



January 13, 2023

VIA ELECTRONIC SUBMISSION

The Honorable Janet L. Yellen
Secretary
U.S. Department of the Treasury
1500 Pennsylvania Ave NW
Washington, DC 20220

William M. Paul
Principal Deputy Chief Counsel and Deputy Chief Counsel (Technical)
Internal Revenue Service
1111 Constitution Avenue NW
Washington, DC 20224

Re: Prevailing Wage and Apprenticeship Initial Guidance Under Section 45(b)(6)(B)(ii) and Other Substantially Similar Provisions, 87 Fed. Reg. 73580 (Nov. 30, 2022).

Dear Secretary Yellen and Deputy Chief Counsel Paul:

On November 30, 2022, the Internal Revenue Service (IRS) published a notice of initial guidance (Notice 2022-61 or Notice)¹ regarding prevailing wage and apprenticeship (PW&A) requirements that generally apply to certain energy tax incentives found in the Internal Revenue Code (Code),² as amended by the Inflation Reduction Act of 2022 (IRA).³ Through publication of the Notice, the IRS used its delegated authority to determine that the PW&A requirements will come into effect for any qualified facility, property, project, or equipment (facility) where construction or installation (construction) begins on or after January 29, 2023.⁴ This letter

¹ Notice 2022-61, *Prevailing Wage and Apprenticeship Initial Guidance Under Section 45(b)(6)(B)(ii) and Other Substantially Similar Provisions*, 87 Fed. Reg. 73580 (Nov. 30, 2022).

² Internal Revenue Code (I.R.C.), Title 26 U.S.C., as amended.

³ Inflation Reduction Act of 2022, Pub. L. 117-169, 136 Stat. 1818 (August 16, 2022).

⁴ 87 Fed. Reg. 73580. On December 7, 2022, the IRS issued a corrective notice changing the 60-day compliance date found in the guidance publication from January 30, 2023, to January 29, 2023. *Notice 2022-61, Prevailing Wage and Apprenticeship Initial Guidance Under Section 45(b)(6)(B)(ii) and Other Substantially Similar Provisions; Correction*, 87 Fed. Reg. 75141 (Dec. 7, 2022).

constitutes the Office of Advocacy’s (Advocacy) comments on the initial guidance found in the Notice.

Advocacy is concerned that the PW&A requirements detailed in the Notice will have a significant negative economic impact on small businesses. Small business representatives in the construction industry have told Advocacy that attaching federal labor requirements to energy tax incentives will discourage small firms from participating in a growing clean energy market. Advocacy’s most recent data shows that 99.8% of all construction industry employers are small businesses and over 80% of construction workers are employed by small businesses.⁵ The smaller the business, the less likely they are to have the time or resources to research and comply with the PW&A requirements by January 29, 2023. Any decline in small business participation may unintentionally impede the goals of the IRA by causing delays and increasing the cost of clean energy projects.

Although we recognize that PW&A requirements are statutory, the disproportionate impact that those requirements will have on small businesses is exacerbated by IRS’s decision to issue informal guidance without an opportunity for public comment. The Notice states that the Department of the Treasury and IRS “anticipate issuing proposed regulations” on the issue.⁶ It is unclear, however, when any notice of proposed rulemaking (NPRM) will be published. In the interim, small businesses will be expected to plan for and comply with the informal guidance found in Notice 2022-61.

On October 5, 2022, IRS issued a previous notice requesting information from industry stakeholders about the IRA’s PW&A provisions (Notice 2022-51).⁷ The agency received a tremendous response to that request with 370 comments to date.⁸ Many of the comments were from small businesses and trade groups representing small business interests.⁹ It is unclear why, after creating an opportunity to engage with stakeholder comments in a detailed regulation, IRS decided to move forward with incomplete guidance issued through an informal notice.

Moreover, it is Advocacy’s opinion that Notice 2022-61 constitutes a legislative rulemaking that should have undergone the Administrative Procedure Act’s notice-and-comment procedures.¹⁰ Through its release, IRS carried out an express delegation of Congressional authority and created new obligations for taxpayers, contractors, and subcontractors who work on clean energy projects.¹¹

⁵ See Office of Advocacy, 2022 Small Business Profile for the United States (Aug. 31, 2022), <https://cdn.advocacy.sba.gov/wp-content/uploads/2022/08/30121338/Small-Business-Economic-Profile-US.pdf>.

⁶ 87 Fed. Reg. 73580 at 73580.

⁷ Notice 2022-51, *Request for Comments on Prevailing Wage, Apprenticeship, Domestic Content, and Energy Communities Requirements Under the Act Commonly Known as the Inflation Reduction Act of 2022* (Oct. 5, 2022), <https://www.regulations.gov/document/IRS-2022-0025-0001> [last visited Jan. 12, 2023].

⁸ *Id.*

⁹ *Id.*

¹⁰ Administrative Procedure Act, 5 U.S.C. §§ 551-559, § 553.

¹¹ Pub. L. 117-169, Subtitle D – Energy Security, §§ 13101(f), 13102(k), 13104(d), 13105(a), 13204(a), 13303(a)(1), 13304(d), 13404(d), 13501(a), 13701(a), and 13704(a).

To resolve these issues, Advocacy recommends that IRS withdraw Notice 2022-61. We further recommend that IRS issue a detailed NPRM that engages with issues raised by industry stakeholders in response to Notice 2022-51. The NPRM should adequately assess the rulemaking's economic impact on small businesses. Given the complexity of the IRA's PW&A provisions and the jurisdictional overlap between IRS and the U.S. Department of Labor (DOL), Advocacy recommends a comment period of at least 90 days.

I. Background

A. The Office of Advocacy

Congress established the Office of Advocacy under Pub. L. 94-305 to represent the views of small entities before Federal agencies and Congress. Advocacy is an independent office within the U.S. Small Business Administration (SBA). As such, the views expressed by Advocacy do not necessarily reflect the views of SBA or the Administration.

B. The Inflation Reduction Act's Energy Tax Incentives

The IRA is a budget reconciliation bill signed into law on August 16, 2022.¹² The bill includes an investment of \$369 billion to help build a clean energy economy.¹³ That investment is primarily enacted through changes to the Code that extend and expand energy and technology tax incentives.¹⁴ Among other energy provisions, the bill extends the existing production tax credit for eligible energy technologies (PTC)¹⁵ and the investment tax credit (ITC) for facilities that begin construction before January 1, 2025.¹⁶ The bill also introduces new PTCs, including PTCs for nuclear power¹⁷ and clean hydrogen production.¹⁸

The IRA introduced a two-tier “base” rate and “increased” rate structure for the energy tax incentives found in Code sections 30C, 45, 45L, 45Q, 45U, 45V, 45Y, 45Z, 48, 48C, 48E, and 179D (energy tax incentives).¹⁹ The increased rate structure is generally worth five times the

¹² Pub. L. 117-169.

¹³ Department of the Treasury, Treasury Announces Guidance on Inflation Reduction Act's Strong Labor Protections (Nov. 29, 2022), <https://home.treasury.gov/news/press-releases/jy1128>.

¹⁴ Pub. L. 117-169, Subtitle D—Energy Security.

¹⁵ In addition to the existing eligible technologies, which include wind, hydropower, biomass, and municipal solid waste, the IRA reinstates the PTC for solar facilities and extends it for geothermal facilities. *See* Pub. L. 117-169 § 13101(c); I.R.C. § 45.

¹⁶ I.R.C. § 48.

¹⁷ Pub. L. 117-169 §13105.

¹⁸ *Id.* at §13204.

¹⁹ *See* Pub. L. 117-169 §§ 13101(f), 13102(k), 13104(d), 13105(a), 13204(a), 13303(a)(1), 13304(d), 13404(d), 13501(a), 13701(a), and 13704(a). The PW&A requirements apply to I.R.C. §§ 30C (alternative fuel vehicle refueling property tax credit), 45 (production tax credit), 45Q (carbon sequestration tax credit), 45V (clean hydrogen tax credit), 45Y (clean energy production tax credit), 45Z (clean fuel production tax credit), 48 (investment tax credit), 48C (advanced energy project tax credit), 48E (clean electricity investment tax credit), and the energy efficient commercial buildings deduction under section 179D. The prevailing wage requirements also apply to I.R.C. §§ 45L (energy efficiency home tax credit) and 45U (nuclear power production tax credit).

value of the base rate.²⁰ Generally, a facility will only qualify for the increased rate structure if it meets or is grandfathered into certain PW&A requirements.²¹

To qualify for the increased rate structure, the IRA’s PW&A provisions require that taxpayers ensure that:

- (1) any laborers and mechanics employed by the facility owner, contractors, or subcontractors are paid “wages at rates not less than the prevailing rates[.]”²²
- (2) a percentage of the total labor hours spent to construct the facility are performed by “qualified apprentices.”²³

The term “prevailing rates” refers to wages at rates for similar work in the location of the facility site “as most recently determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, [U.S.C.]”²⁴ This requirement applies not only during construction, but also for any repairs or alterations that may be needed during the applicable tax period.²⁵

Qualified apprentices are those who participate in a registered apprenticeship program that complies with certain federal requirements.²⁶ The percentage of labor hours is 10% for facilities beginning construction in 2022, 12.5% for facilities beginning construction in 2023, and 15% for facilities that begin construction after December 31, 2023.²⁷ These apprenticeship requirements are subject to any applicable requirements for apprentice-to-journeyworker ratios of the DOL or the applicable state apprenticeship agency.²⁸ Each facility owner, contractor, or subcontractor with four or more employees on a facility must employ at least one qualified apprentice.²⁹ The statute includes a good faith effort exception to the apprenticeship requirements if a taxpayer requests qualified apprentices from a registered apprenticeship program. The exception applies if that request is either denied, subject to certain limitations, or the program fails to respond to the taxpayer’s request within five business days of receipt.³⁰

Facilities may qualify for the increased energy tax incentive rates automatically without meeting the PW&A requirements under certain circumstances. Those circumstances include facilities that

²⁰*Id.*

²¹*Id.*

²² See e.g., Pub. L. 117-169 § 13101(f).

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ See I.R.C. 45(b)(8)(D)(ii).

begin construction prior to the date that is 60 days after guidance is published by the IRS with respect to the PW&A requirements (60-day rule).³¹

C. Notice 2022-61

On November 30, 2022, IRS published Notice 2022-61, which offers preliminary guidance on the PW&A provisions attached to the energy tax incentives. Due to the 60-day rule, the publication of the notice means that the PW&A requirements will generally apply to any facility where construction begins on or after January 29, 2023.³²

The Notice indicates that prevailing wage rates will be determined using prevailing wage information for the appropriate geographic area and work type published by the DOL on www.sam.gov, if it exists.³³ The Notice also clarifies that all persons receiving remuneration for services of the facility owner, contractor, or subcontractor are subject to the prevailing wage requirements, regardless of employee or independent contractor status.³⁴ The Notice further confirms that a sufficient percentage of such laborers must be enrolled in a registered apprenticeship program under the National Apprenticeship Act.³⁵ The Notice does not provide detailed information on compliance with the good faith effort exception to the registered apprenticeship requirements.³⁶

The Notice states that the applicable “begin construction” standard for the PW&A requirements will follow standards similar to pre-IRA tax credit stepdown and phaseout schedules as set forth in a series of IRS notices related to the PTC, ITC, and Code section 45Q carbon capture and sequestration credit.³⁷ Therefore, the Notice provides that construction “begins” through one of two methods:

- (1) The “Physical Work Test,” in which construction begins when physical work of a “significant nature” is performed.³⁸
- (2) The “Five Percent Safe Harbor,” which provides that construction has begun when a taxpayer has paid or incurred 5% of the total cost of a facility.³⁹

³¹ Projects with a maximum net output of less than 1 megawatt of electrical (as measured in alternating current) or thermal energy automatically also qualify for the increased rate. *See e.g.*, Pub. L. 117-169 § 13101(f).

³² Notice 2022-61, 87 Fed. Reg. 73580.

³³ If the appropriate prevailing wage is not available on the website, a taxpayer may email DOL at IRAprevailingwage@dol.gov for a determination of the prevailing wage, noting in the correspondence the facility, facility location, proposed labor classifications, proposed prevailing wages, job descriptions and duties, and any rationale for the proposed classifications, *See* Notice 2022-61 § 3.02, 87 Fed. Reg. 73580 at 73582.

³⁴ Notice 2022-61 § 3.03(1), 87 Fed. Reg. 73580 at 73583.

³⁵ Notice 2022-61 § 2.01(3), 87 Fed. Reg. 73580 at 73581.

³⁶ In lieu of detailed guidance, the Notice repeats the statutory requirements of the good faith effort exception. It then states that a taxpayer must, in accordance with I.R.C. § 6001 and associated Treasury regulations, “maintain sufficient books and records establishing the taxpayer’s request of qualified apprentices from a registered apprenticeship program and the program’s denial of such request or non-response to such request, as applicable.” *See* Notice 2022-61 § 4.01(3), 87 Fed. Reg. 73580 at 73584.

³⁷ Notice 2022-61 § 2.02(1), 87 Fed. Reg. 73580 at 73581.

³⁸ Notice 2022-61 § 2.02(2), 87 Fed. Reg. 73580 at 73581-73582.

³⁹ *Id.*

By applying this “begin construction” guidance, the Notice also requires satisfaction of the “continuity requirement” pertaining to continuous construction or continuous efforts after a facility starts construction.⁴⁰ The Notice also includes a “continuity safe harbor,” in which the continuity requirement is deemed satisfied if an eligible facility is placed in service by the end of certain timeframes described in the guidance.⁴¹ Additionally, the Notice includes examples of the types of recordkeeping IRS expects may be used to substantiate satisfaction of the PW&A requirements.⁴²

II. Advocacy’s Concerns about Notice 2022-61

A. The Notice will Disproportionately Impact Small Businesses

The cost burden and complexity of the IRA’s PW&A requirements will have a disproportionate negative impact on small businesses. That impact is exacerbated by the publication of the incomplete guidance found in Notice 2022-61. Small business representatives have told Advocacy that the Notice will amplify the IRA’s existing disproportionate impact on small businesses in three ways.

First, the fact that the Notice was published as informal guidance adds costs and uncertainty to decision making processes. Small businesses will be expected to learn and understand the guidance without assurance that its requirements will be permanent. Many small businesses do not have dedicated tax and compliance support staff. Consequently, those businesses must dedicate a larger share of their limited time and resources to learning about and implementing new requirements. When IRS eventually decides to issue proposed regulations, small firms will be required to devote additional time and resources to determine whether the PW&A requirements have changed and how any changes will affect their businesses.

Second, the publication of the Notice further disadvantages small businesses because it starts the clock on the 60-day rule without sufficient time to learn about DOL prevailing wage rates or registered apprenticeship programs. Most small businesses in the affected industries do not currently engage in projects that require the application of special federal labor standards. In contrast, larger firms with greater experience on federal projects are likely familiar with DOL’s prevailing wage requirements and may have greater access to registered apprenticeship programs. This knowledge gap inherently favors larger firms and is heightened by the limited 60-day timeframe before firms must make important contract and bidding decisions.

Finally, small business representatives have informed Advocacy that the guidance found in the Notice is incomplete. In preparing this letter, Advocacy spoke with Associated Builders and Contractors (ABC). ABC is a national construction industry trade association representing more

⁴⁰ Notice 2022-61 § 2.02(3), 87 Fed. Reg. 73580 at 73582.

⁴¹ *Id.* The continuity requirement will be deemed satisfied if a qualified facility is placed in service no more than four calendar years after the calendar year during which construction began for purposes of the PTC and ITC, and no more than six calendar years after construction began for purpose of qualified facility or carbon capture equipment under I.R.C. § 45Q. Certain offshore projects and projects built on federal land under I.R.C. §§ 45 and 48 satisfy the continuity requirement if the project is placed into service no more than 10 calendar years construction began.

⁴² Notice 2022-61 § 3.04, 87 Fed. Reg. 73580 at 73583.

than 21,000 member companies, the majority of which are small businesses.⁴³ ABC told Advocacy that expanding PW&A requirements to the private sector is likely to discourage small developers, contractors, and subcontractors from bidding on clean energy projects. The association said that Notice 2022-61 would further discourage small firm participation because it does not provide the clear and specific guidance necessary for developers to determine whether the tax credits are worth the associated risks. In the same vein, small contractors and subcontractors lack the information necessary to decide whether to bid on project contracts. ABC noted that it raised numerous questions in its comments to Notice 2022-51 that were left unanswered by IRS in its publication of Notice 2022-61. Small firms should not be expected to comply with new regulatory requirements while questions about the operation of those requirements remain unanswered.

ABC expressed particular concern that registered apprenticeship programs will not have the capacity to meet demand. In an analysis of DOL data from 2021, ABC found that it would take 14 years for federal and state government-registered apprenticeship programs to educate the 650,000 workers the construction industry needed to hire in 2022.⁴⁴ The DOL data used in that estimate indicates that state and federal registered apprenticeship programs in the construction industry graduate fewer than 45,000 skilled workers per year.⁴⁵

Advocacy shares ABC's concerns about the Notice's registered apprenticeship requirements. On December 14, 2021, Advocacy attended a DOL webinar about the IRA's PW&A provisions. At that webinar, DOL encouraged businesses to register their own apprenticeship programs to help meet the IRA's apprenticeship requirements. While this may be a good option for larger firms over time, it is likely cost-prohibitive for small firms to register a new apprenticeship program with the appropriate registration agencies.

Small businesses are likely to face other hurdles that will not similarly encumber large firms in their attempt to meet the apprenticeship requirements. For example, adding an additional worker for a firm with four workers on a project is likely a larger proportional change than meeting a 10% apprentice requirement for firms with more workers on the project. Likewise, larger businesses have more workers at all stages of their careers and therefore may have more flexibility in allocating apprentices to projects. These factors may make it easier for larger businesses to meet the apprenticeship requirements than it is for smaller businesses, placing smaller firms at a disadvantage.

Small firms are similarly disadvantaged by the Notice's use of DOL prevailing wage rates. DOL determines prevailing wages from survey information that responding contractors and other

⁴³ Associated Builders and Contractors, Comments of Associated Builders and Contractors to the Treas. Dep't and IRS on Notice 2022-51 (Inflation Reduction Act Guidance) (Nov. 4, 2022), <https://www.regulations.gov/document/IRS-2022-0025-0001>.

⁴⁴ Associated Builders and Contractors, *ABC: Government-Registered Apprenticeship Woefully Inadequate to Meet Construction's Skilled Workforce Shortage* (June 30, 2022), <https://www.abc.org/News-Media/News-Releases/entryid/19486/abc-government-registered-apprenticeship-system-woefully-inadequate-to-meet-constructions-skilled-workforce-shortage>.

⁴⁵ *Id.*

interested parties provide voluntarily. This system can lead to data gaps that may skew wage rates, as illustrated by a 2019 report from DOL’s Office of Inspector General. That report found that 48% of DOL’s prevailing wage rates are union rates, even though less than 12.6% of the construction workforce was unionized during the time the study was conducted.⁴⁶ As most small firms in the industries affected by the Notice are not unionized, IRS’s use of DOL prevailing wage rates is likely to further disadvantage those small businesses.

For the reasons above, IRS’s publication of informal, incomplete regulatory guidance exacerbates the disadvantages faced by small businesses in complying with the IRA’s PW&A requirements. It is unclear why IRS felt it necessary to start the 60-day compliance clock before it had answered stakeholder questions in a detailed regulation. It is similarly unclear why the agency would publish regulatory guidance without an opportunity for public comment.

B. The Notice is Legislative and Requires Notice-and-Comment Rulemaking

In general, before an agency may promulgate a regulation that has the force of law, the Administrative Procedure Act, 5 U.S.C. §§ 551-559 (APA) requires the agency to follow notice and comment rulemaking procedures. The agency must publish a notice about the proposed rule and allow the public to comment on the rule.⁴⁷ After considering public comments, the agency must make appropriate changes and include in the final rule a “concise general statement of its basis and purpose.”⁴⁸ For rules that undergo notice and comment procedures, the Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act, requires federal agencies to assess the impact of the proposed rule on small entities and to consider less burdensome alternatives.⁴⁹

Notice and comment procedures are mutually beneficial to the public and the regulatory agency. As the Supreme Court noted in *Azar v. Allina Health Services*, 139 S. Ct. 1804, 1816 (2019), “[n]otice and comment gives affected parties fair warning of potential changes in the law and an opportunity to be heard on those changes—and it affords the agency a chance to avoid errors and make a more informed decision.”

The APA distinguishes between “legislative rules” and “interpretive rules.”⁵⁰ “[S]ubstantive agency regulations” are considered legislative rules and are subject to APA rulemaking procedures.⁵¹ In contrast, Congress specifically exempted interpretive rules from the APA’s notice and comment requirements.⁵² In a 2022 opinion finding that an IRS notice did not

⁴⁶ U.S. Dep’t of Labor, Office of Inspector General-Office of Audit, Report to the Wage and Hour Division, Better Strategies are Needed to Improve the Timeliness and Accuracy of Davis-Bacon Act Prevailing Wage Rates (Mar. 29, 2019); *See also* U.S. Bureau of Labor Statistics, Current Population Survey Data, Construction Union Membership 2019 (Modified Jan. 20, 2022). In this study, union rates prevailed for 48% of the 134,738 rates in the Wage and Hour Division’s system.

⁴⁷ Administrative Procedure Act, 5 U.S.C. §§ 551-559, § 553.

⁴⁸ *Id.*

⁴⁹ *See* 5 U.S.C. § 601(2).

⁵⁰ 5 U.S.C. § 553(b)(3)(A); *see Perez v. Mortg. Bankers Ass’n*, 575 U.S. 92, 96 (2015).

⁵¹ *Chrysler Corp. v. Brown*, 441 U.S. 281, 295, 313-315 (1979).

⁵² 5 U.S.C. § 553(b)(3)(A).

properly follow notice and comment procedures, the Sixth Circuit offered the following guidance in distinguishing between legislative and interpretive rules:

- Legislative rules have the “force and effect of law”; interpretive rules do not.⁵³
- Legislative rules impose new rights or duties and change the legal status of regulated parties.⁵⁴
- Obeying those new duties imposed by legislative rules can “involve significant time and expense,” and failure to comply may come with the risk of penalties or criminal sanctions.⁵⁵
- Interpretive rules articulate what an agency thinks a statute means or remind parties of pre-existing duties.⁵⁶
- When rulemaking carries out an express delegation of authority from Congress to an agency, it usually leads to legislative rules.⁵⁷
- Interpretive rules merely clarify the requirements that Congress has already put in place.⁵⁸

It is Advocacy’s opinion that Notice 2022-61 is a legislative rule. The Notice has the force and effect of law. Taxpayers will be expected to comply with the requirements laid out in the Notice from January 29, 2023, until an unknown date when IRS intends to publish additional guidance or regulations. The Notice imposes new duties on facility owners, contractors, and subcontractors to ensure that a facility will qualify for energy tax incentives. As detailed above, complying with those duties will require significant time and expense, particularly in the case of small firms. Finally, IRS’s authority to promulgate the guidance was expressly delegated to the Secretary of the Treasury by Congress in the IRA.⁵⁹

There is no indication that Congress expressly or implicitly intended to exempt the IRS’s PW&A guidance from APA notice and comment rulemaking procedures.⁶⁰ Accordingly, Advocacy believes that the Notice was issued improperly because it did not satisfy the procedures for promulgating legislative rules under the APA.

III. Conclusion

For the reasons above, Advocacy urges IRS to rescind Notice 2022-61. The incomplete guidance found in the Notice exacerbates the disproportionate impact that the IRA’s PW&A requirements will have on small businesses. As a result, small firms may be discouraged from developing or bidding on clean energy projects. We further encourage IRS to issue a detailed NPRM on the PW&A requirements, in accordance with APA rulemaking procedures. A regulation that will

⁵³ *Mann Construction Inc. v. United States*, No. 21-1500, p. 5 (6th Cir. 2022) (citing *Perez*, 575 U.S. at 96-97).

⁵⁴ *Id.* (citing *Tenn. Hosp. Ass’n v. Azar*, 908 F.3d 1029, 1042 (6th Cir. 2018)).

⁵⁵ *Id.* (citing *CIC Servs., LLC v. IRS*, 141 S. Ct. 1582, 1591 (2021)).

⁵⁶ *Id.* (citing *Tenn. Hosp. Ass’n v. Azar*, 908 F.3d 1029, 1042 (6th Cir. 2018)).

⁵⁷ *Id.* (*Tenn. Hosp. Ass’n*, 908 F.3d at 1043).

⁵⁸ *Id.* (*Tenn. Hosp. Ass’n*, 908 F.3d at 1043).

⁵⁹ See e.g., Pub. L. 117-169 § 13101(f).

⁶⁰ See Pub. L. 117-169, Subtitle D—Energy Security.

have such a large impact on small businesses requires a formal rulemaking, including a small entity economic impact analysis and an opportunity for public comment. Advocacy recommends a public comment period of no less than 90 days.

Our office is available to assist in any way to ensure that the statutory goals of the IRA are fulfilled with minimum negative economic impact on small businesses. If you have any questions or require additional information, please contact me or Assistant Chief Counsel Meagan Singer at (202) 921-4843 or by email at meagan.singer@sba.gov.

Sincerely,

/s/

Major L. Clark, III
Deputy Chief Counsel
Office of Advocacy
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/s/

Meagan Singer
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Copy to: Richard L. Revesz, Administrator
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