



DEPARTMENT OF THE TREASURY  
WASHINGTON, D.C. 20220

August 29, 2023

via Email

Dear Tribal Leader:

As the Point of Contact for Tribal Consultation for the U.S. Department of the Treasury (Treasury Department), I invite you to a consultation on a [Notice of Proposed Rulemaking](#) (NPRM or proposed regulations) released today for the Increased Credit or Deduction Amounts for Satisfying Certain Prevailing Wage and Registered Apprenticeship Requirements under the Inflation Reduction Act of 2022 (IRA).<sup>1</sup> The proposed regulations cover certain prevailing wage and registered apprenticeship (collectively, PWA) requirements under section 45 of the Internal Revenue Code (Code) applicable to the renewable electricity production tax credit under section 45 (section 45 credit), as well as other clean energy tax incentives under the Code as amended or added by the IRA. Several of these clean energy tax incentives are increased 5 times if PWA requirements are met. This consultation will be held virtually on Monday, September 25, 2023, 1pm-4pm EDT.

### ***Background***

The IRA amends section 45 to add PWA requirements. If a taxpayer satisfies the PWA requirements, the One Megawatt Exception, or the Beginning of Construction (BOC) Exception, then the credit determined under section 45(a) for electricity produced at a qualified facility is multiplied by five. The IRA also enacted new clean energy tax incentives and amended existing energy incentives, and these proposed regulations would apply to such incentives. Specifically, sections 30C, 45Q, 45U, 45V, 45Y, 45Z, 48C, 48, 48E, and 179D provide increased credit or deduction amounts to taxpayers satisfying certain PWA requirements.<sup>2</sup> **Taxpayers must meet both prevailing wage and apprenticeship requirements to satisfy the PWA requirements, with some exceptions described in the NPRM.**

Section 45(b)(7)(A) provides that a taxpayer satisfies the prevailing wage requirements with respect to the construction, alteration, or repair of a facility by ensuring that all laborers and mechanics employed by the taxpayer, or any contractor or subcontractor, in the construction, alteration, or repair of a facility are paid wages at rates that are not less than the prevailing rates determined by the Department of Labor (DOL) in accordance with the Davis-Bacon Act.<sup>3</sup> Taxpayers that fail to satisfy the prevailing wage requirements with respect to a facility may still receive the increased credit (or

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<sup>1</sup> Section 13101(f) of Pub. L. No. 117-169, 136 Stat. 1954, 1962 (August 16, 2022).

<sup>2</sup> See the [White House Inflation Reduction Act Guidebook](#) for additional details on the bonus credits available if PWA requirements are met.

<sup>3</sup> 40 U.S.C. 3141 et seq.

deduction) amounts if they satisfy the statutory cure provisions by making a correction payment and a penalty payment. The proposed regulations provide definitions of relevant terms, such as laborer, mechanic, construction, alteration, or repair, employ, and locality. The proposed regulations also address prevailing wage rate determinations as well as the statutory correction and penalty procedures, among other matters.

Section 45(b)(8)(A)(i) provides the apprenticeship requirements that apply with respect to the construction of any qualified facility, including the labor hours requirement, the ratio requirement, and the participation requirement. Under the labor hours requirement, a minimum percentage of the total labor hours of the construction, alteration, or repair work (including such work performed by any contractor or subcontractor) has to be performed by qualified apprentices. The applicable percentage is:

- (i) in the case of a qualified facility the construction of which begins after December 31, 2022, and before January 1, 2024, 12.5 percent; and
- (ii) in the case of a qualified facility the construction of which begins after December 31, 2023, 15 percent.

Taxpayers that fail to satisfy the apprentice requirements with respect to a facility may still receive the increased credit (or deduction) amounts if they satisfy the good faith effort exception or pay a penalty. The proposed regulations provide further guidance on the apprenticeship requirements. The proposed regulations also cover the good faith effort exception to the apprenticeship requirements and the penalty procedures, among other matters.

On November 30, 2022, the Treasury Department and the IRS published Notice 2022-61, which provided initial guidance for the PWA requirements. 87 FR 73580, *corrected in* 87 FR 75141 (Dec. 7, 2022). Notice 2022-61 started the 60-day period applicable for determining if taxpayers qualify for the increased credit or deduction amounts by satisfying the BOC Exception.

To be eligible for the BOC Exception, taxpayers must have begun construction or installation of a facility (as defined in Notice 2022-61) before January 29, 2023. Finally, Notice 2022-61 provided guidance for determining the beginning of construction under sections 30C, 45, 45Q, 45V, 45Y, 48, and 48E, and the beginning of installation under section 179D.

With regard to the application of Tribal prevailing wage standards, the NPRM provides as follows:

The statutory language of the IRA does not reflect any intent to include exceptions from the PWA requirements, other than the One Megawatt Exception and the Beginning of Construction Exception. Consequently, the Treasury Department and the IRS have not proposed a rule exempting Tribal governments from the PWA requirements in section 45.

## ***Consultation Content***

Pursuant to Executive Order 13175, President Joseph R. Biden's Presidential Memorandum for Tribal Consultation and Strengthening Nation to Nation Relationships; the Presidential Memorandum on Uniform Standards for Tribal Consultation; and Treasury's Action Plan for Tribal Consultation and Collaboration, Treasury is commencing Tribal consultation to inform the development of final guidance to implement the Increased Credit or Deduction Amounts for Satisfying PWA Requirements under the IRA.

Specifically, Treasury requests the assistance of Tribal leaders in addressing the following topics:

- A. To the extent that Indian Tribes request the application of Tribal prevailing wage standards rather than Davis-Bacon prevailing wage standards, please explain the reason for this request and the challenges, if any, experienced by Indian Tribes in complying with Davis-Bacon standards.
  - i. To your knowledge, do other federal programs that statutorily require application of Davis-Bacon prevailing wage standards permit Indian Tribes to set their own prevailing wage standards?
- B. Under section 45(b)(8)(B), the labor hours requirement is subject to the requirement for apprentice-to-journeyworker ratios of the DOL or the applicable State apprenticeship agency (ratio requirement), as well as the requirement to employ a certain number of apprentices in relation to journeyworkers (participation requirement).
  - i. Do Indian Tribes presently participate with either the DOL or State apprentice programs?
  - ii. Do Indian Tribes have their own apprenticeship programs that integrate DOL standards?
  - iii. Subject to the statutory requirements of section 45, which requires compliance with DOL apprenticeship requirements, what questions or comments do you have regarding the apprenticeship requirements proposed in the NPRM?
- C. What other questions or comments, if any, do Indian Tribes have regarding any of the other proposed rules in the NPRM?

[Register here](#) for the consultation.

We respectfully request that each Tribe register one person to participate in the consultation. All others are welcome to register as listen-only participants.

In addition to a Tribal consultation, Treasury is accepting written or electronic comments received by October 30, 2023, 11:59 p.m. Alaska Time. Submit written comments at [tribal.consult@treasury.gov](mailto:tribal.consult@treasury.gov).

**Please note that consultations are off the record and not for press purposes.**

We will send out an Agenda and a list of registered speakers before or on September 22, 2023.

We hope that you will be able to join us for this important discussion and value your participation.

Sincerely,

Chief Lynn Malerba  
Treasurer  
Point of Contact for Tribal Consultation  
U.S. Department of the Treasury