September 13, 2023

The Honorable Lisa McClain
Chairwoman
U.S. House Oversight and Accountability
Subcommittee on Health Care
and Financial Services
2154 Rayburn House Office Building
Washington, DC 20515

The Honorable Katie Porter
Ranking Member
U.S. House Oversight and Accountability
Subcommittee on Health Care
and Financial Services
2154 Rayburn House Office Building
Washington, DC 20515

Chairwoman McClain, Ranking Member Porter and Members of the Health Care and Financial Services Subcommittee:

On behalf of Associated Builders and Contractors, a national construction industry trade association with 68 chapters representing more than 22,000 member companies, I appreciate the opportunity to comment on the committee's Sept. 14, hearing, "The Inflation Reduction Act: A Year in Review." ABC remains concerned about anti-competitive and inflationary policy in the IRA that grants developers of clean energy construction projects a bonus tax credit 500% greater than a baseline tax credit of 6% conditioned on satisfying controversial prevailing wage and government-registered apprenticeship requirements.

Developers of solar, wind, hydrogen, carbon sequestration, electric vehicle charging stations and other clean energy projects seeking enhanced tax credits must ensure that contractors pay all construction workers government-determined prevailing wages and benefits set by the U.S. Department of Labor. Developers must also ensure that contractors utilize apprentices enrolled in government-registered apprenticeship programs for certain percentages of all construction hours worked on a qualifying project (12.5% of all construction work hours in 2023 and 15% of all construction work hours in 2024 and thereafter).[1]

The unprecedented expansion of Davis-Bacon and government-registered apprenticeship requirements on private construction projects via the IRA will limit opportunities for many qualified contractors—including small businesses—and deny workforce development pathways for apprentices enrolled in nonregistered programs.

Critically for ABC and the construction industry, these requirements place a strain on developers and contractors grappling with a construction industry workforce shortage of more than 500,000 people in 2023 alone, which will result in needless delays and increased construction costs on clean energy projects.

Further, the government-registered apprenticeship system is woefully inadequate to meet the increased demand for construction workers generated by these tax incentives. According to ABC's analysis of recently released U.S. Department of Labor data, it would take 12 years for all government-registered apprenticeship programs to educate the more than half a million workers the construction industry needs to hire this year.

[1] In addition, all contractors with four or more employees on a jobsite must utilize at least one registered apprentice and comply with applicable apprenticeship ratios. Learn more at www.abc.org/ira

ABC estimates that the construction industry's federal and state registered system yielded just 45,000 completers of four-to-five-year apprenticeship programs in 2022, and just 250,000 apprentices were enrolled in all construction industry-registered apprenticeship programs.[2]

In addition, the lack of clear guidance[3] and timely regulations from the U.S. Department of Treasury's Internal Revenue Service related to these new requirements has significantly delayed ground-breaking of clean energy projects. ABC members and clean energy developers have reported they are unlikely to move forward with financing and building clean energy projects eligible for enhanced tax credits until final rules are crystal clear because of significant penalties related to noncompliance with prevailing wage and apprenticeship requirements.

On Aug. 30, the IRS finally released a proposed rule[4] and FAQs[5] on these tax incentives. While ABC plans to comment on the proposal by its Oct. 30 deadline and welcomes efforts by the IRS to provide regulatory clarity about how these new provisions will be implemented, a final rule is months away and the proposed regulation fails to answer key questions and raises additional concerns.[6]

For example, in 2024, the IRA requires that 15% of all construction labor hours on a qualifying project must be performed by apprentices enrolled in government-registered apprenticeship programs. ABC expects that, in some markets, many apprenticeship programs in certain trades cannot meet industry demand. Developers seeking regulatory clarity concerning the proposal's apprenticeship Good-Faith Exception policy—in order to assess the financial feasibility and risk of the tax credits—have been disappointed by the failure of the initial IRS guidance and proposed regulation to provide clear answers on the GFE process.

Additionally, the proposal appears to needlessly incentivize[7] the use of anti-competitive and inflationary union-favoring project labor agreements[8] by exempting developers from enhanced penalties[9] for noncompliance with potentially confusing and half-baked rules. When mandated by government schemes, PLAs increase the cost of construction 12% to 20% and force contractors to replace most or all of their existing employees with workers from union hiring halls, thereby denying jobs to the more than 88% of the U.S. construction industry workforce that chooses not to affiliate with unions and chilling competition from contractors unwilling and unable to operate under PLAs.

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[2] See https://www.abc.org/News-Media/News-Releases/abc-government-registered-apprenticeship-system-alone-wont-solve-construction-labor-shortage

[3] ABC's Nov. 4, 2022, comments to Treasury in response to its request for comments on future initial guidance implementing these tax credits outlined concerns with the IRA's unprecedented expansion of inflationary prevailing wage and apprenticeship requirements and the lack of clear regulations as a result of the IRS failing to issue regulations through a traditional notice and comment rulemaking. ABC issued a Nov. 29, 2022, statement in response to the IRS/Treasury's inadequate initial guidance, which applies to qualifying projects effective Jan. 29, 2023.

[4] See Treasury IRS NPRM: https://www.federalregister.gov/documents/2023/08/30/2023-18514/increased-credit-or-deduction-amounts-for-satisfying-certain-prevailing-wage-and-registered

[5] See IRS FAQs: https://www.irs.gov/credits-deductions/frequently-asked-questions-about-the-prevailing-wage-and-apprenticeship-under-the-inflation-reduction-act

[6] See ABC: Treasury's Rule Implementing IRA Clean Energy Construction Tax Credits Needs Improvement, Aug. 29, 2023: https://www.abc.org/News-Media/News-Releases/abc-treasurys-rule-implementing-ira-clean-energy-construction-tax-credits-needs-improvement

[7]Treasury IRS NPRM at: https://www.federalregister.gov/d/2023-18514/p-340

[8] Learn more about government-mandated PLAs at: https://buildamericalocal.com/learn-more/

[9] https://www.federalregister.gov/d/2023-18514/p-128 and https://www.federalregister.gov/d/2023-18514/p-340

Also concerning to ABC and construction industry stakeholders is the DOL's Aug. 23 final rule making sweeping changes to Davis-Bacon Act regulations[10] that will affect prevailing wage rates on future IRA projects. As discussed in ABC's analysis,[11] the DOL final rule fails to fix the DOL's unscientific and inefficient wage determination process, increases regulatory burdens on small businesses, new industries and additional public works projects and rescinds modest pro-taxpayer reforms that have been in place for nearly 40 years.

In short, the IRA's prevailing wage requirements create additional risk, uncertainty and red tape for small businesses and ultimately penalize employers that believe in fair and open competition and pay wages based on experience, quality and market rates.

As the construction industry continues to face supply chain delays, materials cost escalation of more than 40% since the start of the COVID-19 pandemic, workforce shortages, and an overly burdensome regulatory environment, ABC believes that the anti-competitive policies included in the IRA will continue to delay the construction of America's clean energy projects and discourage competition from quality open shop construction contractors unfamiliar with these new requirements.

To effectively unleash America's energy potential and build the necessary infrastructure to support the IRA's clean energy goals, we must award construction projects through fair and open competition from all of America's construction contractors and allow our entire qualified workforce to participate in these projects across the country.

Sincerely,

Kristen Swearingen
Vice President, Legislative & Political Affairs

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[10] U.S. DOL Davis-Bacon final rule: https://www.federalregister.gov/documents/2023/08/23/2023-17221/updating-the-davis-bacon-and-related-acts-regulations

[11] https://www.abc.org/News-Media/Newsline/dol-increases-costs-for-contractors-and-taxpayers-with-davis-bacon-final-rule