



October 30, 2023

Office of Associate Chief Counsel
Internal Revenue Service
P.O. Box 7604
Ben Franklin Station
Washington, DC 20044
(CC:PA:LPD:PR(REG-10090823))
Room 5203

Submitted through Federal e-Rulemaking Portal
<https://www.regulations.gov>
IRS REG-100908-23
RIN-1545-BQ54

and Request to Participate in November 21st
Public Hearing submitted to:
Ms. Vivian Hayes
publichearings@irs.gov

SUBJECTS:

- 1) **Comments on IRS REG-100908-23, RIN-1545-BQ54, Increased Credit or Deduction Amounts for Satisfying Certain Prevailing Wage and Registered Apprenticeship Requirements; and**
- 2) **Comments and Request for a Public Hearing and Request to Speak at November 21, 2023 Hearing**

Dear Ms. Hayes and IRS Associate Chief Counsel:

The Mechanical Contractors Association of America (MCAA) is most eager to comment and work with IRS and the Labor Department to achieve the most laudable public policy goals boldly declared by the Biden Administration in the Inflation Reduction Act (IRA) in all respects and particularly in respect to the high labor standards prevailing wage and apprenticeship (PWA) incentives in energy projects generating tax incentives.

MCAA represents some 2,600 mechanical construction and service firms in the high-skill mechanical construction and heating, ventilation, and air conditioning service and maintenance industries.



Union signatory contractors and subcontractors perform exceptionally well qualified to meet the IRA PWA and PLA incentive, as operations under multiemployer collective bargaining agreements (CBAs) wage and benefit rates perform ensure prevailing wage compliance in either blended rate or union rate wage determinations, virtually all union-sector collective bargaining agreements (CBAs) include participation in jointly sponsored registered apprenticeship programs, and operations under local CBAs are virtually equivalent to PLA participation.

MCAA member employers participate in some 80 local affiliate multiemployer bargaining units with local unions of the United Association of Plumbers and Pipefitters (UA), and, together with those UA local unions of that leading national Building Trades labor organization, sponsor, jointly trustee, and participate in industry leading joint apprenticeship and training programs nationwide.

In addition to that directly relevant experience relating to the IRS regulatory proposal, MCAA member firms across the country routinely are active participants in public sector construction markets at the federal, state and local levels, and so are broadly skilled and experienced in prevailing wage requirements and performance aspects of prevailing wage operations, compliance and administrative procedures. Moreover, MCAA contractors are well versed and experienced in performance on project labor agreements (PLA) on both public and private-sector projects.

MCAA is proud to support the groundbreaking innovation in the IRA in importing high-skill, high-road workforce and project performance specifications into the private sector energy projects funded under the IRA.

The IRA's landmark, long-term investment in high-road workforce development in the construction industry will stem the low-road workforce regression in some market sectors of the industry, and will provide the bedrock for long term and sustainable growth in high-standards performance. In addition, the IRA PWA and PLA incentives will spur the economic benefits of high workforce standards to project owners in improved project performance and raise workforce and community economic standards at the same time – to say nothing of the cardinal environmental and climate improvement aims of the IRA policy.

The IRA is indeed bold and innovative policy making that has been sorely needed for some time – and the PWA incentives likewise are sound and proven project performance enhancers.

High-road PWA utilization and PLA projects are strongly associated with more productive and superior project outcomes – Lest the old adage that ***you get what you pay for*** needs further validation, the MCAA and the UA, together in the national labor/management coalition, the Mechanical Industry Advancement Fund, recently funded foundational, non-partisan industry cost-engineering research and analysis that convincingly demonstrates that union labor construction projects are substantially more productive, cost effective, and less susceptible to cost and schedule problems than non-union projects. That conclusion is based on some 1,550 domestic US projects spanning 20 years. You can download the full report, including methodology, [here](#).

That study by the non-partisan, Independent Project Analysis (IPA), convincingly demonstrates that union labor indeed pays back on its premium wage and benefits in surpassing productivity gains and other aspects of superior project performance relative to non-union projects.



So, owners choosing the PWA and PLA incentives should factor in a substantial productivity edge, and overall cost reductions and risk mitigation advantages in their project cost/benefit analysis well.

The IPA analysis also is based on the premise that management practices (in addition to the sourcing of skilled labor and front-line supervision), including project front-end planning (“front-end loading”) and other aspects of jobsite management discipline and project pre-planning drive greater productivity and positive schedule and overall cost outcomes on projects of all types. And that conclusion is the basis for the following recommendation.

Project pre-planning and front-end loading should precede project completion compliance reviews -- The IRS non-compliance sanctions for not meeting the PWA requirements are good in many respects and the post-project enforcement scheme in the main effectively goes after those who would foul the project competition and project delivery process by attempting to skirt the rules – inadvertently or otherwise.

However, MCAA respectfully requests that the IRS also consider adding in more proactive front-end planning approaches to move compliance incentives and safeguards up front in the owner’s project pre-planning, solicitation, and procurement and acquisition process.

Because there is no public law contracting agency interposed between the IRA project owner/taxpayers and on-site performing prime contractors and subcontractors, there may be hazardous *lacunae* between the IRS regulatory requirements and what specific administrative and compliance obligations the on-site contractors are specifically aware of.

Put another way – without some more specific regulatory or contracting guidance examples in the IRS regulations directed to qualifying project owners/taxpayers that are directed at flowing down regulatory requirements in the project contract documents, there could be a good deal of slippage between the cup and the lip in actual project PWA project compliance. That hurts project performance, as well as competitive market conditions among firms that already meet the PWA and apprentice targets.

Overall project successful completion and successful tax credit qualification will be immeasurably enhanced with detailed and specific contractual obligations flowing down the project performance chain in project pre-award solicitation and bidding documents to project prime contractors and subcontractors.

In this way, high quality job-site prime contractors and subcontractors bidding or offering on the project will engage in more robust competition because their greater facility with the PWA and PLA aspects of the rules will be given fair weight and evaluation in the bidding and contractor selection process – and the risks of non-compliance aren’t put off to the end of the project where the burden and inefficiency of the owner’s project pre-planning deficits put dispute resolution and performance problem overhead into overall project performance unnecessarily.

While the proposal notes that the tax credits are not claimed, and due until project completion and a return is filed – the practical effect of gaining the performance enhancement from the PWA rules may be lost in considerable degree by leaving specific guidance out of the front-end planning of



the project. Moreover, pre-planning and procurement lapses are strongly associated with overall project performance and facility operations problems.

In summary, MCAA respectfully requests that the IRS consider the merits of adopting some of these general approaches for owner/taxpayer energy incentive projects at the front end of project award – incorporating some as project award responsibility criteria or award evaluation factors or conditions, as well as sample owner/prime contractor and prime contractor/subcontractor contract clauses and employee jobsite notices.

1. Qualifying project owners/taxpayers should be required to provide advance notice of project solicitation to the Department of Labor Wage and Hour Division and the DoL Office of Apprenticeship.
2. Qualifying project owners should put the advance notice of the prevailing wage and apprentice utilization targets and/or PLA requirements in the project solicitation documents – Invitations for Bids or Requests for Proposals.
3. Each work package specification bidding document should include the probable work classifications for wage determinations within that scope of work, along with an estimate of the apprentice hour utilization expected for that work package performance to meet the overall project apprentice utilization targets.
4. On site prime contractors or subcontractor bidders or offerors should be instructed on how to find the qualifying DoL Wage Determination at DoL, and how to contact the Office of Apprenticeship for seeking project market area(s) joint apprenticeship and training committees for a qualifying apprenticeship participation agreement to be arrived at before contract award and submitted with project bids or proposals.
5. The regulations should clarify whether, and if so how, project owners/taxpayers can qualify for apprenticeship referrals on a project-wide basis, or, more typically, how actual construction employers will have to specifically qualify for participation agreements with joint apprenticeship and training programs as a condition of referral of registered apprentices to employers on the project.
6. The project scope of work bid packages and specifications should include the types of craft work classifications that the owners consider appropriate for the work, and the bidding document should require responsible bids to note any missing work classifications that are addressed at that early stage with a request to the Wage and Hour Division for a supplementary wage classification determination as the procurement process begins – not after construction starts.



7. Responsible bidders/offerors should be required to demonstrate experience with production of certified payrolls on federal, state or local prevailing wage projects as a responsibility criteria or award evaluation criteria for project award.
8. The current proposal should, rather than encouraging Davis-Bacon-type certified payroll-type records to demonstrate reasonable diligence to mitigate penalties for intentional violations, be more specific with a sample in the regulations of a Davis-Bacon-like payroll certification – with weekly payroll records by classification and individuals, along with employer certifications.

Similarly, pre-existing participation in a registered apprenticeship program(s) in the labor market area(s) of the project should be a responsibility criteria or award eligibility criteria as well.

9. Non-union signatory contractors should be required to produce a qualifying apprenticeship participation agreement prior to the project award and as a condition of award. To postpone the apprentice acquisition procedures until after construction starts for just some employers and allowing significant indulgence for the inability to employ registered apprentices, disadvantages employers that already sponsor apprenticeship programs in the market area.
10. The project solicitation documents should detail all the work classifications involved in all onsite construction activity and notice of those classifications should be included in the contract bidding specifications, with instructions to bidders to produce the appropriate prevailing wage determination classification for each element of their scope of work with their bid or proposal. That provision also should note the need to fill in missing classifications and update to current wage determinations on changes in scope of work or delays in performance.
11. All project construction prime and subcontracts shall include a prevailing wage and apprenticeship utilization flow-down responsibility clause from the owner/contractor general conditions contract – and included with that there should be a requirement to keep payroll records (similar to Davis-Bacon weekly certified payrolls), an expedited compliance/dispute resolution mechanism for PWA requirements for all onsite primes and subs, anti-retaliation protections for worker compliance complaints, and a broad form indemnity for tax credit losses flowing through the contract documents conduit clauses running from non-compliant primes and subs to the benefit of the project owner/taxpayer.
12. Notices of project prevailing wage and apprenticeship utilization shall be posted at all jobsites for each prime and sub. Wage rates and apprentice ratios should be posted, along with notice of whistleblower protections from employer adverse actions against workers who report non-compliance during the project.



13. Samples of all these types of solicitation, contract and subcontract clauses, and notices for posting should be included in the IRS regulations.

14. Use of PLAs to ameliorate fines and penalties should specify the soon-to-be-published FAR PLA as an example of a qualifying PLA.

MCAA is very appreciative of the opportunity to provide these comments and commends the IRS and the Labor Department for their good work in setting sound rules for this most important policy initiative for the construction industry and our Nation's environmental future as well.

Also, please accept these comments as MCAA's request and outline of participation in any public hearing the IRS may convene on this subject in November. MCAA would be represented the undersigned representative Jim Gaffney.

Respectfully submitted,

A handwritten signature in black ink, which reads "James P. Gaffney". The signature is written in a cursive style with a large initial "J".

Jim Gaffney
President, Goshen Mechanical, West Chester. Pennsylvania and
MCAA Government Affairs Committee Chairman