



**JOINT COMMENTS OF
THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS
AND THE NATIONAL ELECTRICAL CONTRACTORS ASSOCIATION
ON THE TREASURY DEPARTMENT’S GUIDANCE
ON PREVAILING WAGE AND APPRENTICESHIP REQUIREMENTS
UNDER THE INFLATION REDUCTION ACT OF 2022**

Notice 2022-51

The International Brotherhood of Electrical Workers, AFL-CIO, CLC (“IBEW”) and the National Electrical Contractors Association (“NECA”) appreciate this opportunity to comment on the Department of Treasury’s (“Treasury Department”) forthcoming guidance implementing the prevailing wage and apprenticeship requirements under the Inflation Reduction Act of 2022 (“IRA”), Pub. L. No. 117-169 (codified in various sections of Title 26 of the U.S. Code).

IBEW and NECA strongly support the prevailing wage and apprenticeship utilization requirements in the IRA, which we believe will be critical to realizing the Biden administration’s bold climate agenda. By promoting successful project delivery, these requirements will ensure that energy generation supported by the IRA’s tax incentives consistently and reliably delivers power to customers; in other words, that it *works*. As such, these requirements are key to ensuring that the IRA supports a successful transition to a carbon free economy.

These comments fully endorse and incorporate by reference the comments of North America’s Building Trades Unions (“NABTU”) and are offered to support NABTU’s recommendations with our perspective based on our experience building energy infrastructure projects across the country. NECA and IBEW join NABTU in urging the Treasury Department to adopt and tailor the U.S. Department of Labor’s (“DOL”) well-established existing regulatory framework and contract requirements under the Davis-Bacon Act (“DBA”) to administer both the prevailing wage and apprenticeship requirements under the IRA. We further join NABTU in urging Treasury Department to prioritize the development and publication of guidance on these provisions,¹ which do not take effect until 60 days after such guidance is issued.²

I. Background

IBEW is a labor organization representing approximately 775,000 active and retired members. Nearly 400,000 of the IBEW’s active members are employed in the construction industry and work on all aspects of electrical construction work, including generation, distribution and transmission line construction. IBEW is the most established electrical union in the world, having existed for as long as the commercial use of electricity. For over a century, IBEW members have played an integral role building and maintaining the nation’s energy infrastructure, its electrical grid, distribution systems and electric generation units --

¹ Exec. Order No. 14082, *Implementation of the Energy and Infrastructure Provisions of the IRA*, Sec. 2(f) (Sept. 12, 2022) (directing agencies to prioritize implementation of IRA labor standards).

² See, e.g., 26 U.S.C. 26 U.S.C. §§ 45(b)(6)(B)(ii), 48(a)(9)(B)(ii).

working on everything from coal-fired power plants and nuclear reactors to utility-scale solar farms, on- and offshore wind, and battery storage.

NECA is a national trade association and the leading voice of the \$202 billion electrical contracting industry that brings power, light, and communication technology to buildings and communities across the country. NECA collectively represents over 4,000 electrical contractor members served by 118 local chapters across the country. NECA members employ a unionized workforce with contracts collectively bargained with IBEW.

Over 70 years ago, IBEW and NECA developed the nonprofit Electrical Training Alliance (“Alliance”).³ The Alliance’s affiliated local apprenticeship training programs are the largest training providers for electrical workers in the nation, with some 300 construction training centers in operation. IBEW and NECA invest nearly \$200 million per year in apprenticeship training efforts. Training is provided at no cost to participants or taxpayers, and apprentices earn competitive wages for on-the-job training plus health and retirement benefits.

II. Treasury should adopt existing DOL standards for prevailing wage and apprenticeships

IBEW and NECA urge the Treasury Department to follow NABTU’s recommendation to follow DOL’s existing standards and procedures for both the prevailing wage and apprenticeship requirements under the IRA. We also join NABTU in urging the Treasury Department to adopt DOL’s rigorous oversight and quality control standards, including apprentice-journeyman ratios, which are critical for ensuring safety and training to the specialized skills for each craft. We also urge Treasury to closely follow NABTU’s recommendations regarding recordkeeping, reporting and enforcement, which will prevent unscrupulous contractors from benefiting from the IRA’s tax incentives by exploiting untrained, underpaid workers.

A. Craft-specific training and hiring promote safe, high-quality construction

Adopting the existing rules in both prevailing wage and apprenticeship policy on traditional craft labor classifications in the construction industry (i.e., electricians, pipefitters, ironworkers, etc.) is essential to protecting workers and taxpayer investments alike, as these rules ensure that work is performed by workers with the specialized training and experience needed to complete projects safely and successfully.

Construction is dangerous work. Electrical construction is extremely dangerous work which is highly technical, complex, and replete with hazards that lead to injuries and fatalities when workers are not properly trained.⁴ Faulty electrical installations often prove to not only be hazardous, but tremendously expensive, leading to crippling cost overruns for project owners. The nature of this work thus underscores the need for Treasury to strictly observe DOL’s well-established craft classification rules in implementing the IRA’s apprenticeship and prevailing wage requirements, as the utilization of an untrained workforce on these projects has the potential to be catastrophic, resulting in loss of life, injury and significant property loss. Recent, peer-reviewed research on the work-related factors that contribute to hazards in electrical operations “*can collectively stem from insufficient or lack of proper electrical safety training.*”⁵

³ Electrical Training Alliance, <https://www.electricaltrainingalliance.org/AboutUs>.

⁴ Babak Memarian, et. al, *High-Risk Electrical Tasks and Contributing Work Factors*, Professional Safety Journal (2022), https://www.assp.org/docs/default-source/psj-articles/flmem_0822.pdf?sfvrsn=d8b99447_0 (internal citations omitted).

⁵ *Id.*

A carefully balanced system of education, training, and experience is the only method for achieving safety and the highest level of craftsmanship. It is therefore critical that the workers charged with building energy infrastructure have a robust understanding of their craft’s work supported by extensive training, including knowledge of current technological and safety standards.

Apprentices in IBEW/NECA affiliated Registered Apprenticeship programs receive hands-on work experience under the supervision of experienced journey-level electricians and study electrical, mechanical and construction theory as part of their classroom training. Apprentices train in blueprint reading, mathematics, safety, first aid, conduit installation, wiring, outlets, and switches, among other topics. Those furthest along in their training work on planning the construction and testing the operation of an entire electrical system. In addition, journey-level workers frequently obtain additional certifications due to the ever-evolving technological advancements and safety imperatives in the field.

IBEW/NECA affiliated Registered Apprenticeship programs are trained to state licensing and other industry standards, even in states without such standards in place. Apprentices are also trained to the latest components, devices, technological specifications in the electrical construction industry. For example, apprentices are trained to follow the National Electric Code (“NEC”), a model code produced by the National Fire Protection Association (“NFPA”) that provides benchmark standards for the safe installation of electrical wiring and equipment.

B. Craft-specific training and hiring prevents “de-skilling” in the face of unprecedented need for skilled workers

The construction industry is highly specialized and requires an adequate supply of highly skilled craft labor. Adopting the existing DOL framework for craft classifications is necessary to prevent “de-skilling” in an industry in critical need of skilled labor. Furthermore, doing so will facilitate the development of the nationwide pipeline of skilled workers necessary to build major energy and infrastructure projects for decades to come.

Measures to promote quality training for the next generation of construction workers are critical. In a recent survey of construction firms across the country, 91 percent of respondents reported difficulties finding skilled craft labor, leading to cost increases and project delays, “threatening the success of new federal investments in infrastructure and manufacturing.”⁶ Electricians are facing particularly unprecedented demand, with a recent study predicting that the U.S. will need an additional 224,000 electrical workers by 2030 to accommodate the growing needs of the electrical system.⁷

Without a steady supply of skilled craft labor, construction projects face major risks to safety and productivity that lead to significant cost and time overruns.⁸ In fact, research has shown that difficulty recruiting skilled craft workers is linked to *exponentially increasing* rates of Occupational Safety and Health

⁶ *Construction Workforce Shortages Risk Undermining Infrastructure Projects As Most Contractors Struggle To Fill Open Positions*, Associated General Contractors of America (Aug. 31, 2022), <https://www.agc.org/news/2022/08/31/construction-workforce-shortages-risk-undermining-infrastructure-projects-most-contractors-struggle-0>.

⁷ *Dark by 2050*, Klein Tools, The Accelerate Group LLC (2020), https://data.kleintools.com/sites/all/product_assets/documents/brochures/klein/DarkBy2050_Klein_ResearchPaper.pdf.

⁸ Hossein Karimi, *Quantitative Analysis of the Impact of Craft Labor Availability on Construction Project Performance*, University of Kentucky (2017), https://uknowledge.uky.edu/cgi/viewcontent.cgi?article=1059&context=ce_etds; see also Allison L. Huang, et al., U.S. Department of Commerce, National Institute of Standards and Technology, Office of Applied Economics, *Metrics and Tools for Measuring Construction Productivity: Technical and Empirical Considerations* (Sept. 2009), http://www.nist.gov/customcf/get_pdf.cfm?pub_id=903603.

Administration (“OSHA”) incidents.⁹ In addition, on projects with skilled craft worker shortages, the skilled workers that are available are frequently scheduled to work overtime, which “can cause physical fatigue ... [and] seriously affect the implementation of construction site safety.”¹⁰

Correctly implementing the prevailing wage and apprenticeship requirements in the IRA will address these challenges. Craft-specific apprenticeship requirements will ensure workers have the appropriate specialized training and contribute to the necessary supply of skilled craft workers, while payment of the appropriate locally prevailing and craft-specific wages will attract craft workers to staff up existing projects.

C. Craft-specific training and hiring discourages worker misclassification and exploitation

Craft-specific requirements are also essential to preventing unscrupulous contractors from misclassifying workers to pay them lower wages to perform work they are not qualified to perform safely or effectively. As aptly noted by NABTU, unscrupulous contractors frequently attempt to subdivide traditional craft classifications and invent “new” low-wage classifications in an attempt to legitimize using unqualified workers.

Made-up classifications like “Solar Photovoltaic Installer” and the “Wind Turbine Technician” are particularly troublesome because they claim work that is properly and strictly classified as “*Electrician*” work and give it a new label, lower wages, and far less, if any, safety and occupational training. The use these made-up classifications has proved attractive to developers, with the Bureau of Labor Statistic projecting a 27-percent growth rate for “Solar Photovoltaic Installers” by 2030 and a 44-percent growth rate for “Wind Turbine Technicians,” the second highest of all occupations.

The use of these made-up classifications creates a host of negative effects for workers and industry. Over the course of the past decade, the solar industry has produced an untrained, low-wage workforce forced to chase projects from state to state for meager wages.¹¹ Meanwhile, research has shown that “*niche training programs targeting a particular low-emission technology, such as training for solar panel installation, are less effective than broader training that helps workers gain mastery in an occupation and provides them with skills to continually adopt improved and cleaner technologies.*”¹²

Due to the highly specialized and safety-sensitive nature of construction work, it is imperative that, for example, if a project involves 90% electrical construction, the project utilizes 90% *electricians*, as opposed to other crafts or made-up classifications. Creating “new” classifications is merely a tactic used by low-road contractors to pay workers the lowest wages possible and avoid investing in adequate workforce training, imperiling the safety of workers and quality of projects to unlawfully maximize profits.

⁹ Karimi at 4.

¹⁰ Karimi at 7.

¹¹ Lauren Kaori Gurley, “Shifting America to Solar Power is a Grueling, Low-Paid Job,” Vice News (June 27, 2022), <https://www.vice.com/en/article/z34eyx/shifting-america-to-solar-power-is-a-grueling-low-paid-job> (“...the state of the solar industry throughout much of the country resembles Amazon warehouse work and the gig economy with ‘grueling work schedules, few unions, middling wages and limited benefits.’”) (“...unlike the unionized oil and coal workers in company towns of decades past, the majority of today’s solar farm installers are poor, receive minimal benefits, and are always on the move to the next project because solar fields require little maintenance once they’re set up.”)

¹² *Putting California on the High Road: A Jobs and Climate Action Plan for 2030*, Carol Zabin, et. al, UC Berkeley Labor Center (2021), <https://laborcenter.berkeley.edu/wp-content/uploads/2020/09/Putting-California-on-the-High-Road.pdf>. (Emphasis added).

D. Craft-specific training and hiring adds value for project owners

Project owners have recognized the value in using qualified electrical contractors and highly skilled and trained electricians on all types of renewable energy projects including wind, solar, hydropower, biomass, and geothermal since they arrived on the market.

NECA and IBEW's experience building utility-scale solar projects have shown the value of using a workforce comprised primarily, if not exclusively, of electricians to build solar projects, which primarily involve electrical construction work. For example, the Dunns Bridge Solar Project in Wheatfield, Indiana is currently under construction, with NECA contractor Cupertino Electric employing an all-IBEW 250-member workforce for the first phase of construction. When completed, the \$2.4 million project will produce 700 megawatts of electricity and span approximately 4,900 acres. Similarly, the Atkina Solar Project outside Houston, Texas selected NECA contractor Rosendin as the electrical contractor. The project will use an all-IBEW 500-member workforce to build 500 megawatts over 4,000 acres to supply power to over 100,000 homes.

In the offshore wind sector, where construction work is more diversified across the various construction crafts, developers have also recognized the value of adhering to traditional craft classifications through the use of project labor agreements ("PLAs"). The Block Island Wind Farm ("BIWF"), which opened in 2016, was the first offshore wind farm built off the United States' coast. Deepwater Wind, its owner, determined at the outset to enter into PLAs with the Rhode Island Building and Construction Trades Council ("RIBCTC") for construction of both an onshore turbine fabrication facility and the offshore wind farm. Jeffrey Grybowski, who served as Deepwater Wind's CEO during BIWF's planning and construction, explained the company's reasons for entering into the PLA in a letter touting the project's success:

As the BIWF was the first commercial offshore wind farm in the United States, there was no precedent to follow in constructing this project. Its challenges were unique and complex. It was therefore very important that we used the highest skilled craftsmen and women in the industry. Moreover, since our project was being completed in the Atlantic Ocean over 15 miles from the mainland coast, safety of the workforce was paramount.

After a thorough analysis of the marketplace, we decided that the best way to safely and timely complete this project was to utilize local union craftsmen and women. As a consequence, we implemented a PLA [which . . .] contractually bound the local trade unions to provide skilled labor in a timely and non-discriminatory basis; had mechanisms to expedite any potential disputes, and avoid work stoppages; and, included provisions that synchronize work schedules that overrode inconsistent or inefficient provisions of the trades' collective bargaining agreements.

These foregoing benefits of our PLAs ensured the cost, schedule, and time certainty challenges of our project were met. Moreover, it was essential to having our project completed safely, and within budget. Accordingly, these PLAs were essential tools in ensuring that Rhode Island had the first commercial offshore wind farm in the United States.¹³

IBEW members will also perform onshore transmission interconnect work under a PLA for the first offshore wind farm in federal waters, Dominion Energy's two-turbine Coastal Virginia Offshore Wind

¹³ January 31, 2020, Letter from Jeffrey Grybowski to Michael F. Sabitoni, President, Rhode Island Building & Construction Trades Council (Attachment to Comments filed by North America's Building Trades Unions [NABTU] on the Bureau of Ocean Energy Management's proposed sale notice for commercial wind energy lease in the New York Bight, <https://www.regulations.gov/comment/BOEM-2021-0033-0074>.)

project. The project, which is scheduled to include more than 200 turbines by 2026, will deliver up to 8.8 *million* megawatts per year of clean, renewable energy to the grid, powering up to 660,000 homes.

III. 1 MW Exception

In addition to using DOL's existing framework to implement the prevailing wage and apprenticeship requirements in the IRA, NECA and IBEW urge the Treasury Department to adopt NABTU's suggested guidance regarding the 1 megawatt exception to these requirements that is available to certain programs under the IRA.¹⁴ NABTU's guidance on the 1 megawatt exception is important to clarifying how the exception can be obtained and will prevent taxpayers from dividing up projects in an effort to evade the IRA's statutory labor standards requirements.

IV. Conclusion

The prevailing wage and apprenticeship requirements under the Inflation Reduction Act are critical to developing the necessary pipeline of skilled construction workers necessary to address the climate crisis. It is therefore imperative that the Treasury Department expedites publication of guidance on these requirements and correctly implements them using the long-established, well-developed standards under the Davis-Bacon Act to ensure safety and return on taxpayer investment.

¹⁴ See, e.g., 26 U.S.C. §§ 45(b)(6)(B)(i), 48(a)(9)(B)(i).