

1SUPPORTING STATEMENT
Internal Revenue Service
Increased Credit or Deduction Amounts for Satisfying Certain Prevailing
Wage and Registered Apprenticeship Requirements
TD 9998 (REG-100908-23)
OMB Control Number 1545-2315

1. CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION

On August 16, 2022, Public Law 117-169, 136 Stat. 1818, commonly referred to as the Inflation Reduction Act of 2022 (IRA), added sections 45U, 45V, 45Y, 45Z, and 48E to the Internal Revenue Code (Code) and amended existing Code sections 30C, 45, 45L, 45Q, 48, 48C, and 179D. These Code sections, either newly enacted or as amended, are effective for tax years beginning after December 31, 2022.

Among other things, each of these Code sections allow for an increased credit or deduction amount if the taxpayer places in service a qualified facility, project, property, or equipment. As described in the Code sections listed above, a qualified facility, project, property, or equipment is one that either has a net output of less than one megawatt (or capacity under section 48E), or the construction (or installation under section 179D) of which began prior to January 29, 2023, or the construction, alteration, or repair of which was performed in accordance with certain prevailing wage and apprenticeship requirements. In the case of a qualified facility, project, property, or equipment placed in service by the taxpayer, the base amount of the tax credit or deduction allowed by statute is generally multiplied by 5.

A facility, project, property, or equipment which has a beginning of construction (or installation under section 179D) date on or after January 29, 2023, or with a net output (or capacity under section 48E) of greater than one megawatt, may qualify for the increased amount only if the taxpayer, contractor, or subcontractor has paid all laborers and mechanics employed for the construction, alteration, or repair prevailing wages in accordance with the Davis-Bacon Act (40 U.S.C. § 3141 et. seq.). Additionally, the taxpayer must ensure that apprentices are hired to perform the applicable percentage of labor hours in the construction, alteration, or repair of the facility, project, property, or equipment; the taxpayer must ensure compliance with specified apprentice-to-journeyworker ratios; and the taxpayer, contractor, or subcontractor that employs 4 or more individuals in the construction, alteration, or repair of the facility must hire at least one qualified apprentice. The apprenticeship requirements do not apply to sections 45L and 45U.

The Treasury Department and the IRS have decided that supporting documentation must be provided by the taxpayer at the time of filing its tax return in order to claim the increased credit or deduction amount. Section 1.45-12(a) of Treasury Decision (TD) 9998 provides that the increased credit must be claimed in such form and manner as the

IRS prescribes in forms, instructions, and guidance. This information required will include the location and type of the facility, project, property, or equipment, the applicable prevailing wage determinations for the type and location of the facility or project, the aggregate wages paid and hours worked by laborers and mechanics on the facility or project, the aggregate wages paid and hours worked by qualified apprentices on the facility, project, property, or equipment, the total hours worked for the construction, alteration, or repair, and the total credit or deduction claimed by the taxpayer.

Section 1.45-12(a) through (e) of TD 9886 sets forth the required recordkeeping for taxpayers who claim an increased credit or deduction on a return are required to maintain and preserve sufficient records to establish that all laborers and mechanics were paid wages at the applicable prevailing wage rates and that the applicable percentage of labor hours was performed by qualified apprentices. The taxpayers are required to maintain records concerning the any correction and penalty payments made with respect to the prevailing wage requirements. Taxpayers are required to maintain records concerning requests made to registered apprenticeship programs in order to qualify for the good faith effort exception. Taxpayers also must retain records related to any complaints received concerning failures to pay applicable prevailing rates or to use apprentices.

The collection will also include third party disclosures. Section 1.45-7(c)(3)(iii) of TD 9998 provides that the facts and circumstances considered for purposes of a finding of intentional disregard of the prevailing wage requirements includes whether the taxpayer notified laborers and mechanics working on a facility, project, property, or equipment of applicable wage determinations for the type and location of the construction, whether the laborers and mechanics were provided written notice of rights conferred by section 7623(d), and whether laborers and mechanics were provided paystubs reflecting amounts of wages paid. Section 1.45-8(f)(1) of TD 9998 provides that taxpayers seeking to comply with the apprenticeship requirement are required to request the dispatch of apprentices from a registered apprenticeship program. The taxpayer's request are required to include proposed dates of employment, the labor classification of apprentices needed, the location of the work to be performed, the number of apprentices and hours needed, and the name and contact information of the taxpayer, contractor, or subcontractor making the request. Section 1.45-8(f)(2) of TD 9998 also provides that the facts and circumstances considered for purposes of a finding of intentional disregard of the apprenticeship requirements include whether the taxpayer contacted the Department of Labor's Office of Apprenticeship or relevant State apprenticeship agency for assistance in locating a registered apprenticeship program.

The likely respondents are individual, business, trust and estate filers, and tax-exempt organizations.

2. **USE OF DATA**

The information collected at the time of filing will be used by the IRS for validation of the increased portion of the credit or deduction amounts claimed by a taxpayer on a return.

3. **USE OF IMPROVED INFORMATION TECHNOLOGY TO REDUCE BURDEN**

Electronic filing is not appropriate for the third-party disclosure requirement of the collection. The reporting information submitted by the taxpayer will be attached to the tax return as a statement. Taxpayers will be able to attach the statement to a return that is filed electronically. The IRS plans to develop forms to submit the reporting information by electronic filing. It is not currently known how long the development of such forms will take.

4. **EFFORTS TO IDENTIFY DUPLICATION**

The information obtained through this collection is unique and is not already available for use or adaptation from another source.

5. **METHODS TO MINIMIZE BURDEN ON SMALL BUSINESSES OR OTHER SMALL ENTITIES**

The IRS proactively works with both internal and external stakeholders to minimize the burden on small businesses, while maintaining tax compliance. The IRS also seeks input regarding the burden estimates from the public via notices and tax product instructions. The impact to small businesses is not currently known based on available information.

6. **CONSEQUENCES OF LESS FREQUENT COLLECTION ON FEDERAL PROGRAMS OR POLICY ACTIVITIES**

Consequences of less frequent collection on federal programs or policy activities would consist of decreased amount of taxes collected by the IRS, inaccurate and untimely filing of tax returns, and an increase in tax violations. A less frequent collection could prevent taxpayers from being able to claim the increased credit and deduction amounts available under Code sections 30C, 45, 45L, 45Q, 45U, 45V, 45Y, 45Z, 48, 48C, 48E, and 179D.

7. **SPECIAL CIRCUMSTANCES REQUIRING DATA COLLECTION TO BE INCONSISTENT WITH GUIDELINES IN 5 CFR 1320.5(d)(2)**

There are no special circumstances requiring data collection to be inconsistent with Guidelines in 5 CFR 1320.5(d)(2).

8. CONSULTATION WITH INDIVIDUALS OUTSIDE OF THE AGENCY ON AVAILABILITY OF DATA, FREQUENCY OF COLLECTION, CLARITY OF INSTRUCTIONS AND FORMS, AND DATA ELEMENTS

On October 24, 2022, the IRS published Notice 2022-51 (2022-43 I.R.B. 331), requesting public comments on questions arising under the new prevailing wage and apprenticeship provisions. A notice of proposed rulemaking (NPRM) was published in the Federal Register soliciting comments on August 30, 2023 (88 FR 60018). On June 25, 2024, the Treasury Department and the IRS published Treasury Decision 9998 finalizing the prevailing wage and apprenticeship rules.

In response to the NPRM, one commenter suggested the Treasury Department and the IRS provide additional clarification regarding the estimated time for filers to find and display the prevailing wage rates and to request qualified apprentices from registered apprenticeship programs. One commenter suggested that the estimates in the NPRM failed to consider additional actions related to complying with PWA rules, such as tracking the payment of prevailing wages and usage of qualified apprentices. Commenters stated that it may take some taxpayers more than two hours annually to find and display the prevailing wage rates and to request qualified apprentices from registered apprenticeship programs. Another commenter expressed confusion over the difference in the proposed compliance time required by trusts and estate in comparison to all other filers.

TD 9998 clarifies that the estimated annual burden with respect to the reporting and recordkeeping requirements of the final regulations for all filers is 40 hours annually. The preamble to the NPRM estimated these recordkeeping and reporting obligations necessary for compliance with the PWA Requirements will take 40 hours annually. The TD explains that this estimate was submitted as part of the application for a new OMB control number with respect to trust and estate filers and will also be submitted to OMB as part of the annual approval process with respect to the OMB control numbers that already exist for other filers. This estimate includes time necessary for taxpayers to become familiar with the obligations set forth in these regulations. The TD also explains that much of the data taxpayers will be required to maintain, such as the applicable prevailing wage rates, is readily available from DOL websites. Additionally, the recordkeeping requirements with respect to amounts paid to laborers and mechanics are similar to existing requirements imposed by other law. The Treasury Department and the IRS retained the estimate of 40 hours.

Commenters to the NPRM also suggested that the two hours estimated for all filers with respect to the third-party disclosures did not properly account for the expected burdens. The Treasury Department and the IRS agreed with this comment and revised the estimate to account for the burden of complying with the Apprenticeship Requirements. The final regulations require taxpayers to request qualified apprentices from a registered apprenticeship program with an area of operation that includes the location of the facility

and may require taxpayers to submit additional requests on an annual basis if requests have been denied. The final regulations will require taxpayers to review the standards and requirements of the registered apprenticeship program as part of making a request, which will likely take more than the two hours estimated as part of the preamble to the NPRM. Accordingly, the Treasury Department and the IRS have determined that the estimated burden to comply with the third-party disclosures is four hours instead of two hours.

Some commenters requested more frequent reporting of information to the IRS, including submission of weekly or monthly certified payroll records. These comments were not adopted as the submission of records prior to a return being filed that claims the increased credit or deduction amount would not further tax administration.

Some commenters expressed concern regarding a taxpayer's obligation to maintain and preserve records of contractors and subcontractors and that the transfer of such records may raise privacy and competitive concerns. In response to these comments, TD 9998 provides taxpayers with flexibility in satisfying the recordkeeping requirements. To address privacy concerns, the final regulations amend the proposed rule to clarify that records need only contain the last four digits of a social security number. The final regulations also provide three alternatives that taxpayers may use to satisfy the recordkeeping requirements to assist taxpayers in satisfying the requirements while also complying with other applicable law. Under the final regulations: (i) taxpayers may collect and physically retain redacted records from every relevant contractor and subcontractor; (ii) taxpayers may use a third-party vendor to collect and physically retain records from every relevant contractor and subcontractor on behalf of the taxpayer, and the records may have PII redacted to comply with applicable privacy laws; or (iii) taxpayers, contractors, and subcontractors may physically retain unredacted records for their own employees.

9. EXPLANATION OF DECISION TO PROVIDE ANY PAYMENT OR GIFT TO RESPONDENTS

No payment or gift has been provided to any respondents.

10. ASSURANCE OF CONFIDENTIALITY OF RESPONSES

Generally, tax returns and tax return information are confidential as required by 26 USC 6103.

11. JUSTIFICATION OF SENSITIVE QUESTIONS

A privacy impact assessment (PIA) has been conducted for information collected under this request as part of the "Business Master File (BMF)" system and a Privacy Act System of Records notice (SORN) has been issued for this system under IRS 24.046-

Customer Account Data Engine Business Master File. The IRS PIAs can be found at <https://www.irs.gov/uac/Privacy-Impact-Assessments-PIA>.

Title 26 USC 6109 requires inclusion of identifying numbers in returns, statements, or other documents for securing proper identification of persons required to make such returns, statements, or documents and is the authority for social security numbers (SSNs) in IRS systems.

12. ESTIMATED BURDEN OF INFORMATION COLLECTION

The proposed regulations would set forth procedures for requesting supplemental wage determinations and wage rates for additional classifications from the Department of Labor (DOL). This collection is approved by the Office of Management and Budget (OMB) under the DOL's Control Number 1235-0034. The proposed regulations do not alter any of the DOL collections approved under this control number.

The proposed regulations would include requirements to keep sufficient records, as detailed in §1.45-12, to demonstrate that the prevailing wage and apprenticeship requirements have been met or that an exception applies. For purposes of the PRA, the recordkeeping requirements of proposed §1.45-12 are considered general tax records. These general tax records are approved annually under 1545-0074 for individuals/sole proprietors, 1545-0123 for business entities, and 1545-0047 for tax-exempt organizations. IRS will seek OMB approval under a new OMB Control number (1545-NEW) for the burden for trust and estate filers.

The proposed regulations would include reporting requirements that taxpayers provide a statement with the tax return that claims an increased credit or deduction amount that includes aggregate information as detailed in §1.45-12. The Treasury Department and the IRS may issue forms and instructions in future guidance for the purpose of meeting these reporting requirements. These reporting requirements will be covered under 1545-0074 for individuals/sole proprietors, 1545-0123 for business entities. IRS will solicit public comments on this requirement and the associated burden for trusts and estates filers as reflected below; and will seek OMB approval under a new OMB Control Number (1545-NEW) for trust and estate filers.

The proposed regulations would include third-party disclosures that include notifying laborers and mechanics of the applicable prevailing wage rates as detailed in §1.45-7. The proposed regulations would also include third party disclosures for taxpayers requesting the dispatch of apprentices from a registered apprenticeship program as detailed in §1.45-8. IRS will solicit public comment on this requirement and associated burden for all filers reflected below; and will seek OMB approval under a new OMB Control Number (1545-NEW) for all filers for the disclosure requirement.

Burden associated with claiming an increased credit are identified on the attached burden

table and the total burden identified is:

IRC	Description	# Respondents	# Responses Per Respondent	Total Annual Responses	Hours Per Response	Total Burden
§1.45-12	compile the data needed/keep records for the statement attached to return	70	1	70	40 hours	2,800
§1.45-7 and 1.45-8	Third party reporting: display the prevailing wages rates and to request the dispatch of apprentices	70,000	1	70,000	4 hours	280,000
Total		70,070		70,070		282,800

13. ESTIMATED TOTAL ANNUAL COST BURDEN TO RESPONDENTS

This information collection will be included in the consolidated OMB submission for Estate and Trust returns currently being developed. IRS is working on the methodology for evaluating estate and trust return burden and cost; and will update the cost and burden estimates as part of the consolidation. The annual cost burden for individual filers and business filers will be included in 1545-0074 and 1545-0123, respectively.

14. ESTIMATED ANNUALIZED COST TO THE FEDERAL GOVERNMENT

The government cost will be accounted for in 1545-0074 for individual filer reporting, and 1545-0123 for business filer reporting. The government cost for trust/estate filer reporting is expected to be minimal. There will be no government cost for the third-party disclosure requirements for all filers.

15. REASONS FOR CHANGE IN BURDEN

These are new collections due to a new statute, the Inflation Reduction Act of 2022 (Public Law 117-169).

16. PLANS FOR TABULATION, STATISTICAL ANALYSIS AND PUBLICATION

There are no plans for tabulation, statistical analysis, and publication.

17. REASONS WHY DISPLAYING THE OMB EXPIRATION DATE IS INAPPROPRIATE

IRS believes that displaying the OMB expiration date is inappropriate because it could cause confusion by leading taxpayers to believe that the regulation sunsets as of the expiration date. Taxpayers are not likely to be aware that the IRS intends to request renewal of the OMB approval and obtain a new expiration date before the old one expires.

18. EXCEPTIONS TO THE CERTIFICATION STATEMENT

There are no exceptions to the certification statement.

Note: The following paragraph applies to all the collections of information in this submission:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained if their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.