



# INFLATION REDUCTION ACT PREVAILING WAGE AND APPRENTICESHIP INITIAL GUIDANCE

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NECA is excited to continue its webinar series on recent relevant federal legislation this Thursday, December 15, 2022 [thereafter available to members on demand], with a deep dive into the CHIPS and Science Act as well as the Inflation Reduction Act. Please be sure to sign up here for the series: [The CHIPS and Science Act and the Inflation Reduction Act: What You Need to Know Now Webinar](#). There will be a live question-and-answer opportunity this Thursday.

In the meantime, here is an overview of the basics of the Inflation Reduction Act for NECA contractors. We will continue to monitor guidance and interpretations as they come out on these important measures.

NECA and IBEW submitted joint sub-regulatory comments to the Department of Treasury on implementation of prevailing wage and apprenticeship that could be found [here](#).

## Introduction

The [Inflation Reduction Act of 2022](#) (“Act”) provides a wealth of clean energy tax credits but also ties these credits to somewhat confusing obligations and deadlines. The Act provides these clean energy tax credits in both a base rate and, if certain requirements are satisfied, a higher rate that is five times the base rate. The higher rate generally applies only to those projects that meet the Act’s prevailing wage and apprenticeship requirements or satisfy certain exceptions to those requirements.

Projects that are exempted from the prevailing wage and apprenticeship requirements, and thus also qualify for the higher rate, generally include (a) where applicable, projects with a maximum net output of less than one megawatt (as measured in alternating current) and (b) projects that begin construction prior to the 60th day after Treasury issues guidance regarding the prevailing wage and apprenticeship requirements. Given the Notice discussed below that date has been interpreted to mean Projects that begin construction prior to January 30, 2023 are exempted.

On November 30, 2022, the Internal Revenue Service and the Department of the Treasury (“Treasury”) published [Notice 2022-61, Prevailing Wage and Apprenticeship Initial Guidance under Section 45\(b\)\(6\)\(B\)\(ii\) and Other Substantially Similar Provisions](#), thus starting the 60-day clock for beginning construction of qualified facilities, property, projects or equipment (“Projects”) in order to obtain the higher credit amount without satisfying the prevailing wage and apprenticeship requirements. The Notice, which is significant to NECA contractors given the generous provisions relevant to the use of registered apprentices, provides initial guidance on the prevailing wage and apprenticeship requirements that contractors must meet in order to qualify for the higher amount of certain clean energy tax credits as established by the Act.

## Apprenticeship Requirements

NECA contractors should be well placed to take advantage of the Act’s provisions related to registered apprentices. The apprenticeship requirements of the Act have both an **hour requirement** and a **ratio participation requirement**.



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The hour requirement obligates a contractor to perform construction, alteration, or repair work with an “applicable percentage” of total hours completed by qualified apprentices. Qualified apprentices are generally defined as individuals participating in a registered apprenticeship program such as the NECA/IBEW ETA. That applicable percentage is 12.5% for facilities that begin construction on or after January 30, 2023 and before January 1, 2024, and 15% after that point.

The participation ratio requirement means that if any contractor or subcontractor on the project employs four or more individuals to perform construction, alteration, or repair work, then one or more qualified apprentices must be employed to perform such work. This requirement is subject to applicable requirements for apprentice-to-journey worker ratios of the Department of Labor or State apprenticeship agency.

The Act provides a “good faith effort” exception to the apprenticeship requirements, under which the taxpayer is deemed to satisfy the apprenticeship requirements if it requests qualified apprentices from a registered apprenticeship program and such request is denied (other than as a result of the refusal of the taxpayer, including any contractor or subcontractor, to comply with established standards and requirements of the registered apprenticeship program) or the program fails to respond within five business days.

The Act also imposes new enforcement mechanisms to abide by the apprenticeship requirements if not granted a “good faith effort” exception. The contractor will pay a penalty an amount equal:

1. \$50 multiplied by the total labor hours for which did not satisfy the total amount.
2. If the contractor was found in intentional disregard by the Secretary, then the contractor shall pay the penalty of \$500 multiplied by the total labor hours for which did not stratify the total amount.

## Prevailing Wage Requirements

The Act also contains prevailing wage requirements. These require a contractor to pay wages at rates not less than the “prevailing rates” for construction, alteration, or repair of similar character in the locality in which such facility is located as determined by the Secretary of Labor. The Notice provides that a published prevailing wage determination for the geographic area and type or types of construction applicable to the project, including all labor classifications for the construction, alteration, or repair work that will be done on the facility by laborers or mechanics on [www.sam.gov](http://www.sam.gov), such determination will be the “prevailing rates” for purposes of satisfying the prevailing wage requirements. If the Secretary of Labor has not published a prevailing wage determination or has issued a prevailing wage determination, but one or more labor classifications for the construction, alteration, or repair work that will be done on the facility by laborers or mechanics is not listed, then the taxpayer can rely on the procedures established by the Secretary of Labor for purposes of the requirement to pay prevailing rates determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code.

To rely on the procedures to request a wage determination or wage rate, and to rely on the wage determination or rate provided in response to the request, the taxpayer must contact the Department of Labor, Wage and Hour Division via email at [IRAPrevailingwage@dol.gov](mailto:IRAPrevailingwage@dol.gov) and provide the Wage and Hour Division with the type of facility, facility location, proposed labor classifications, proposed prevailing wage rates, job descriptions and duties, and any rationale for the proposed classifications. The taxpayer may use these procedures to request a wage determination, or wage rates for the



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unlisted classifications, applicable to the construction, alteration, or repair of the facility. After review, the Department of Labor, Wage and Hour Division will notify the taxpayer as to the labor classifications and wage rates to be used for the type of work in question in the area in which the facility is located. The Act also imposes new enforcement mechanisms that if a taxpayer fails to satisfy the prevailing wage requirements during any year of the construction. The taxpayer is fined:

1. Amount equal to the difference between what the person was paid and was required to pay and;
2. Six percent interest on the interest owed to the worker during such year
3. \$5,000 additional penalty for each worker whose wages were below the prevailing wage rate during such year.
4. If the contractor was found in intentional disregard by the Secretary, the contractor must owe three times the sum of (1) and (2) and increase the penalty of (3) to \$10,000

The government is expected to continue to issue more detailed guidance on these provisions. At the same time the Notice was issued, the Department of Labor posted a list of FAQs [here](#). However, there remain many unanswered questions. We will continue to monitor the Act and the guidance initiatives from the IRS and Treasury and will provide further updates as guidance is released.

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