



VIA ELECTRONIC SUBMISSION

October 30, 2023

Deputy Commissioner for Services and Enforcement
U.S. Department of the Treasury
Internal Revenue Service
1111 Constitution Ave. NW
Washington, DC 20224

Re: Comments of Associated Builders and Contractors to the Treasury Department and Internal Revenue Service on Reg-100908-23, Increased Credit or Deduction Amounts for Satisfying Certain Prevailing Wage and Registered Apprenticeship Requirements

:

Associated Builders and Contractors submits the following comments to the U.S. Treasury Department and Internal Revenue Service in response to Reg-100908-23, Increased Credit or Deduction Amounts for Satisfying Certain Prevailing Wage and Registered Apprenticeship Requirements, published in the Federal Register on Aug. 30, 2023.¹

The IRS/Treasury notice of proposed rulemaking requests public comments on proposed regulations affecting an estimated \$270 billion worth of increased tax credit or deduction amounts available for taxpayers constructing clean energy projects conditioned on satisfying prevailing wage and registered apprenticeship (collectively, PWA) requirements established by the Inflation Reduction Act of 2022.

ABC appreciates the opportunity to provide feedback on this proposed rule, hereinafter referred to as the PWA NPRM.

About ABC

ABC is a national construction industry trade association representing more than 22,000 member companies. ABC and its 68 chapters help members develop people, win work and deliver that work safely, ethically and profitably for the betterment of the communities in which ABC and its members work. ABC and its members believe construction work procured by both private and public stakeholders should be performed on the basis of merit through fair and open competition regardless of contractors or their employees labor affiliation and willingness to sign agreements with unions. More than 88% of the U.S. construction industry workforce have freely chosen not to belong to a union and are employed by contractors who are not signatory to any union agreements.²

¹ <https://www.federalregister.gov/documents/2023/08/30/2023-18514/increased-credit-or-deduction-amounts-for->

comprised primarily of general contractors and subcontractors that perform work in the industrial and commercial sectors for government and private sector customers.³

Historically, many ABC members have successfully built energy projects of the types under the pre-IRA tax code which generally provided for tax incentives of 30% of investments in qualifying projects such as solar, wind, geothermal, carbon sequestration, electric vehicle charging stations and other types of clean energy construction. However, the IRA dramatically altered clean energy project tax incentives by reducing credit/deduction incentives to a baseline of 6% in sections 30C, 45, 45L, 45Q, 45U, 45V, 45Y, 45Z, 48, 48C, 48E and 179D of the updated Internal Revenue Code. Under the IRA, clean energy developers are now eligible to receive the full 30% tax incentive five times the value of prior baseline tax incentives but only if they meet the onerous and unclear PWA

T

contractors in the specialty trades and delivered taxpayer-funded construction projects safely, on time and on budget for their federal government customers. Likewise, ABC members are prominent builders of private construction projects in all market segments and geographies across America and also deliver state and local government construction projects rebuilding their communities.

significant improvements are made. In response to an October 2023 ABC survey on the proposed rule, 98% of respondents said they would be less likely to bid on clean energy projects subject to IRA requirements, as proposed.¹¹ These contractors will be much more likely to participate in critical clean energy construction if the IRS provides greater clarity to these policies.

In addition, as discussed in Section I has been confusing for construction industry and clean energy stakeholders, and has needlessly increased costs, delayed the construction of clean energy construction projects and exacerbated challenges facing the construction industry.

discretionary process to waive or decline to assert penalties in the interest of sound tax administration.¹²

ge, which dramatically departs from the IRA statute and illegally coerces owners into requiring discriminatory and inflationary project labor agreements as protection against additional penalties for intentional disregard violations of PWA requirements discussed in Section IV. ABC asserts there is no rationale to incentivize the use of PLAs on clean energy construction projects seeking enhanced IRA tax credits other than to promote the use of union labor and steer contracts to unionized contractors. ABC further asserts that such ill-advised coercion will increase construction costs, trigger additional project delays and exclude experienced large and small businesses and more than 88% of the U.S construction industry workforce from building clean energy construction projects seeking enhanced IRA tax credits. ABC urges the IRS to abandon -PLA policies and promote fair and open competition on all clean energy projects receiving IRA funding.

s thorough analysis of its paperwork burdens and new compliance costs on taxpayers and contractors, and harmful effects on small businesses.

I. Construction Industry Challenges **S**

Before addressing the specific requests for comments posed by Treasury and the IRS in the PWA NPRM, ABC will highlight general comments on this rulemaking.

1. Disruptive and Inadequate IRA Regulations Have Delayed Construction of Clean Energy Projects

This is the first time t00912 0 615g92 regeW* 1. reW* 6BT/F3 12 Tf1 0 0 1 90.048 177.65 Tm0 G[(Cle)-3(

never intended to impose mandates on private construction projects and such projects are not well-suited for such regulations. Likewise, apprenticeship requirements were never intended to be applied to private construction work, nor government work, as the apprenticeship system established by the Fitzgerald Act was intended to be entirely voluntary. As a result, the issues presented to Treasury and the IRS for guidance and regulation pose novel and complex interagency jurisdictional and practical issues.

comments on the PWA NPRM, the IRA PWA requirements impose unprecedented and disruptive new mandates on private clean energy construction projects through the federal tax code. As a result, the IRA perversely discourages experienced contractors and a large portion of the construction performing clean energy projects eligible for enhanced IRA tax credits, thereby reducing competition for such projects and increasing the costs for taxpayers and developers seeking to build clean energy projects. These new policies undermine efficient taxpayer investment in clean energy projects and will result in added costs that may ultimately be passed along to consumers and energy ratepayers. In addition, these policies are likely to delay projects and result in fewer clean energy construction projects and less private investment, all of which -class jobs for Americans while reducing carbon emissions.

For these and other related reasons, ABC opposed the IRA¹³ and authored multiple opinion pieces opposing new anti-competitive and inflationary PWA requirements tied to federal tax incentives for clean energy projects.¹⁴

Notw0300[(r)-6(e)-3(q)-3(u)-3(i)22(r)-6(e)-3(m)-6(e)16(n)-3(ts)o9.00000912 0 61n private

ABC members are currently pursuing contracts to construct or are actively building projects that may be eligible to qualify for However, clean energy project investors, lenders, developers and ABC member contractors investigating ways to receive the full IRA tax incentives under the new IRA PWA policy have inundated ABC with questions and concerns regarding industry prevailing wage and GRAP practices and regulations, the unclear and incomplete initial guidance and FAQs and the latest IRS PWA NPRM.

Many have reported needless delays and increased construction costs as a result of cumbersome IRA PWA regulatory process. A ober 2023 survey who had bid on projects receiving IRA tax credits, 42% reported delays due to a lack of regulatory clarity. Comments on the survey indicated both developers and contractors remain uncertain regarding interpretation of IRA requirements, and that some developers are reconsidering whether IRA tax credits are worth pursuing given compliance costs and additional penalties and risk.¹⁸

In addition, the Aug. 22, 2022, passage of the IRA as well as Oct. 24, 2022, request for comment notice on PWA issues,¹⁹ Nov. 30, 2022, notice of initial guidance concerning PWA requirements,²⁰ , 2023, PWA NPRM were issued at a time when the U.S. construction industry faces significant headwinds. The construction industry continues to face severe supply chain disruptions,²¹ unprecedented materials cost inflation of 41% since the onset of the COVID-19 pandemic,²² lackluster investment in structures,²³ increased finance and lending costs driven by a 22-year high interest rate and a widespread shortage of more than half a million skilled workers in 2023 alone.²⁴

All of these threats to the industry are exacerbated by problematic Biden administration policies promoting government-mandated project labor agreements²⁵ and drastic rewrites of Davis-Bacon Act prevailing wage regulations²⁶ and government-registered apprenticeship regulations²⁷ that will increase costs and reduce competition on private and government construction projects and disrupt the construction

It is important that the forthcoming IRA final rule does not frustrate the stated purpose of the IRA to promote investment in clean energy projects by further increasing costs for contractors and taxpayers, needlessly restricting the pool of qualified bidders and excluding experienced and qualified nonunion construction workers and apprentices via unclear or unfair guidance and coercive actions pushing developers to require project labor agreement schemes.

In short, clean energy stakeholders need complete, clear and timely guidance on all of the new issues raised by the PWA NPRM. Unfortunately, the current NPRM still fails to give proper guidance to industry stakeholders, and in many respects departs from the limited statutory authority of the IRA, which is why there will be significant delays to clean energy construction projects that partially depend on the full 30% of clean energy tax credits without disruptive PWA requirements.

2. The Proposed Rule Would Rescind the Original 2022 IRS

Additionally, the

across multiple trades.⁶² These regulations undermine the benefits of multiskilling, increase and increase labor productivity.⁶³

On the other hand, if the union wage scale does not prevail for a given trade listed in the wage determination, then the DOL will conduct an area practice survey to resolve disputes over which classification should perform the work. Contractors are held to be fully liable for incorrectly determining which job classification should perform each assigned tasks under a project, and only the position of the DOL, not the contracting officer or general contractor, controls the outcome.

In response to the October 2023 survey, ABC contractors expressed concerns regarding the

acknowledges that taxpayers may not reasonably determine until shortly before or even after construction begins that a conformance is necessary. But the ⁶⁹ The IRS understates

prevailing wage requirements. Clearer guidance is necessary, and specifically the IRS should make clear that taxpayers/contractors will not be penalized for misclassifications

70

In addition, the IRS FAQs to the effect that clean technology workers will generally be deemed covered and classified under so-turbine industries.⁷¹ This preemptive ruling issued without any area practice surveys or meaningful legal support will, if not corrected by the IRS, have the perverse effect of imposing 20th century job classifications on 21st century technology, in a manner directly

apprenticeship system

ABC supports and the PWA final rule should clarify that the IRA does not impose a total labor hours percentage of apprenticeship workers on any individual contractor or subcontractor. Section 45(b)(8)(C) makes clear that each individual taxpayer, contractor or subcontractor employing four or more individuals to perform construction, alteration or repair

Allowing the clean energy project developer and its contractors flexibility to achieve this goal makes the most sense.

However, the PWA final rule must clarify the timeframe of when the total percentage of apprenticeship hours worked in relation to the total construction hours should

contractors are not required

denies jobs to local nonunion construction workers. Likewise,

legislatures. For example, in 2016, Michigan reformed its apprenticeship ratio requirements by increasing the required ratio of electrical apprentice-to-journeyworker ratios from 1-to-1 to 3 apprentices-to-1 journeyworker. By instituting these reforms, Michigan lawmakers ensured that electrical contractors are able to meet increased hiring demands and employ a steady workforce for the future. In 2018, Wisconsin reformed an outdated apprenticeship ratio law that said the first apprentice may be hired on a 1-to-1 apprentice-to-journeyworker ratio. However, for each additional apprentice hired, the number of journeyworkers required increased for most trades. For example, if a contractor employed a second carpentry apprentice, they were then required to hire four journeyworker carpenters. The number of journeyworkers required per apprentice increased all the way up to the 12th apprentice, where thereafter three skilled carpenters were required for each additional apprentice. Reforms to this nonsensical and burdensome regulation were widely celebrated by apprenticeship stakeholders and it has led to growth in GRAP enrollment and contractor participation in Wisconsin.

In its October 2023 survey, ABC members cited apprenticeship ratios as a potential barrier to compliance with IRA requirements, with 84% of respondents agreeing that apprenticeship ratios are likely to limit their ability to meet the 15% labor hour requirement.¹⁰⁰

With respect to the PWA NPRM, restrictive apprenticeship ratios in certain states may make it difficult

businesses. This change

ABC comments that it is unlikely that the GFEE, as currently defined in the PWA NPRM,¹⁰⁵ is useful or practical for most nonunion contractors, which make up the vast majority of the construction industry and employ more than 88% of the U.S. construction workforce.

In addition, the GFEE process described in the PWA NPRM departs from the plain language of the IRA¹⁰⁶ by imposing arbitrary requirements such as the 120-day renewal, specific limiting information governing requests for apprentices and arbitrary limits on what constitutes a

The PWA NPRM also imposes a new and arbitrary restriction on the geographic scope of

ABC raises four concerns specific to recordkeeping requirements in the PWA NPRM for consideration:

1. To the extent the PWA NPRM currently requires taxpayers to collect social security numbers and home address information from contractors regarding the contractors' employees, this creates potential privacy concerns, given that the taxpayers are not the employers of such employees and are not government agencies entitled to collect such information.
2. The PWA NPRM should set clearer limits on the length of time such records need to be maintained.
3. The level of detail imposed on the contractors and taxpayers to prove compliance is going to be extremely burdensome to maintain. Taxpayers should be allowed to rely on certificates of compliance.
4. There are potential antitrust concerns involved in sharing wage information between private parties.

V. ABC Comments Opposing Coercive Efforts To Promote Project Labor Agreement Schemes To Avoid Intentional Disregard Penalties

The PWA NPRM establishes exceptions to the elevated intentional disregard penalties associated with failing to meet prevailing wage¹¹⁸ and GRAP requirements,¹¹⁹ respectively. The PWA NPRM states that developers can avoid severe intentional disregard penalties if they have required contractors to sign a project labor agreement covering construction work on the project seeking enhanced tax credits under the IRA.

ABC is strongly opposed to waiving intentional disregard penalties if developers require PLAs. This violates the plain text of IRA, which includes no PLA requirement and certainly does not authorize waiver of intentional violations based on the discriminatory requirements of a PLA. This arbitrarily establishes unequal treatment for intentional violations made by union contractors and nonunion contractors who are much less likely to execute PLAs. Typical PLA mandates, whether required by government entities or coerced through regulatory policy as is the case in this NPRM discourage competition from nonunion contractors, who employ the overwhelming majority of all construction workers, and deny jobs to their existing workforce through several common PLA provisions summarized in these comments.

In addition, this policy coerces owners into requiring discriminatory and inflationary PLAs as protection against violations attributable to unclear rules established

2022 survey of contractor members said PLAs negatively affect

that permits contractors to utilize their own work rules that are independent of union CBAs and any union CBAs included in the PLA.

4. PLA Mandates Force Contractors To Pay Employee Benefits Into Union Plans, Exposing Workers to Wage Theft and Employers to Multiemployer Pension Plan Liabilities

Fourth, union trust funds, even though these companies may have their own bona fide benefits plans. Workers cannot access any of their benefits accrued during the life of the PLA project in union plans unless they decide to leave their nonunion employer, join a union, work for union-signatory contractors and receive enough work and remain in good standing with the union until vested. Research suggests this loss in wages and benefits reduces

In addition, union

communities in Baltimore;¹³⁶ Boston;¹³⁷ Chicago;¹³⁸ Detroit;¹³⁹

One such advocate, the National Black Chamber of Commerce, opposes PLA mandates¹⁶⁰ because:

PLA advocates may claim that the IRS NPRM is good policy because PLAs allegedly reduce the cost of construction on projects. However, there is no factual basis for claims that PLAs will reduce costs on construction projects.¹⁶⁵

millions of dollars from the contractor built into its original bid related to the added costs associated with performing the project under a PLA.¹⁷⁰

In addition to these real-world examples of added costs on federal construction projects under -PLA policy, multiple academic studies of thousands of taxpayer-funded affordable housing¹⁷¹ and school construction projects¹⁷² found that government PLA mandates increase the cost of construction by 12% to 20% compared to similar non-PLA projects when all projects are subjected to prevailing wage regulations.¹⁷³

In addition to these studies, PLA mandates on construction projects procured by state and local governments¹⁷⁴ have revealed many instances in which PLAs have failed to achieve promised cost savings, and have instead led to cost overruns, delays, local hire failures and safety incidents¹⁷⁵ on such diverse public projects as stadiums,

work stoppages from 2010 to 2014 on public and private projects valued at trillions of dollars of construction put in place.¹⁸⁵

featherbedding, union strikes and labor disputes, a poor safety record, employees working on the jobsite while drunk, sexual harassment allegations and violations of state and federal minority contracting rules.¹⁹² Both projects were procured with controversial government-mandated PLAs.

In 2018, the National Labor Relations Board imposed a settlement requiring that the Steamfitters Union stop illegal strikes and job actions against firms working at the \$20 billion Hudson Yards multibuilding private development in New York City, which was subject to a PLA.¹⁹³ In 2015, the project was also subjected to a PLA-violating strike that impacted 30 other NYC jobsites and was resolved after a judge issued a restraining order against striking workers.¹⁹⁴

Federally assisted projects that were part of the World Trade Center reconstruction following the 9/11 attacks in New York City suffered strikes in 2015,¹⁹⁵ 2013¹⁹⁶ and 2011,¹⁹⁷ despite no-

suffered a crane accident in February 2012. In August 2012, the *New York Post* reported the Port Authority cracked down on drinking by construction union members following a series of accidents and reports of excessive workday boozing by union tradespeople employed at various World Trade Center construction projects, including 4 World Trade Center.¹⁹⁸

In addition, Chicago was a relative hotbed of strikes on PLA projects in 2010,¹⁹⁹ but the most famous private project subjected to a strike in the city occurred on the \$850-million Trump International Hotel and Tower in downtown Chicago. In June 2006, the Trump company developing the \$850-million project in downtown Chicago sued three labor organizations for breaching the terms of a PLA after union members walked off the project during a strike.²⁰⁰

The Trump development company eventually settled the suit against the Chicago and Cook

6.

Joseph Gagliardo, managing partner of the firm Laner, Muchin, Dombrow, Becker, Levin and Tomlinberg Ltd., represented 401 North Wabash in the action and told the media that the unfortunate lesson emerging from this strike and suit was to question the real value of PLAs

¹⁹² See www.TheTruthAboutPLAs.com, [Workers](#), March 22, 2016, and [Despite Project Labor Agreement, Union Dispute Shuts Down Seattle Tunnel Job For Four Weeks](#), Sept. 18, 2013.

¹⁹³ [Labor Board Requires Hudson Yards Unions to Stop Strikes](#), New York Post, Carl Campanile, July 31, 2018.

¹⁹⁴ [Judge points to PLA in ordering union workers to end strike](#), Real Estate Weekly, July 6, 2015.

¹⁹⁵ See www.TheTruthAboutPLAs.com, [NYC Union Strike Shuts Down Project Labor Agreement Jobsites Again](#), July 13, 2015.

¹⁹⁶ See www.TheTruthAboutPLAs.com,

industry contractors improve jobsite safety.²⁰² STEP measures how much leading indicators proactive injury and hazard elimination tools on the jobsite improve safety performance.

on real projects, which shows that implementing STEP best practices can produce world-class construction safety programs.²⁰³ The 2023 report documents the dramatic impact of deploying proactive health and safety practices leading indicators such as new hire safety orientation, substance abuse prevention and toolbox talks to reduce recordable incidents by up to 85%, making the best-performing companies nearly seven times safer than the industry average.

Creating an effective company safety culture and formal process for tracking these leading indicators and acting on them has produced positive and meaningful safety outcomes without the necessity for a PLA.

In addition, BLS data suggests that pro-PLAs policies do not measurably improve safety. An ABC analysis of the 2019 BLS Survey Occupational Injuries and Illnesses and the BLS Census of Fatal Occupational Injuries demonstrate that states with laws prohibiting government-mandated PLAs had average of 2.4 total recordable construction incidents, while states that allow and encourage government-mandated PLAs had an average of 3.5 total recordable construction incidents.²⁰⁴

In fact, a PLA mandate
its existing workforce with construction workers from union hiring halls with unknown safety

Likewise, a PLA mandate
get most or all of their labor from union hiring halls and follow inefficient union work rules. ABC contractors raise concerns that both factors are likely to result in the performance of a project

employees and multiskilling helps ensure quality work and consistent labor costs, but those are undermined when a PLA is mandated.

Based on the lack of evidence for improvements to safetyas[(7S)7(d-5(f)-3(e)-3(vid)18(e)-3(0 GW*1)-3(

For example, Section 1 of the EO 14063 requiring PLAs on federal construction projects of \$35 million or more justifies the use of government-employers typically do not have a permanent workforce, which makes it difficult to predict labor costs when bidding on contracts and to ensure a steady supply of labor on contracts being

²⁰⁶ The proposal and EO offer no support for this claim. In contrast, as discussed in these comments, ABC contractors assert that nonunion contractors do have a permanent

unfamiliar workers from union hiring halls and obey unfamiliar union work rules will result in unpredictable labor costs and expose a firm to additional productivity, quality and safety risks

-scale construction projects pose special challenges to efficient and timely procurement by the federal government."²⁰⁹

does not require -PLA policy of the last 12 years that encourages but

In fact, of the few federal construction projects subjected to government-mandated PLAs under the Obama policy, many projects experienced delays,²²¹ poor local hire outcomes,²²² reduced competition and increased costs²²³ as described in these comments.

Despite this evidence, the Biden EO 14063 and default pro-PLA policy assumes a project procured with a PLA will result in superior outcomes compared to a project procured via fair and open competition. As discussed in these comments, case and the claimed justifications for the contrary to the record of evidence and fail to justify PLA mandates at all.

VI. ABC Comments on Paperwork Reduction Act, Regulatory Flexibility Act Impact on Small Businesses

It is concerning and remarkable that the IRS PWA NPRM has done inadequate and incomplete analysis of the regulatory costs of this NPRM, as is required by the Paperwork Reduction Act,

wage and GRAP requirements on taxpayers/developers and their contractors building clean energy projects introduces novel and considerable regulatory familiarization costs, paperwork burdens and increased regulatory compliance costs. Small businesses generally have a much harder time absorbing additional regulatory costs and their costs are proportionately greater

²²¹ See TheTruthAboutPLAs.com, [_____](#), March 5, 2013.

²²² Data collected by Del. Eleanor Holmes-Norton, D-D.C., on federal projects subject to PLA mW* nBTW* nBT/F1 7.2 792 reW* nBT/F1 7.92 Tf1 0 0 1 241.3 1

compared to larger firms which generally will discourage small business participation and harm all stakeholders and the public in numerous ways.²²⁴

1. The IRS Failed to Conduct a Regulatory Impact Assessment

ABC is disappointed that the IRS PWA NPRM asserts it does not need to conduct a Regulatory Impact Assessment.²²⁵

Pursuant to the Memorandum of Agreement, Review of Treasury Regulations under Executive Order 12866 (June 9, 2023), tax regulatory actions issued by the IRS are not subject to the requirements of section 6 of Executive Order 12866, as amended. Therefore, a regulatory impact assessment is not required.

The novel imposition of PWA requirements on private clean energy construction projects through groundbreaking changes in the federal tax code generates significant new costs to taxpayers/developers applying for enhanced tax credits, as well as large and small contractors performing construction activity for the taxpayers/developers. Despite its justification, the IRS should conduct thorough evaluation of the application of controversial labor policy through the federal tax code to anticipate and understand the intended and unintended consequences of new regulations on affected stakeholders.

2. ABC Concerns About Inadequate Paperwork Reduction Act Analysis

The IRS PWA NPRM estimates that 70 trust and estates may claim the increased credit and that it could take approximately 40 hours to compile the data needed for the statement attached to their return, totaling 2,800 hours of recordkeeping annually.²²⁶ In addition, the IRS estimates that 70,000 filers may claim the increased credit and that it could take approximately two hours to display the prevailing wages rates and to request the dispatch of apprentices, totaling 140,000 hours annually.²²⁷

ABC requests clarity concerning how the IRS arrived at these estimates. How and why did the IRS determine 70 trusts and estates and 70,000 filers may claim the increased credit? Why is there a discrepancy of compliance time of 40 hours for trusts and estates, and only two hours for filers? It is hard to assess whether an estimate is correct or incorrect if there is no explanation for initial estimates or guidelines and citations on developing such estimates.

To create an accurate estimate of regulatory costs and establish a comprehensive Paperwork Reduction Act analysis, ABC suggests the IRS collaborate with the Treasury and the White House to estimate the number of clean energy projects anticipated as a result of this new policy change and additional \$270 billion in tax incentives from the IRA. The IRS most certainly has records of the number of projects that have previously filed for tax credits that have been altered by the new IRA PWA policy.

In addition, ABC suggests that the IRS attempt to establish the size of the construction market devoted to clean energy projects eligible for IRA tax credits, or at least determine the size of

²²⁴ See Mercatus Center, George Mason University, [Regulatory Accumulation and Its Costs](#), May 4, 2016.

²²⁵

90% stated that the GFE is not workable as written and/or does not align with current GRAP practices in their area, with 92% calling for additional clarity on how the GFE will apply to overall labor hour requirements

incentive to avoid willful penalties, they will be less likely to bid on IRA projects

them less likely to bid on IRA projects

Further, the proposed rule drastically underestimates the costs it will impose on entities that must familiarize themselves with the rule to ensure compliance on any IRA projects they may estimate that

impacted entities will have an average annual burden of just two hours to display prevailing wage rates and request apprentices.²³⁶

It is unclear how this number was established. Also, this estimate fails to account for the time that will be

wage and apprenticeship requirement, research and understand local prevailing wage rates and associated work rules, and other activities necessary to comply with the proposal outside the scope of simply displaying wage rates and requesting apprentices. Taxpayers and contractors will be required to track the payment of prevailing wages and usage of apprentices,

scope.

However, even simply considering only the time taken for the activities of posting prevailing wage rates and requesting apprentices, ABC contractors strongly disagreed with the PWA

these activities would take annually, 70% of respondents estimated nine or more hours.²³⁷ Clearly, the potential burden to contractors of the proposal has been vastly underestimated and should be reassessed.

For example, the IRS PWA NPRM is 40,000 words, which would take almost three hours to read at an average American silent reading rate of 238 words per minute.²³⁸ The final rule will likely be about double the number of words, requiring at least six hours of initial regulatory familiarization to read the final rule. Then the business would have to hire expensive attorneys on an hourly basis specializing in labor and employment law and the construction industry to understand the rule and operationalize it across its business (HR, accounting, foreperson, etc.) and contracting arrangements with other general contractors and subcontractors.

VII. Conclusion

ABC remains seriously concerned that the prevailing wage and apprenticeship requirements in the IRA and the unclear initial IRS guidance and the may cause additional significant risk, uncertainty, cost increases, project delays and overall confusion for the regulated community without extensive clarification. ABC urges Treasury and the IRS to further engage with stakeholders to ensure these requirements can be implemented while

²³⁶ <https://www.federalregister.gov/d/2023-18514/p-197>

²³⁷

²³⁸ <https://www.sciencedirect.com/science/article/abs/pii/S0749596X19300786#:~:text=Abstract,and%20260%20wpm%20for%20fiction> ion

minimizing disruption and harm to critical clean energy projects and the existing marketplace of developers and contractors that already build this type of work successfully and safely.

ABC appreciates the opportunity to comment on the IRS PWA NPRM and would welcome the chance to facilitate additional industry outreach, collaboration and discussions on these issues at the appropriate time. Please do not hesitate to contact us with any questions.

Respectfully submitted,



Ben Brubeck
Vice President of Regulatory, Labor and State Affairs
Associated Builders and Contractors
brubeck@abc.org

Of Counsel: Maurice Baskin, Esq.
Little Mendelson, P.C.
815 Connecticut Ave. NW
Washington, DC 20006