a contractor requests apprentices from a GRAP and is denied or does not receive a response within five business days of the request. The agencies have asked if any clarification of this GFE is needed and what factors the agencies should consider in providing this exception.

First, Treasury and the IRS should clarify and confirm that the GFE from the apprenticeship requirement can be met as a result of efforts beyond the single example listed in the IRA. Many GRAPs do not “refer out” apprentices in response to contractor requests; rather, the contractors refer their own employees to the apprenticeship programs to receive education and employ them as apprentices on their existing projects. Considering the construction industry’s current significant shortage of skilled labor, the challenge in some trades and geographic areas will be to find employees who are willing and able to spend the classroom time needed to be registered in a certified apprenticeship program. Good-faith efforts should therefore include proof of reasonable but unsuccessful outreach to potential apprentices to participate in registered apprenticeship training; illness, injury or voluntary departures of apprentices under circumstances that do not allow for immediate replacements; or unwillingness of federal or state agencies to approve specific clean energy job classifications as “apprenticeable trades.”

In addition, Treasury and the IRS must establish clear rules and a simple process for contractors and developers to seek a GFE to the apprenticeship requirement, identify contractors affiliated with GRAPs and locate apprentices enrolled in GRAPs in order to satisfy the IRA’s apprenticeship requirement.

Currently, there are many firms that successfully build clean energy projects in marketplaces with few to zero GRAPs and/or little or no union contractor or union labor market penetration. These stakeholders may not know where to enroll their inexperienced construction workers in a GRAP or seek contractors participating in GRAPs. The IRA’s apprenticeship requirements raise many questions about the mechanics of a developer receiving a GFE and locating qualified firms and GRAPs in order to qualify for the IRA tax credits conditioned on meeting such requirements. The following are a few key concerns raised by ABC, but additional concerns would be raised if Treasury and the IRS implemented this policy through a normal notice and comment process.

1. Treasury should provide a comprehensive list of apprenticeable trades to meet such requirements, so that contractors know when it is permissible not to include apprentices in the total hours worked and conduct outreach and take GFE actions.
2. Treasury and the IRS should make publicly available a list of specific GRAPs and GRAP participants in a manner that can be sorted by state or geographic location that industry stakeholders can utilize in order to satisfy these requirements. Of note, the DOL search engine publicly available at [apprenticeship.gov](https://www.apprenticeship.gov)⁴⁵ should not be considered a solution to this recommendation. ABC conducted a review of the “apprenticeship programs” search results and found that it omitted many well-known and established GRAPs provided by associations, unions and other workforce development providers. It is unclear if the data source used to populate this website’s search engine is complete, inclusive and accurate. Treasury and the IRS should ensure the quality of any such resource provided to the regulated community.
3. Treasury must confirm there is no requirement in the IRA specifying that a developer/contractor must reach out to every single GRAP for an applicable trade; reaching out to a single GRAP is sufficient to qualify for a GFE. Otherwise, the regulatory burden becomes unmanageable for taxpayers, developers and contractors.
4. If Treasury clarifies outreach must be conducted by a developer, taxpayer or contractor to a GRAP in a geographic location, it must provide clear guidance on the definition of a geographic area. According to the U.S. Census Bureau, the average commute time for Americans in 2019 was just under 28 minutes, or approximately one hour round-trip. ABC suggests that if a GRAP program is not located within the average U.S. commute time of the project in question, then a company should not be forced to consult with that GRAP.
5. If a contractor employs workers in multiple construction trades on a qualifying project, Treasury and the IRS should confirm that the contractor does not need to utilize an apprentice from each trade; rather, one or more apprentices in total per contractor is enough to satisfy the requirements, according to the plain language of the IRA. ABC recommends the latter to ensure maximum flexibility and ensure consistency with the statute as developers can manage the overall use of apprentices on the project in question. Therefore, IRS must clarify if a contractor needs to contact one or multiple GRAPs across multiple trades to acquire a GFE in such circumstances.
6. Treasury and the IRS must establish a dispute resolution and due process procedure to sort out disputes over GFE compliance. For example, ABC members and chapters have reported that some municipalities have ordinances with GRAP requirements with GFE provisions. In one scenario flagged as an area of concern by an ABC member familiar with this circumstance, contractors approached a local union for registered apprentices and did not receive a response within the designated response window and/or were told the unions did not have any available apprentices, triggering the statute’s GFE. However, the contractors were embroiled in litigation, confusion and uncertainty when weeks later, while construction was underway, a different construction trade union local business agent from a union hall located

⁴⁵ See <https://www.apprenticeship.gov/apprenticeship-job-finder> and the DOL’s General Disclaimer: <https://www.dol.gov/general/disclaim>.

more than 200 miles away from the site of the project claimed jurisdiction over the work on the project performed by the contractor. The union claimed that the contractor should have consulted them for apprentices first and threatened legal action to recover damages. This resulted in needless compliance expense and harassment of multiple small businesses on the project and future project once it was established that the out-of-area local union could engage in such tactics because the ordinance had not contemplated this scenario and provided unclear guidance. This had a chilling impact on the municipality's small business contractor participation on future contracts until clear rules were established.

7. As mentioned with respect to prevailing wage requirements previously, before issuing its final guidance, Treasury and the IRS must establish clear definitions of unintentional and intentional violations, because the severe penalties and the ambiguity of this new requirement will result in costly disputes and project delays if not carefully crafted. The regulated community deserves and requires complete clarity before the final guidance is issued, otherwise, developers and firms will not pursue this work due to risk that is impossible to assess with drawn-out and inadequate guidance. In addition, in the absence of a formal notice-and-comment period, ABC recommends a cap on unintentional violation penalties for businesses with fewer than 100 employees within the first two years of enactment of guidance from Treasury and the IRS. This is needed to encourage participation from small, minority- and women-owned and disadvantaged businesses, allowing them to grow and serve this marketplace while employing diverse construction workers and apprentices. Fear of costly penalties caused by unclear regulations will elbow such stakeholders out of participating in this marketplace as guidance evolves over an extended period of time.

3. What documentation or substantiation do taxpayers maintain or could they create to demonstrate compliance with the apprenticeship requirements in § 45(b)(8)(A), (B), and (C), or the good faith effort exception?

The agencies have asked what records are typically maintained by contractors that could be used to demonstrate compliance with the IRA's GFE provisions.

First, Treasury and the IRS need to clarify specify the sufficient proof contractors and developers need to produce in order receive a GFE. For example, email traffic to qualifying GRAPs should be sufficient. Documentation of outreach by phone should also suffice.

Second, Treasury and the IRS should reject any requirement to use certified payrolls to document the number of apprentices. GRAPs currently maintain records of apprentice enrollment in accordance with their registered apprenticeship standards. This information is sufficient for IRS purposes in enforcing the IRA's provisions.

4. Please provide comments on any other topics relating to the apprenticeship requirements in § 45(b)(8)(B) that may require guidance.

Specific to EV tax credits,⁴⁶ Treasury and the IRS should consider the content and timing of its forthcoming guidance in relation to an ongoing rulemaking by the U.S. Department of

⁴⁶ See IRA Sec. 50142 and 50143.

Transportation's Federal Highway Administration⁴⁷ related to the National Electric Vehicle Infrastructure Formula Program.

The NEVI Formula Program will implement provisions of the Infrastructure Investment and Jobs Act that include \$7.5 billion for electric vehicle charging stations, including \$5 billion over five years to install EV chargers, mostly along interstate highways. The intent of the program is to support the installation of 500,000 EV chargers across the country by 2030 as part of a domestic push to shift away from gas-powered vehicles.

As outlined in ABC's Aug. 22 comments,⁴⁸ the DOT's June 22 proposed rule contains several concerning labor provisions of interest to the construction industry and ABC members.

It requires that all electricians working on electric vehicle supply equipment either be certified by the International Brotherhood of Electrical Workers' Electric Vehicle Industry Training Program or be a graduate of a GRAP with a focus on Electric Vehicle Supply Equipment installation approved by the U.S. DOL in consultation with the DOT. However, the DOL has yet to approve any EVSE installation curriculum in general or an EVSE GRAP, so this is not a viable alternative. Additionally, the proposed rule requires all NEVI-funded projects that require more than one electrician to use at least one GRAP-enrolled apprentice. Finally, the proposed rule includes a novel policy expansion of the use of graduates of GRAPs by requiring that, "all other onsite, non-electrical workers directly involved in the installation, operation, and maintenance of EVSE must have graduated from a registered apprenticeship program or have appropriate licenses, certifications, and training as required by the State."⁴⁹

Prior to the issuance of the DOT proposed rule, ABC submitted comments⁵⁰ in response to a DOT Federal Highway Administration request for information⁵¹ on the NEVI program on Jan. 28. ABC urged the DOT to avoid union labor requirements and to instead welcome all qualified contractors to build EV chargers. Unfortunately, the agency disregarded these recommendations in the proposed rule.

Treasury and the IRS should review all of ABC's comments on this DOT proposal to understand concerns that the forthcoming DOT final rule will create confusion and perhaps duplicative and conflicting regulations and policies with IRS EV tax credit guidance specific to the IRA. ABC recommends that guidance related to EV tax credits be delayed until the DOT rulemaking is finalized.

IV. ABC Responses to IRS Section 3.03 – Domestic Content Requirement

⁴⁷ <https://www.federalregister.gov/documents/2022/06/22/2022-12704/national-electric-vehicle-infrastructure-formula-program>.

⁴⁸ https://www.abc.org/Portals/1/2022%20Files/ABC_DOT_National%20Electric%20Vehicle%20Infrastructure%20Formula%20Program%20NPRM_08.22.2022%20v2.pdf?ver=109TzquNNHXDkot3W6edPA%3d%3d.

⁴⁹ <https://www.federalregister.gov/d/2022-12704/p-219>.

⁵⁰ <https://www.regulations.gov/document/FHWA-2021-0022-0001>.

⁵¹ <https://www.abc.org/News-Media/Newsline/entryid/19228/abc-to-fhwa-welcome-all-qualified-firms-and-workers-to-build-ev-charging-stations->.

1. (a) What should Treasury and the IRS consider when determining “completion of construction” for purposes of the domestic content requirement? Should the “completion of construction date” be the same as the placed in service date? If not, why?

The completion of construction date should not be based on the placed-in-service date of an eligible clean energy facility. Facilities may enter service long after all construction activities have been completed and contractors have finished their work. Certification of domestic content requirements should not be delayed longer than necessary and should take place upon the actual completion of construction on a facility.

1. (d) What records or documentation do taxpayers maintain or could they create to substantiate a taxpayer’s certification that they have satisfied the domestic content requirements?

Typically, a certification of domestic content from the manufacturer of construction materials used on the project would be the documentation used to verify compliance with these requirements. Treasury and the IRS should provide clear guidance to taxpayers that these certifications need to be requested from the manufacturer when construction supplies are procured for a project receiving IRA tax credits.

5. Please provide comments on any other topics relating to the domestic content requirements that may require guidance.

The U.S. construction industry currently faces significant headwinds in the form of supply chain disruptions, unprecedented materials cost inflation and declining investment. Project start dates are slipping - backlog is increasing, spend is going down, many projects are being delayed. Now interest rates are going up. ABC is concerned that immediate implementation of domestic content requirements could exacerbate these disruptions and further increase costs for contractors and taxpayers and delay and stop critical clean energy projects

As Treasury and the IRS move forward with implementing domestic preference requirements for construction materials on projects receiving IRA tax credits, ABC urges the agencies to consider the supply chain challenges facing the construction industry as outlined above and carefully analyze domestic supply chains related to clean energy construction. The agencies should conduct extensive studies and seek additional public comment to ensure effective implementation of domestic content requirements. Further, in order to avoid the unnecessary delay of clean energy construction projects the IRA intends to fund, the agencies are encouraged to hire a sufficient number of government personnel to process domestic content waiver requests in a timely manner.

V. Conclusion

ABC is seriously concerned that the prevailing wage, apprenticeship and domestic content requirements in the IRA may cause significant risk, uncertainty, cost increases, project delays and overall confusion for the regulated community without extensive clarification. ABC urges Treasury and the IRS to extend this comment period and engage in formal notice-and-comment rulemakings for each of these topics to ensure these requirements can be

implemented while minimizing disruption and harm to critical clean energy projects and the existing marketplace of developers and contractors who already build this type of work successfully and safely.

ABC appreciates the opportunity to comment on Notice 2022-51 and would welcome the change to facilitate additional industry outreach, collaboration and discussions on these issues. Please do not hesitate to contact us with any questions.

Respectfully submitted,



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