



VIA ELECTRONIC SUBMISSION

August 26, 2019

Adele Gagliardi
Administrator
Office of Policy Development and Research
U.S. Department of Labor
200 Constitution Avenue, N.W.
Room N-5641
Washington, DC 20210

Re: RIN 1205-AB85; Apprenticeship Programs, Labor Standards for Registration, Amendment of Regulations

Dear Ms. Gagliardi:

Associated Builders and Contractors Inc. hereby submits the following comments to the U.S. Department of Labor's Employment and Training Administration in response to the above-referenced request for comment published in the *Federal Register* on June 25, 2019, at 84 Fed. Reg. 29970.

About Associated Builders and Contractors

ABC is a national construction industry trade association representing more than 21,000 members. ABC and its 69 chapters help members develop people, win work and deliver that work safely, ethically and profitably for the betterment of the communities in which ABC and its members work. ABC's membership represents all specialties within the U.S. construction industry and is comprised primarily of firms that perform work in the industrial and commercial sectors. Moreover, the vast majority of our contractor members are classified as small businesses. Our diverse membership is bound by a shared commitment to the merit shop philosophy in the construction industry. The philosophy is based on the principles of nondiscrimination due to labor affiliation and the awarding of construction contracts through open, competitive bidding based on safety, quality and value.

Background

On June 15, 2017, President Trump issued Executive Order 13801, Expanding Apprenticeships in America, which directed the secretary of labor, in consultation with the secretaries of education and commerce, to consider proposing regulations that establish guidelines for third parties to certify industry-recognized apprenticeship programs.¹

¹ <https://www.whitehouse.gov/presidential-actions/3245/>.

The executive order also directed the secretary of labor to establish a Task Force on Apprenticeship Expansion with the goal of identifying strategies and proposals to expand and promote apprenticeship opportunities. ABC President and CEO Michael Bellaman was appointed by Labor Secretary Alexander Acosta to serve on the task force. At its fifth and final meeting on May 10, 2018, members of the task force submitted a report to President Trump providing a strategy to create more apprenticeships in the United States through an industry-recognized apprenticeship model.²

On July 27, 2018, ETA issued Training and Employment Notice (“TEN”) No. 3-18, Creating Industry-Recognized Apprenticeship Programs to Expand Opportunity in America.³ The interim guidance document outlined a framework for the creation of industry-recognized apprenticeship programs and established criteria organizations must demonstrate to become certifiers of these programs. Unfortunately, the TEN stipulated that the new industry-recognized apprenticeship pilot program would not initially include the construction industry and the U.S. military. ABC submitted a comment letter to ETA urging it to include the construction industry in its final program in order to address the skilled workforce shortage in construction and give millions of hardworking Americans the opportunity to pursue a career in a rewarding and lucrative field.

On Sept. 20, 2018, ETA published a notice soliciting public feedback on the development of the form, Industry-Recognized Apprenticeship Programs Accrediting Entity Information, which is intended to be completed by prospective accrediting entities seeking to obtain a determination from the DOL as to whether the entity’s standards meet the criteria outlined in the TEN.⁴ ABC submitted comments offering recommendations to the DOL in order to ensure all Americans have the opportunity to participate in the program.⁵

On June 25, 2019, the DOL issued a proposed rule on apprenticeship programs that would establish a process for creating high-quality, industry-recognized apprenticeship programs (Industry Programs) by organizations that apply to become DOL-recognized Standards Recognition Entities (SREs).⁶

ABC’s Comments in Response to DOL’s Proposed Rule

Over the last two years, the Trump administration and the DOL have worked to expand apprenticeships and create new opportunities for American workers. ABC agrees with the administration that as our economy grows and more opportunities are born, it is imperative that Americans obtain the skills and knowledge necessary to acquire and succeed at the jobs of tomorrow.

The development and acknowledgement of the value of an industry-led apprenticeship system is a positive step in addressing the nation’s skilled workforce shortage. However, as the administration develops its roadmap to fill the current skills gap, ABC urges the following: all Americans should be welcome to participate in the new Industry Programs; the DOL must not require overly burdensome reporting and data collection requirements similar to those of the

² <https://www.dol.gov/apprenticeship/docs/task-force-apprenticeship-expansion-report.pdf>.

³ https://wdr.doleta.gov/directives/attach/TEN/TEN_3-18_Acc.pdf.

⁴ 83 Fed. Reg. 47643.

⁵ <https://www.regulations.gov/document?D=ETA-2018-0001-0028>.

⁶ 84 Fed. Reg. 29970.

current DOL-recognized apprenticeship programs; and the DOL must clearly communicate the value of participating in the new Industry Programs.

ABC offers the following recommendations on the proposal to ensure all Americans have the opportunity to participate in a flexible and successful program.

1) To Successfully Expand Apprenticeship Opportunities and Close the Skills Gap, All Americans Should have the Opportunity to Participate in the New Industry Programs.

While the purpose of the proposed rule is to expand apprenticeship opportunities and close America's skills gap, it initially excludes the construction industry and U.S. military.⁷ ABC believes the exclusion of any industry from a nationally recognized apprenticeship program, whether initially or permanently, would be an impediment to innovation and industry advancements in workforce development and safety. Excluding the construction industry in particular is inconsistent with the expansive purpose of the proposed rule and is neither authorized nor required by the statutory and regulatory authority cited in the proposed rule.

Under the proposed rule, the DOL would not, at least initially, accept applications from SREs that seek to recognize apprenticeship programs in construction.⁸ The reason given for the initial exclusion is that the department considers the construction industry a sector that already has "significant" DOL-registered apprenticeship opportunities.⁹ Elsewhere, the proposed rule refers to construction industry apprenticeships as "well established" and/or "already effective and substantially widespread."¹⁰ In making these assertions, however, it appears the department did not take into consideration that the overwhelming majority of America's 8.17 million U.S. construction industry professionals¹¹ never participated in any federal registered apprenticeship programs but are instead developed through industry-recognized and market-driven apprenticeships sponsored by companies large and small.¹² As further explained below, participants and graduates of federal registered apprenticeship programs in the construction industry constitute only a small fraction of the industry's workforce, as a result of which there is currently a drastic shortage of skilled professionals. Industry-recognized apprenticeship programs offer a solution to the current skills shortage in the construction industry, and there is no justification for excluding construction workers from access to such programs in the proposed rule.

According to data cited in the proposed rule, "The construction industry has had approximately 48% of all federal registered apprentices on average over the prior 5-year period, averaging approximately 144,000 federal registered apprentices per year."¹³ However, the 48% figure (and the arbitrary 25% minimum threshold)¹⁴ are misleading because they only count federal registered apprentices in construction against the paltry number of federal registered apprentices in all other industries. The true measurement of whether federal registered apprenticeship is "widespread" or "significant" in the construction industry should be to compare the number of

⁷ 84 Fed. Reg. 29980.

⁸ Id. at 29980-29981.

⁹ Id.

¹⁰ Id. at 29980.

¹¹ <https://www.bls.gov/cps/cpsaat42.pdf>.

¹² https://doleta.gov/oa/data_statistics.cfm.

¹³ 84 Fed. Reg. 29981, footnote #19, <https://www.federalregister.gov/documents/2019/06/25/2019-13076/apprenticeship-programs-labor-standards-for-registration-amendment-of-regulations#footnote-19-p29981>.

¹⁴ 84 Fed. Reg. 29980.

federal registered apprentices with the total number of construction industry professionals—a mere 144,000 federal registered apprentices in an industry that employs 8.17 million workers.¹⁵

Additionally, if the estimated 17,748 apprentices who completed federal registered construction apprenticeship programs in FY2018¹⁶ all accepted jobs in the construction industry, it would only supply 4% of the estimated 440,000 additional construction workers that need to be hired in 2019 alone to meet the existing backlog of projects under contract but not yet completed, which stood at nearly nine months in June 2019.¹⁷ Thus, at current annual completion rates, it would take about 25 years for the federal registered apprenticeship program to supply the number of construction workers the industry needs to hire *this year*.

The above data clearly shows that while federal registered apprenticeship programs provide career opportunities, they cannot fill industry's labor needs and skills gap on their own. America needs an all-hands-on-deck effort from all industries, including construction most of all, to meet industry workforce development needs in order to grow the U.S. economy and close America's skills gap.

By comparison, in 2018, ABC contractor members spent \$1.6 billion to provide apprenticeship, craft, safety and leadership education programs—an entire ecosystem of workforce development initiatives—to 980,000 course attendees to advance their careers in commercial and industrial construction.¹⁸ The overwhelming majority of America's construction industry professionals¹⁹ were not educated in federal registered apprenticeship programs but are instead developed through industry-recognized and market-driven apprenticeships sponsored by companies large and small.²⁰

ABC and its 69 chapters are doing their part to educate craft, safety and management professionals using an all-of-the above strategy for workforce development, such as just-in-time task training, competency-based progression, work-based learning, industry-recognized apprenticeship programs and government-registered apprenticeships to build a safe, skilled and productive workforce. By excluding all nonregistered construction industry workforce development programs from recognition under the proposed rule, the DOL is creating a perverse disincentive to increased training opportunities and is prolonging the skills shortage in the construction industry.

Both industry-recognized and registered apprenticeship programs have been utilized by the merit shop construction industry for decades to educate and upskill the workforce. In partnership with NCCER, a not-for profit 501(c)(3) education foundation created by ABC in the 1990s, ABC is intensively engaged in building our workforce through more than 800 apprenticeship, craft, management and safety education programs at more than 1,400 locations across the United States. NCCER's curricula are widely used and accepted globally as a gold standard for industry-recognized and government-registered apprenticeship programs.

¹⁶ The number of FY2018 completers of federal registered apprenticeship programs in the construction industry, provided by the DOL Office of Apprenticeship, Dec. 20, 2018.

<https://www.abc.org/Portals/1/Newsline%202017/Newsline%202019/Registered%20Apprenticeship%20Data%20for%20Construction%20Industry%20from%20DOL%20OA%20Created%20082619.xlsx?ver=2019-08-26-170226-800>

¹⁷ <https://www.abc.org/News-Media/News-Releases/entryid/16650/abc-s-construction-backlog-indicator-inches-lower-in-june>.

¹⁸ [abc.org/WFSurvey](https://www.abc.org/WFSurvey).

¹⁹ <https://www.bls.gov/cps/cpsaat42.pdf>.

²⁰ https://doleta.gov/oa/data_statistics.cfm.

ABC's commitment to creating a safe, skilled and productive workforce is evident from the practices contractor members have in place, from the utilization of both government-registered and industry-recognized apprenticeship programs to world-class safety programs such as the STEP safety management system.²¹ There is a place for both government-registered and market-driven apprenticeships in an industry that is constantly evolving through technology and process improvements.

To the extent the DOL's proposed exclusion of construction industry SREs from DOL recognition purports to derive its authority from the president's Executive Order 13801,²² that order does not support such an exclusion. The only language in the executive order treating any industry sector differently from other sectors with regard to apprenticeship appears in Section 4(a)(v), which allows a proposed regulation to establish review processes for considering whether to "deny expedited and streamlined registration" to a sector in which DOL-registered apprenticeship programs are already effective and substantially widespread. That is a far cry from what the DOL is proposing now, which would withhold recognition from construction industry SREs *altogether and for any purpose*. It should also be noted that the executive order does not *require* DOL to deny expedited and streamlined registration to any sector's SREs, but only allows DOL to "consider" whether to do so.

There is no evidentiary support for the concern expressed in the proposal that apprenticeship expansion might somehow come "at the cost of existing registered apprenticeship programs."²³ ABC and its members strongly support registered apprenticeship as one training tool, and we anticipate such support will continue. As explained above, that tool by itself has proved to be insufficient to meet the training needs of the construction industry. Recognition of alternative industry approved programs will expand the training pool, without weakening or detracting from registered apprenticeship programs.

For the reasons set forth above, the department should reject the aspect of the proposed rule that excludes construction SREs from DOL recognition as a matter of policy, in order to maximize expansion of alternative forms of apprenticeship training and address the drastic skills shortage in the construction industry.

2) In Developing the New Industry Programs, the DOL Should Focus on Minimizing Burdens and Ensuring Significant Flexibility.

As stakeholders recounted in the Task Force on Apprenticeship Expansion's final report to President Trump, many employers elect to establish apprenticeship programs outside of registered apprenticeship programs due to the lack of flexibility, unnecessary paperwork and the bureaucracy involved in registering a program with the DOL, especially for employers with a national presence that need to work with both federal and state officials to gain program approval.²⁴ Unfortunately, the current proposal requires SREs and/or Industry Programs to provide unnecessary and burdensome information, and, at times, the purpose of collecting the information is unclear and/or is contrary to the recommendations of the task force. In order to attract employers or other entities to participate, the department must ensure that the

²¹ abc.org/spr.

²² <https://www.whitehouse.gov/presidential-actions/3245/>.

²³ 84 Fed. Reg. at 29980. Although the proposed rule makes reference to the final report of the Apprenticeship Task Force on this point, that report also contains no evidentiary support for the alleged concern.

²⁴ <https://www.dol.gov/apprenticeship/docs/task-force-apprenticeship-expansion-report.pdf>.

requirements of SREs and/or new Industry Programs do not mirror the burdensome requirements of the current DOL-registered apprenticeship program.

For example, the proposed rule imposes requirements on industry SREs that substantially exceed the requirements imposed by the DOL on state agencies charged with approving registered apprenticeship programs under Part 29 (to be re-codified as part 29 subpart A). Such additional, unjustified requirements include the proposed requirements of establishing a “consensus-based” process involving industry experts, evidence of capacity and quality assurance processes, re-recognition and constant notification requirements, and restrictions on SREs offering consulting services to industry programs, or even offering their own programs.²⁵ The intimidating review process proposed by the DOL creates additional disincentives to apprenticeship expansion.²⁶ The DOL’s proposed rule also restricts the types of Industry Programs that can be approved by SREs, in ways which match or exceed the current registered apprenticeship program requirements.²⁷

Excessive paperwork burdens and unnecessary data collection that use up limited program resources and increase costs may undermine the very goals of increasing apprenticeship opportunities. In addition, the goal of the proposed rule should be to allow SREs the freedom to encourage and promote Industry Programs that create dynamic alternative training methods. That goal would be frustrated by imposing requirements that mirror or even exceed the traditional registered apprenticeship program requirements.

3) The Benefit of Participating in the New Industry Program is Unclear.

The DOL expects this regulation to have a net benefit overall.²⁸ The anticipated benefit of the proposed rule is to encourage and enable the rapid expansion of quality apprenticeships across a wide range of industries and occupational areas.²⁹ However, because the rule primarily focuses on the responsibilities and requirements of SREs, it fails to demonstrate the benefits of participating in the new Industry Programs. As currently written, the rule does not set forth any compelling reason or business case for businesses to participate. This is especially true if a business is currently sponsoring its own successful, high-performing, industry-recognized, market-driven apprenticeship program. The DOL’s final rule must outline incentives for large and small businesses to participate, as well as clearly communicate the value of participation. If this does not occur, businesses will continue to move forward with their own innovative, industry-driven training programs and the anticipated benefit of the rule will not be realized.

Conclusion

ABC appreciates the opportunity to submit comments and is committed to working with the DOL to ensure that all Americans, in all industries, have the opportunity to participate in the agency’s new and innovative industry-recognized apprenticeship program. American industries have always been the leaders and incubators of transformation in the world, including in educating and upskilling the American workforce. America needs an all-hands-on-deck effort from all industries, including construction most of all, to close America’s skills gap and meet the industry demands of a growing economy. As stated above, there is a place for both government-

²⁵ See proposed rule 29.21 and 29.22.

²⁶ See, e.g., 84 Fed. Reg. at 29973 (discussing unprecedented interference by DOL in the SRE standard-setting process).

²⁷ Proposed 29 C.F.R. 29.22.

²⁸ 84 Fed. Reg. 29982.

²⁹ Id.

registered and market-driven apprenticeships in an industry that is constantly evolving through technology and process improvements. The biggest opportunities ahead of us include ensuring the integrity of the new system, maximizing flexibility and incentivizing participation in it.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "G. Sizemore", written in a cursive style.

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