

United States Senate

WASHINGTON, DC 20510

March 21, 2024

The Honorable Janet Yellen
Secretary of the Treasury
U.S. Department of the Treasury
1500 Pennsylvania Ave, NW
Washington, DC 20220

The Honorable Danny Werfel
Commissioner
Internal Revenue Service
1111 Constitution Ave, NW
Washington, DC 20224

Dear Secretary Yellen and Commissioner Werfel:

We are writing regarding the Treasury Department's proposed rulemaking to implement the prevailing wage and registered apprenticeship (PWA) requirements permitting taxpayers to claim increased tax credits under the Inflation Reduction Act of 2022 (IRA). The IRA expanded several clean energy tax credits and provided for increased amounts for taxpayers who meet the law's PWA standards. The purpose of the IRA credits is to not only spur the creation of new clean, affordable energy, but to employ tens of thousands of electricians, metalworkers, welders and other workers in high-paying jobs, with training and apprenticeships to build the pipeline of workers for the next generation. We write today to encourage the Treasury to adopt rules that empower workers, raise wages, and set our workers up for success for years to come.

The PWA bonus credit is the most important labor provision in the IRA, and effective implementation of these standards is critical to ensure that the IRA creates the high-quality, good-paying jobs that Congress intended. To claim the full IRA tax credits, taxpayers must ensure that workers are paid the prevailing wage as determined by the Department of Labor (DOL). Additionally, the apprenticeship utilization standards require qualifying taxpayers to employ apprentices from registered apprenticeship programs for a certain number of hours, among other requirements.

It can be difficult and time-consuming for agencies to certify that a taxpayer has met these conditions. That is why we urge the Treasury to adopt the following commonsense recommendations that will shift compliance to the front end and rely more heavily on workers and their representatives. These suggestions will ensure that the award of bonus tax credits goes to companies who have set out to comply with the law, made a good faith effort to fulfill the conditions of the law, and whose compliance can be verified by workers on the ground through project labor agreements to the extent practical. To that end, we urge Treasury to adopt the following recommendations in its final PWA rule:

1. Treat Project Labor Agreements as Evidence of Compliance with the IRA's PWA requirements.

Taxpayers should be able to demonstrate compliance with the IRA's prevailing wage and apprenticeship utilization requirements by presenting evidence that all construction work at a Qualified Facility was completed under a Project Labor Agreement (PLA), using the definition of PLAs as included in the comments submitted by North America's Building Trades Unions (NABTU).¹ A taxpayer that certifies to the Treasury Department that construction work on a

¹ Comments submitted by NABTU on October 30, 2023, in response RIN 1545-BQ54, REG-100908-23

Qualified Facility is subject to a PLA should be entitled to a presumption of compliance, given that PLAs (1) ensure that construction workers receive wages at or above the local prevailing wage, (2) promote the employment of registered apprentices on the project, and (3) provide for labor standards enforcement through a grievance procedure. Allowing PLAs to show compliance with these rules is the best way to simplify the compliance process for taxpayers and the Treasury.

2. Establish a Front-End Compliance Monitoring System for Clean Energy Bonus Credit projects.

Treasury's proposed rule relies heavily on records retention, and while important, records retention alone is insufficient to ensure compliance. Therefore, we urge Treasury to adopt the framework of DOL's existing Davis-Bacon compliance monitoring system while also requiring that taxpayers who intend to claim a bonus credit based on labor standards compliance notify Treasury before construction begins or shortly thereafter.

For example, Treasury should require taxpayers to ensure that all solicitations, contracts, and subcontracts for construction on qualifying projects include provisions describing the applicable labor standards to ensure that contractors, at all tiers, are on notice of their obligations. Workers should also receive notice early on of their right to a prevailing wage. Without direct front-end notice, there will be no way for workers to know what they are entitled to, and whether they are being shorted. To this end, taxpayers should be required to post Davis-Bacon posters and the applicable wage schedules throughout the job site, including all designated entrances where workers and the general public can see them. Taxpayers must also ensure that each construction worker is provided a written notice identifying the worker's classification and the proper prevailing wage rate to which they are entitled. Relatedly, Treasury should require that taxpayers who plan to claim enhanced credits for labor standards compliance notify Treasury of that intent before construction begins through Treasury's pre-filing registration system. In this way, Treasury will be able to identify early on those projects subject to labor standards, and to monitor and audit those projects for compliance.

Taxpayers should also be required to collect weekly certified payroll reports from their contractors, as well as periodic apprentice labor hour reports for review and transmission to Treasury. This process is critical for verifying that contractors and subcontractors are paying the prevailing wage and meeting their apprentice utilization requirements. The certified payroll process has been consistently applied to a wide range of federal and federally assisted projects for over 60 years, as well as state public works projects covered by state prevailing wage laws.

Treasury must also establish a complaint procedure that aggrieved workers can use to report noncompliance and an office dedicated to enforcement. To that end, Treasury should create a designated Office of Labor Standards Enforcement, which should partner with the Department of Labor on enforcement efforts.

Taxpayers should also be required to pre-file an intended labor plan with the Treasury and with the Department of Labor, explaining how they will fulfill the requirements of the IRA, including pay rates, hours worked for applicable workers and their apprenticeship utilization plan.

Treasury should also clarify that aggrieved workers on covered projects are protected by anti-retaliation provisions.

3. Further Strengthen the Good Faith Effort Exception to the Apprentice Requirements

We urge Treasury to adopt several changes to ensure the Good Faith Effort Exception for the taxpayers' apprenticeship utilization requirement better captures situations where entities have truly acted in good faith:

- a. If a taxpayer wishes to claim the good faith effort exception, require that that taxpayer have requested apprentices from all registered programs that could be reasonably expected to provide apprentices to the qualified facility, rather the proposed requirement to only request apprentices from "one registered apprenticeship program".² Taxpayers, contractors, and subcontractors should also be required to request apprentices by multiple means: email, registered mail, **and** telephone, rather than the proposed requirement to request apprentices in writing either electronically or by registered mail.
- b. Clarify that where a Registered Apprenticeship program is only able to partially fulfill a request for apprentices, the requesting entity must accept the apprentices that are provided, and that an entity's outreach to DOL's Office of Apprenticeship or a State Apprenticeship Agency should have no bearing on whether the entity qualifies for a good faith effort exemption.

Treasury should also impose key affirmative obligations on taxpayers under the good faith effort exception to facilitate development of a strategic plan that would enable taxpayers to comply with the three separate prongs of the Apprenticeship Requirements: Labor Hours, Participation, and Ratios. We recommend inclusion of the following affirmative obligations:


- c. Require taxpayers, which are not signatory to a PLA (or already participating in a Registered Apprenticeship Program [RAP]), to develop an apprenticeship utilization plan at least 90 days before work is to begin and also before the taxpayer, contractor, and/or subcontractor on a project makes a request(s) to a RAP(s) for apprentices to work on a covered project. Taxpayers should confer with the Department of Treasury on this plan before work begins.
- d. Require taxpayers, contractors, and subcontractors not signatory to a PLA (or already participating in a RAP) to request apprentices at least 90 days before apprentices are needed on a qualified facility, rather than permitting a taxpayer to request apprentices merely hours before starting a job as would be permitted under the proposed rule.³


² 88 Fed. Reg. at 60,048


³ 88 Fed. Reg. at 60,031

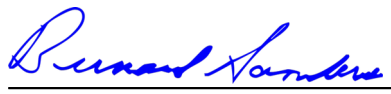
Effective implementation of the IRA is critical to ensuring the success of this law, and we appreciate your consideration of these recommendations. Thank you for your time and attention to these important issues.


Sincerely,



Robert P. Casey, Jr.
United States Senator

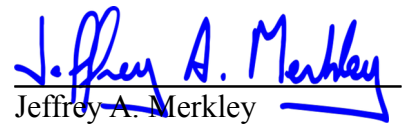

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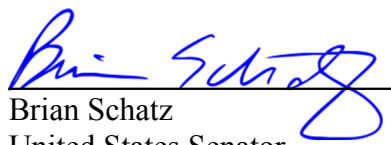

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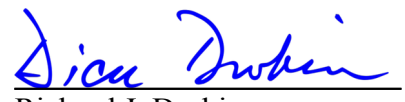

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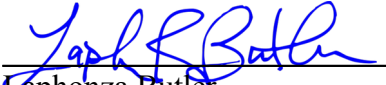

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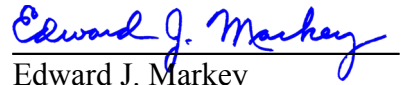

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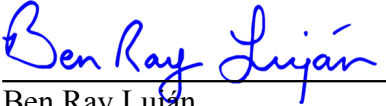

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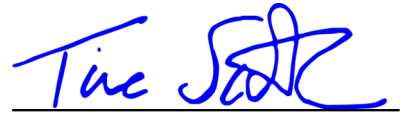
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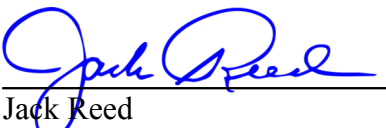
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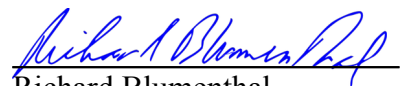
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United States Senator



Jack Reed
United States Senator



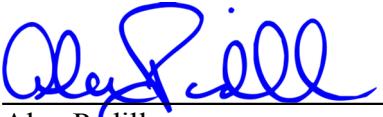
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United States Senator



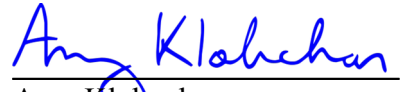
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Alex Padilla
United States Senator



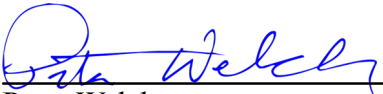
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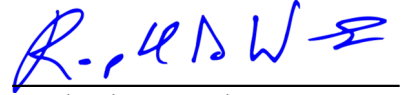
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