

***RenewablesGC***

**Q&A on IRA:  
Prevailing Wage & Apprenticeship Requirements**


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**Overview**



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## Inflation Reduction Act (HR 5376)

- Solar PV, BESS and wind projects qualify for a 30% federal investment tax credit (ITC) if they meet prevailing wage and apprenticeship requirements.
- On November 30, 2022, the Treasury and IRS published guidance on the IRA's prevailing wage and apprenticeship requirements.
- All projects beginning construction after January 29, 2023 must meet these requirements.
  - To establish beginning of construction, the guidance affirmed existing IRS Notice standards of the Physical Work Test or the Five Percent Safe Harbor.
  - As a result, most current projects are grandfathered.

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## A New Era of Compliance

- The IRA provides unprecedented opportunity for the renewables industry with the full 30% ITC available until 2033.
- BUT, if a project does not meet prevailing wage and apprenticeship requirements, it will only qualify for a 6% ITC.
- So, how do we ensure our projects are compliant?

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## **A New Era of Compliance**

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## Key Starting Points

- A primary policy goal of the IRA is to incentivize use of union labor. Hence, prevailing wage and apprenticeship requirements.
- Many EPCs are open shop (non-union).
- It will be years before we know what will satisfy the IRS from an audit perspective.
- Unfortunately, the initial Treasury guidance failed to answer key compliance questions.

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## Apprenticeship Requirements

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## Apprenticeship Requirements - Overview

- **Three Apprenticeship Requirements under the IRA:**

- Apprenticeship Labor Hour Requirement ☒
- Apprenticeship Ratio Requirement ☒
- Apprenticeship Participation Requirement ☒

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## Key Definitions

- **Qualified Apprentice:** An apprentice employed by a taxpayer, contractor, or subcontractor who is participating in a registered apprenticeship program
- **Registered Apprenticeship Program:** A program registered under the National Apprenticeship Act
- **Employ:** Any individual who gets paid money for their services, regardless of whether the individual is an employee or an independent contractor

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## What's An Apprenticeship?

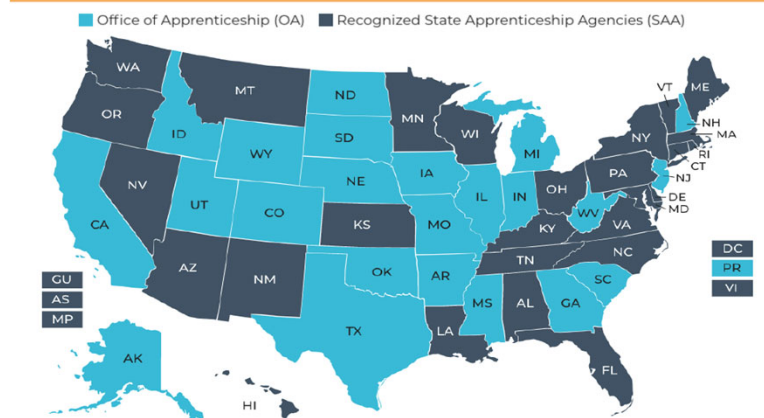
- Apprenticeship programs are formal programs where apprentices learn skills and knowledge from experienced construction professionals.
- Apprentices receive hours of on-the-job training to become experts in their craft.
- Registered apprenticeship programs have to meet certain standards (including a crew ratio requirement so that there are only so many apprentices assigned to the experienced professional).

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## Apprenticeship Programs

### THE REGISTERED APPRENTICESHIP SYSTEM



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## Apprenticeship Labor Hour Requirement

- Qualified apprentices must perform at least the below applicable percentage of total hours for construction, alteration, or repair work on a qualified facility, project, property, or equipment
  - This includes work performed by any contractor or subcontractor
  - But excludes management and administrative personnel (for example, foremen, superintendents, and owners or persons employed in *bona fide* executive, administrative, or professional capacity).
- Applicable Percentages:
  - For facilities that began construction **before** 2023: **10%**
  - For facilities that begin construction **during** 2023: **12.5%**
  - For facilities that begin construction **after** 2023: **15%**

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## Apprenticeship Ratio Requirement

- Any applicable requirements for apprentice-to-journeyworker ratios of the Department of Labor or the applicable State apprenticeship agency must be met.



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## Apprenticeship Participation Requirement

- Each taxpayer, contractor, or subcontractor who employs **four or more** individuals to perform construction, alteration, or repair work with respect to the construction of a qualified facility **must** employ one or more qualified apprentices.



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## Good Faith Effort Exemption

- A taxpayer will be considered to have met the apprenticeship requirements if they request qualified apprentices from a registered apprenticeship program and:
  - The request is made in accordance with usual and customary business practices for registered apprenticeship agency in the particular industry; **and**
  - The request is denied (not because of a refusal to comply with the established standards and requirements of the registered apprenticeship program) **or**
  - The registered apprenticeship program fails to respond to the request within five business days after the date it received the request.

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## Recordkeeping Requirements

- Taxpayer should keep records demonstrating satisfaction of:
  - The apprenticeship labor hour requirement
  - The apprenticeship ratio requirement
  - The apprenticeship participation requirement
- If claiming a good faith effort exception, taxpayer should keep records of its requests for apprentices from registered apprenticeship programs



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## What Forms are Required?

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## What Forms are Required?



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## Prevailing Wage Requirements

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## Prevailing Wage Requirement

- All laborers and mechanics performing construction, alteration, or repair at a qualified facility must be paid at least the prevailing wage.



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## A Prevailing Wage is...

- The combination of the **basic hourly wage rate** *and* any **bona fide fringe benefits**.
- Paid to workers in a specific labor classification
- For the type of construction being performed
  - Types = building, residential, highway, and heavy
  - Utility-scale solar is generally considered **heavy construction**
- In the geographic area where construction is performed
- As determined by the U.S. Secretary of Labor.

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## So, What's the Number?

- The prevailing wage can be found by a *wage determination*, which is provided by labor classifications (type of work performed) for a specific geographic area and type of construction
- Where are wage determinations?



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## When There is No Wage Determination

- The sam.gov wage determinations are used to set prevailing wages on federal government contracts (these are required by the Davis-Bacon Act)
- There are usually no wage determinations for (often rural) solar/renewables project jurisdictions
- So, the IRA allows the taxpayer to request a formal wage determination for any individual project from the Department of Labor
  - Once a wage determination is issued, it is binding for the project
  - But there's no timeline for DOL response...

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## What if We Guess Wrong?

- If we obtain the DOL wage determination pre-construction, we can adjust
- If not, we will have the opportunity to cure by:
  - Providing backpay (including interest) to each affected worker paid a lower wage, and
  - Paying a penalty to the IRS of \$5,000 per affected worker

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## Record Keeping Requirements

- Taxpayer must provide, at minimum, the names of workers, their duties and responsibilities, the work performed, and the wages paid for all workers employed on the project.

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## What Forms are Required?

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## What Forms are Required?



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## What Does This Mean for the Industry?

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### Where is the Industry?

- Significant uncertainty around compliance
  - Little to no DOL wage determinations for most solar/renewables project locations
  - No consensus or guidance on specific documents needed
  - The first open shop projects subject to these requirements are blazing trails
- Still potential for additional Treasury guidance
- Lawyer-dependent, with consultants next in line

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### **Common Misconceptions**

- IRA prevailing wage requirements = Davis Bacon compliance
- This is only an administrative/documentation issue, without cost or additional risk
- The good faith exemption is a “workaround” strategy
- Open shop contractors can be trusted to understand and fulfill general compliance provisions
- These requirements don’t apply to O&M work

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## What It's Not



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## What Should Developers Do Now?

- Confirm which projects are grandfathered
- If not grandfathered, are any union projects?
- Submit your DOL wage determination requests ASAP
  - Confirm any existing wage determination by facility location
  - Provide a list of wage classifications (job description and duties)
  - Estimate a proposed wage rate and explain rationale
- Carefully draft RFP and EPC provisions, and diligence your contractor's plan for compliance

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## Managing EPC Risk – Monica's Opinion

- Developers with broad, unspecific prevailing wage and apprenticeship provisions attempting to pass the risk down to EPCs are playing a dangerous game.
- Contractors who wholesale accept broad, unspecific prevailing wage and apprenticeship compliance are either dumb or lying.

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**Questions?**

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## **Resources**

- [Inflation Reduction Act Apprenticeship Resources | Apprenticeship.gov](https://www.apprenticeship.gov/inflation-reduction-act-resources)
- [Prevailing Wage and the Inflation Reduction Act | U.S. Department of Labor \(dol.gov\)](https://www.dol.gov/eis/whysites/inflation-reduction-act)

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