



IBEW POLICY BRIEF

Chapter 9: Labor Standards on Federal Energy Tax Credits

Foundational to IBEW's advocacy efforts is the inclusion of labor standards on all federally-assisted construction projects. IBEW's advocacy efforts for labor standards include any federal incentives or assistance for infrastructure projects. A core provision of this policy is that all recipient contractors and subcontractors must pay, at the very least, Davis-Bacon Act prevailing wage rates. The IBEW's list of federal investments that must have labor standards includes, but is not limited to:

- Tax Credits
- Loans
- Bonds
- Grants
- Direct Federal spending

Congress uses federal tax credits and deductions as one of its main tools to drive the construction of clean energy infrastructure to combat climate change. Renewable energy tax credits are most often within Congress' priorities with tax law. The IBEW supports the following labor standards on all legislation that provides federal financial assistance or incentives for energy infrastructure:

- Prevailing wage requirements
- Registered apprenticeship utilization requirements
- Union neutrality agreements
- The application of the ABC test to combat worker misclassification
- Local hire provisions

Recent Developments

The clean energy tax credits under the Inflation Reduction Act of 2022 include prevailing wage and apprenticeship utilization requirements are a major legislative win for the IBEW. As a result, the Government Affairs department will now focus on ensuring agencies implement and enforce the labor standards appropriately on clean energy tax credits.



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The Inflation Reduction Act of 2022

The Inflation Reduction Act includes critical strong labor protections in over \$300 billion in tax credits for clean energy infrastructure projects. Such protections will guarantee that these projects will create middle-class, family-sustaining career opportunities across America.

Labor Standards in the Inflation Reduction Act of 2022

The Inflation Reduction Act modifies several existing clean energy and energy efficiency tax incentives. This update to these tax incentives provides for two tax credit values: a base rate and an alternative or bonus rate. The bonus rate equals five times the base rate. It applies to projects that meet prevailing wage and apprenticeship utilization requirements. A taxpayer must satisfy both criteria to receive the bonus credit rate. Otherwise, they may claim the appropriate credit at the base rate.

The prevailing wage requirements require that the taxpayer ensure laborers and mechanics are paid prevailing wages during the construction of a qualifying project. In addition, in some cases, the alteration and repair of the project for a defined period after the owner places it into service also require prevailing wage rates. The U.S. department of labor publishes the most recent prevailing wage rates for a locality on [SAM.gov](https://sam.gov) (see chapter resources.)

The apprenticeship requirements require that the taxpayer ensure that qualified apprentices perform no less than the applicable percentage of the total labor hours of the project. The appropriate percentage for this requirement is 10 percent for projects beginning in 2022. This rate increased to 12.5 percent in 2023 and 15 percent after that. In addition, the taxpayer and any contractor or subcontractor that employs four or more individuals to perform construction on a qualifying project must employ at least one qualified apprentice.

The Inflation Reduction Act includes stringent penalties for noncompliance with the wage and apprenticeship requirements in the Inflation Reduction Act; these penalties include:

- Prevailing wage violation penalties:
 - Suppose the taxpayer fails to satisfy the requirements, they may cure the discrepancy (and still claim credits at the bonus rate). They can remedy their mistake by compensating each worker the difference between actual wages paid and the prevailing wage, plus interest, and paying a \$5,000 penalty per worker paid below the prevailing wage during the taxable year.
 - Suppose the discrepancy is the product of "intentional disregard," the taxpayer must pay each worker three (3) times the difference in wages, and Treasury increases the penalty to \$10,000 per worker. Once the Treasury determines a discrepancy occurred, the taxpayer must make payments to the affected employees and the Treasury within 180 days of the determination to remain in compliance.

- Apprenticeship utilization violation penalties:
 - Suppose a taxpayer fails to satisfy the apprenticeship utilization requirements. In that case, they may cure the discrepancy by paying the penalty to the Treasury equal to \$50 multiplied by the total labor hours for which the conditions are not satisfied.
 - This penalty is increased to \$500 per hour if the discrepancy is the product of "intentional disregard" for the requirements
- EXCEPTION to apprenticeship requirements:
 - Taxpayers who have made a "good faith effort" to hire qualified apprentices for project construction are deemed to satisfy the requirement and are eligible for the bonus rate. A "good faith effort" is defined as requesting apprentices and receiving a denial or not receiving a response within five (5) business days.

Renewable Energy Tax Credits in the Inflation Reduction Act

Examples of renewable energy tax incentives included in the Inflation Reduction Act include:

- Section 13101: This provision provides for an extension of 3 years and modification of the Production Tax Credit (PTC) through December 31, 2024
 - The provision re-establishes the Solar PTC. Full credit availability is subject to Labor Standards; an additional 10 percent bump for domestic content. 10 percent increased credit for property placed in an energy community. Energy community means: a) a brownfield site, b) an area with significant employment in coal, oil or natural gas and an unemployment rate at or above the national average, and c) a coal mine closed after 1999 and a coal plant retired after 2009.
- Section 13104: This provision provides an extension and Modification of Credit for Carbon Oxide Sequestration, referred to as Sec. 45Q
 - This credit has a beginning construction deadline of December 31, 2032. Direct Air Capture (DAC) facilities must capture at least 1,000 metric tons of carbon oxide. Credits are modified to include a base credit of \$26/ton if carbon oxide is utilized or \$36/ton if sequestered. If the employer meets labor standards, it increases to \$130/ton and \$180/ton. Electricity-generating facilities must capture at least 18,750 metric tons of carbon oxide. The credit is modified to include a base credit of \$12/ton if carbon oxide is utilized or \$17/ton if sequestered. The credit increases to \$60/ton and \$85/ton if the employer meets labor standards. The credit period is 12 years.
- Section 13105: This provision creates a Nuclear Production Tax Credit referred to as Sec. 45U
 - The base credit rate of 0.3 cents/KWh and a bonus credit rate of 1.5 cents/kWh. Credit is reduced as the sale price of such electricity increases, with a complete phase-out once the price reaches \$43.75/MWh. In addition, Congress clarified the treatment of State Zero Emissions credits and how the agency counts the credit toward calculating the nuclear PTC. Effective January 1, 2024, and expires December 31, 2032.

- Section 13204: Provides for creating a Clean Hydrogen Production Tax Credit, referred to as Sec. 45V
 - This credit is equal to the applicable percentage of the base rate of \$0.60 or the bonus rate of \$3.00, indexed to inflation, multiplied by the volume (in kilograms) of clean hydrogen. Congress bases the applicable percentage on the "lifecycle greenhouse gas emissions rate." The credit is scaled based on greenhouse gas emissions, with complete credit phase out at or above 4 kg of CO₂e per kg of hydrogen. It can be used or sold to be eligible for credit. Includes the optionality to elect for the ITC if the asset meets specific requirements. Effective for hydrogen produced after December 31, 2022, at a clean hydrogen facility constructed before January 1, 2033.
- Section 13303: This provision expands the Energy Efficient Commercial Buildings Deduction, referred to as Sec. 179D
 - It increases the maximum deduction and changes it from a lifetime to a 3-year cap. Congress has updated the eligibility requirements for the credit. Now the property must reduce associated energy costs by 25 percent or more compared to a building that meets the ASHRAE standards as of 4 years before the owner places the installation into service. Increased deduction based on meeting Labor Standards.

Chapter Resources

Hyperlink	URL	QR
Labor Standards on Federal Credits Resources:		
Wage Determinations	https://sam.gov/content/wage-determinations	

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