

Eastern Seaboard Apprenticeship Conference – ESAC 2022

# Apprenticeship & Training under the Biden Administration

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# Overview

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- Biden Administration - Most Pro Apprenticeship Ever
- ERISA & IRC inhibit the formation & efficient administration of RAPS – call for collective action
- Inflation Reduction Act (private investment) vs. Bipartisan Infrastructure Investment & Jobs Act (public “investment”)

# Biden Administration Regulatory Initiatives

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- Form T-1 Rescission
- IRAP Rescission
- Davis Bacon Proposed Regulations
- Pre-apprenticeship ICR
- ESG Investing
- Inflation Reduction Act Guidance – Apprenticeship & Prevailing Wage
- Grant Application Criteria – Multiple Agencies

# Multiemployer RAP Basic Legal Framework

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- DOL ETA 29 CFR 29 & 29 CFR 30 (Quality Pre-Apprenticeship?)
- Taft-Hartley Act – Equal Representation, Trust & Audit
- DOL EBSA – ERISA Prudence, Sole & Exclusive Benefit, Reasonable & Necessary Expenses, Compliance with Plan Documents & Prohibited Transactions
- IRS EO – Exempt Status as §501(c)(5) or §501(c)(3) & Excess Benefit Transactions under §4958

## Next Steps – Collective Action Necessary DOL EBSA Should Remove Apprenticeship Plan Barriers

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- Paying for DE&I recruitment, pre-apprenticeship, and increased plan administration costs raise fiduciary and plan asset risks for apprenticeship and training funds under ERISA
- ERISA prohibited transactions & exclusive benefit rules inhibit coordination among sponsoring employers, unions, and target audiences – PTCE 78-6
- IRS treatment of apprenticeship funds should be given the same respect as colleges – payments of stipends, support services, and recruitment raise tax issues

# Inflation Reduction Act - A New Private Investment Tax Credit Regime

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- The IRA modified, expanded, or enacted a number of new tax credits intended to stimulate the production of renewable or alternative energy sources.
- Under this new tax credit regime, most tax credits provide a “two-tiered” tax credit:
  - A base tax credit is provided to all taxpayers.
  - An enhanced or “bonus” tax credit, typically equal to 5X the base tax credit, is provided to taxpayers that meet certain Prevailing Wage & Apprenticeship Requirements.

# Eligible Tax Credits – Construction & Production

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- **Electric Vehicles & Chargers**
- **Solar**
- **Wind (Onshore & Offshore)**
- **Clean Energy Storage**
- **Nuclear**
- **Hydrogen**
- **Geothermal**
- **Biomass**
- **Hydropower**
- **Energy Efficient Commercial Building (Deduction not Tax Credit)**

# What is a Tax Credit?

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- A tax credit is a credit that directly reduces a taxpayer's liability on a dollar-for-dollar basis.
- Example:
  - A taxpayer has gross income of \$100, an effective tax rate of 30%, and a tax liability of \$30. If the taxpayer receives a tax credit of \$10, the taxpayer can reduce his/her tax liability to \$20.
  - Compare this to a tax deduction. If the taxpayer receives a \$10 tax deduction, he/she reduces his/her gross income to \$90, and at an effective tax rate of 30% owes \$27 in tax. Thus, a \$10 deduction only reduces a taxpayer's tax liability by \$3.
  - A tax credit is more valuable than a tax deduction.



# Inflation Reduction Act

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- Apprenticeship Utilization
- Prevailing Wage
- Direct Pay to Tax Exempt Entities – Apprenticeship & *Pension*
- Credit Transfers – ROIs & Partnership Tax
- Grant & Tax Credit Program Award Criteria Preferences (e.g., Commitment to DE&I )

# Prevailing Wage Requirements

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- The IRA set forth certain “Prevailing Wage” requirements in order to receive the enhanced or “bonus” tax credits
  - Any laborers and mechanics employed by the taxpayer (or any contractor or subcontractor) in the construction, alteration, or repair of qualified equipment or facilities must be paid the prevailing wage
  - Refer to Davis Bacon Requirements – SAM.GOV (DOL FAQs)
  - Employers can request Wage Determinations from DOL Wage & Hour [IRAPrevailingwage@dol.gov](mailto:IRAPrevailingwage@dol.gov)

# Alternative Satisfaction of Prevailing Wage Requirements

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- If a taxpayer fails to satisfy the Prevailing Wage requirements, they will be deemed to satisfy the requirements if:
  - The taxpayer pays the laborers and mechanics the difference between what they were paid and what they were required to be paid (along with an additional interest payment); and
  - The taxpayer makes an additional penalty payment of \$5,000 (or \$10,000 in the case of intentional disregard of the rules) times the number of laborers and mechanics paid less than the Prevailing Wage

# Minimum Required *Registered* Apprentice Utilization Percentage

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Minimum Required Apprentice Utilization Percentage (“MRAUP”) must be met for all Construction, Alteration, or Repair on “Qualified Projects”:

- $MRAUP = TQAH / TLH$
- Total Qualified Apprentice Hours = TQAH
- Total Labor Hours = TLH

MRAUP of 12.5% for construction beginning 1/1/2023 - 12/31/2023

MRAUP of 15% for construction beginning after 12/31/2023

# Ratio & Participation Requirements

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- Apprentice must be participating in a Registered Program (29 CFR 29 & 30) and employer must agree to established Standards and requirements of RAP
- Applies to taxpayers (owners) and all of its contractors and subcontractors (expect contract provisions requiring compliance)
- Subject to applicable Journey Worker / Apprentice Ratios of RAP
- If four or more individuals are employed to perform the construction, alteration, or repair of a Qualified Facility then at least one apprentice must be employed to perform such work

# Alternative Satisfaction of Apprenticeship Requirements – *Penalty & Good Faith Effort*

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- If taxpayers do not meet the Apprenticeship Requirements, they may satisfy the requirements if they make a “Good Faith Effort”
  - **Good Faith Effort.** The “Good Faith Effort” requirement is satisfied if a taxpayer has requested **registered** apprentices, and:
    - The request was denied, or
    - The registered apprenticeship program fails to respond within 5 business days after the day the request was received.
    - Request must be made in accordance with “usual & customary business practices for registered apprenticeship programs in a particular industry”

# Alternative Satisfaction of Apprenticeship Requirements – Penalty & Good Faith Effort

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- If taxpayers do not meet the Apprenticeship Requirements, they may satisfy the requirements if they pay a penalty or make a “Good Faith Effort” to satisfy the requirements.
  - **Penalty.** The applicable penalty is equal to \$50 (or \$500 in the case of intentional disregard of the requirements) times the total labor hours for which the Apprenticeship Requirements were not satisfied.

# Comment Letter Requests Not Included in the Notice

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- Although Notice 2022-61 provided helpful guidance, the following guidance we requested was not included:
  - Substantiation & Monitoring – Certifications
  - Anti-Abuse restrictions
  - Contributions to *Trust Funds*
  - Prior record of operation or graduation rates
  - Proposed contractual provisions (and responsibility of taxpayer or assignee)



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