



AGC
THE CONSTRUCTION
ASSOCIATION

Stephen E. Sandherr, Chief Executive Officer

August 26, 2019

VIA ELECTRONIC SUBMISSION: <http://www.regulations.gov>

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

John V. Ladd
Administrator
Office of Apprenticeship
ETA/DOL
Room C-5311, 200 Constitution Avenue NW
Washington, DC 20210

Re: Apprenticeship Programs, Labor Standards for Registration, Amendment of Regulations; Notice of Proposed Rulemaking (RIN 1205-AB85)

Dear Ms. Gagliardi and Mr. Ladd:

On behalf of the Associated General Contractors of America (hereinafter “AGC”), thank you for the opportunity to submit the following comments on the U.S. Department of Labor’s (hereinafter “DOL” or “Department”) Employment and Training Administration’s (hereinafter “ETA”) notice of proposed rulemaking (hereinafter “NPRM”) regarding Apprenticeship Programs, Labor Standards for Registration, Amendment of Regulations. The NPRM was published in the Federal Register on June 25, 2019.

AGC is the leading association for the commercial construction industry, representing more than 26,000 firms, including over 6,500 of America’s leading general contractors and over 8,500 specialty contracting firms. More than 11,500 service providers and suppliers are also associated with AGC, all through a nationwide network of approximately 90 chapters. These firms, both union and open-shop, engage in the construction of buildings, shopping centers, factories, industrial facilities, warehouses, highways, bridges, tunnels, airports, water works facilities, waste treatment facilities, dams, water conservation projects, defense facilities, multi-family housing projects, municipal utilities and other improvements to real property.

President Trump and his Administration are right to focus on promoting apprenticeships to address the nation’s skills gap and workforce demands. AGC agrees that apprenticeship participation is a persistent and serious long-term challenge to American economic leadership, as there exists a significant mismatch between the occupational competencies that businesses need and the job skills of aspiring workers. This pervasive skills gap has posed a serious impediment to job growth and productivity throughout the economy, especially felt in the commercial construction industry. AGC fully recognizes and appreciates the integral role registered apprenticeship programs play in our industry to provide skilled, dependable and safe journeyworkers. The registered model is the standard that not only other programs in the construction industry, but also other industries’ programs should strive to be.

Nevertheless, the construction industry continues to experience a historic workforce crisis that is likely to persist for years to come. According to survey data, contractors across the country are having a hard time finding workers at all levels and report that the training pipeline to supply skilled workers is not sustainable.

The entire focus of this proposal is to assist all other industries with their workforce and skills gap challenges. Nowhere does the Department recognize, address or propose a single solution to the well-documented workforce problems facing the construction industry. Any proposal from the Department must include thoughtful solutions for all industries, including construction. AGC believes that part of a multifaceted approach to addressing this workforce shortage and skills gap in construction is to expand opportunity and access of entry to all training opportunities. The Department should promote all avenues of education and employment and allow apprenticeship program innovation from all sectors of the industry—union and open-shop—to flourish on an even playing field. As such, AGC holds that:

- Equal opportunity should be provided for establishing apprenticeship programs and enabling prospective workers to enter the industry;
- High, rigorous standards of training and safety should be equally ensured;
- Apprenticeship programs should be equally eligible or not for funding opportunities; and
- Participants in such programs should be treated equally as apprentices.

The Commercial Construction Industry is Facing a Historical Workforce Crisis

The Construction Workforce Crisis by the Numbers

Labor shortages in the commercial construction industry remain significant and widespread, impacting virtually every aspect. There were 347,000 job openings in construction at the end of June, not seasonally adjusted; an increase of 24,000 (7 percent) from June 2018, and the highest total for June since the series began in December 2000, according to the U.S. Bureau of Labor Statistics (BLS) in its latest Job Openings and Labor Turnover Survey (JOLTS) release.¹ The industry hired 491,000 employees in June, not seasonally adjusted, the largest June total since 2007. The quit rate rose to 2.7 percent of employees, the highest June rate since 2006, a possible sign that workers are confident of finding other jobs in construction or elsewhere.

Together, the record-high job openings at the end of June, high quit rate and low construction unemployment rate in July (3.8 percent, not seasonally adjusted, as BLS reported on August 2), and nearly 50-year low for the total unemployment rate underscore the challenges that construction contractors face in finding and retaining qualified workers.

Recent AGC survey data underscores this statistical reality. According to the data, 80 percent of contractors nationally are experiencing difficulty finding qualified craft workers to hire, which

¹ U.S. Department of Labor, Bureau of Labor Statistics (June 6, 2019), *Job Openings and Labor Turnover Survey (JOLTS)*, retrieved from <https://www.bls.gov/news.release/jolts.nr0.htm>.

represents the bulk of the construction workforce.² Shortages are impacting union and open-shop construction firms comparably with the five toughest craft positions to fill being pipe layers, sheet metal workers, carpenters, concrete workers and pipefitters/welders. And, while 79 percent of construction firms anticipate a need to expand headcount, 68 percent report that it will continue to be hard, or get even harder, to find hourly craft personnel and 85 percent consider the pipeline for recruiting and preparing new craft personnel to be poor or fair.³

Unfortunately, the concerns with the construction workforce pipeline should come as no surprise based on the industry's demographics and national education trends. BLS Labor Force Statistics from the 2018 Population Survey show that those in the construction industry are, on average, slightly older than workers in the rest of the economy, with a median age of 42.5. Only 1.7 percent of the industry's workers are between 16 and 19 years old, while fewer than 9 percent are younger than 25.⁴ Both percentages are shy of national averages for all industries, suggesting a larger-than-normal share of construction workers are on the older side.

How the Construction Industry is Working to Address the Crisis

Tight labor market conditions are prompting firms to change the way they operate, recruit and compensate workers. According to AGC survey data, 59 percent of construction firms report increasing base pay rates for craft workers because of the difficulty in filling positions. Twenty-one percent have improved employee benefits for craft workers and 29 percent report they are providing incentives and bonuses to attract workers. In addition, 32 percent of respondents report their firms are using methods to reduce onsite worktime, including lean construction, virtual construction techniques or offsite prefabrication. Twenty-nine percent are investing in labor-saving equipment, including drones, robots and 3-D printers.⁵

Many firms are also investing more resources into training programs for current and new workers. Sixty-three percent of firms report they plan to increase investments in training and development in 2019, up from 52 percent at the beginning of last year. Large firms, in particular, are likely to do so, with 71 percent of companies with more than \$500 million in revenue saying they plan to increase investments in training, compared to 59 percent of firms with \$50 million or less in revenue.

Efforts are also being expanded to recruit the next generation of construction professionals, especially those outside of the traditional construction industry profile such as young adults. These recruiting efforts are essential because the economics alone do not appear to be enticing many young adults to pursue careers in construction. Despite all these efforts, the construction workforce crisis has continued to worsen and merely improving construction training opportunities will do

² The Associated General Contractors of America and Autodesk (August 29, 2018), *2018 Construction Workforce Shortage Survey*, retrieved from <https://www.agc.org/news/2018/08/29/eighty-percent-contractors-report-difficulty-finding-qualified-craft-workers-hire>.

³ The Associated General Contractors of America and Sage Construction and Real Estate (January 2, 2019), *2019 Construction Hiring and Business Outlook Report*, retrieved from <https://www.agc.org/news/2019/01/02/2019-sage-construction-hiring-and-business-outlook-survey> and The Associated General Contractors of America, *2018 Construction Workforce Shortage Survey*.

⁴ U.S. Department of Labor, Bureau of Labor Statistics (2018), *Labor Force Statistics from the Current Population Survey*, retrieved from <https://www.bls.gov/cps/>.

⁵ The Associated General Contractors of America, *2019 Construction Hiring and Business Outlook Report*.

little to help with workforce shortages if few people are willing to enter training programs. As described in the following section, all avenues and opportunities to challenge the construction workforce crisis must be explored and utilized if a solution is expected to be reached.

All Avenues to Address the Workforce Crisis Must be Explored & Utilized

Reported shortages are impacting construction schedules and increasing the costs of many construction projects, posing a significant risk to future economic growth. Addressing construction workforce shortages is the best way to encourage continued economic growth, make it easier to rebuild aging infrastructure and place more young adults into high-paying jobs. It's also evident that there is a need not only for more people in the industry, but, specifically, more well-trained people. The nation's critical need for infrastructure improvement requires workers with a wide range of craft skills. There is not only a worker shortage but a skills gap that needs to be challenged. The earn-and-learn apprenticeship model is integral to solving the skills gap and promotion of all bona fide, high-quality apprenticeship programs is a vital component.

In the NPRM, the Department identifies construction as an industry "where registered apprenticeship opportunities are already significant" and "at least initially" disallows the creation of a "parallel system of Industry Programs" to "supplement the current system of registered apprenticeships" and "thereby enabl[e] the rapid expansion of quality apprenticeships." Although such registered apprenticeship opportunities are a critical component of the construction industry's workforce development system, they are not sufficient to meet existing construction workforce needs, as evidenced above. Expanding all training opportunities to enable more skilled workers to enter the construction industry would be an integral component necessary to help address the workforce shortage.

Joint Apprenticeship and Training Programs are Integral to the Industry

For well over a century, joint labor-management apprenticeship and training programs (often called "union programs" and hereafter referred to as "joint programs") have played an essential role in training and providing the high-skilled workers necessary for the construction industry to succeed. Joint programs are considered the time-tested "gold standard" in training. Construction joint apprenticeship and training committees administer many of the best apprenticeship programs within any economic sector. They are well-established and formally institutionalized with a proven track record.

Joint programs provide high standards and rigors of training along with a high quality of curriculum, regularly resulting in productive and skilled journeyworkers capable of performing the tasks necessary on complex construction work sites.

Many AGC contractors continue to regularly utilize workers from joint programs and one of the characteristics that makes joint programs so successful is that industry representatives from labor and management (with the management representatives often appointed by AGC chapters) work diligently and cooperatively to administer the programs together. Joint programs are also regularly funded primarily by collectively-bargained employer (contractor) contributions.

Non-Joint Apprenticeship and Training Programs also Play an Integral Role; Face More Challenges

According to BLS, there were 347,000 job openings in construction at the end of June, yet according to the Department's Office of Apprenticeship (OA), there were only 166,629 active apprentices in the industry for 2018.⁶ While there are multiple paths into the industry, the fact remains that it is difficult for many firms and their partners to establish apprenticeship programs for construction workers and fill in the gap between workers currently being upskilled through registered programs and the industry's current needs.

Open-shop apprenticeship and training programs nationally have faced deeply-established challenges to their creation, registration and operation, resulting in the need for unique and varied approaches. Open-shop programs vary in design, proving there is no one-size-fits-all model that works for the needs and challenges of specific economies and regions. Some programs offer single craft training, but many offer multi-craft training. And, many are provided by a variety of interests, such as, but not limited to: employers, trade-associations and joint industry groups.

Open-shop programs also come in both the registered and non-registered forms, which is highly dependent on specific oversight and regulatory challenges. As the Department knows, registered apprenticeship programs are programs certified by the federal Department's OA and/or through a state apprenticeship agency (SAA). 25 states and the District of Columbia run their own SAAs responsible for registering apprenticeship programs and for the remaining 25 states, the DOL OA is in charge. AGC is aware of instances of reported discrimination by some SAAs against programs that are not union-affiliated. In these instances, substantial resources and effort must be made to attain approval and open registered programs, sometimes taking years and extensive legal efforts and associated fees. The results have left many chapters and contractors discouraged to even attempt to establish programs and, in some areas, those previously interested or investigating apprenticeship programs have completely given up on the idea.

AGC San Diego is one of the largest open-shop programs in the country and has likewise weathered some of the greatest challenges of any program. California's State Apprenticeship Council (SAC) consists of governor-appointed positions with a history of heavy influence from organized labor and enjoys a union-affiliated majority. Union-affiliated appointees fought against AGC San Diego's "open shop" program during its initial establishment in 1988, and also during further geographic expansion in 2009. Currently, it is impossible for any new program to be created within the building trades or for the geographic expansion of existing programs due to the current union majority's influence. AGC San Diego has spent hundreds of thousands of dollars over the years in legal and lobbying costs because of these challenges.

Years ago, California passed the "Need Statute", which in essence bars the creation or expansion of any new apprenticeship program where there is already another apprenticeship program that exists for that county and trade. Thus, there is no "need" for another program. Under President George W. Bush's administration, California was decertified for federal approval because of this need statute. More recently, the state legislature has passed "skilled-workforce" measures requiring graduates from approved apprenticeship programs to be utilized on public works projects. Knowing

⁶ U.S. Department of Labor, Employment and Training Administration (2018), *Registered Apprenticeship National Results*, retrieved from https://www.doleta.gov/oa/data_statistics.cfm.

that much of the state's contractors could only secure graduated apprentices from joint programs, this legislation put the AGC San Diego and its open-shop contractors at a competitive disadvantage.

Inland Northwest AGC, located in Spokane, WA, has also faced similar difficulties in developing, securing state registration of, expanding and operating their open-shop apprenticeship programs. Like California, apprenticeship programs in Washington are governed and registered by the Washington State Apprenticeship and Training Council (WSATC). In order to establish, change and expand a registered apprenticeship program, WSATC allows an objection process where competitors can tie up a program, sometimes for years, through hearings and appeals. Legal counsel is also regularly necessary, and the objection process can be initiated by something as simple as a change of a sentence in a program's standards guidelines. Costs to participate in the process can easily grow beyond a program's means and budget.

It took Inland Northwest AGC 3 attempts over 10 years to develop the curricula and get its laborers program registered and running due to the appeals by union-competitor programs. Costs were significant, but the necessity was a reality for open-shop programs to recruit and train its skilled workforce in the predominantly open-shop region of Eastern Washington. Additionally, even though Washington claims to offer reciprocity towards the categorization and utilization of registered participants from adjoining states, WSATC has denied reciprocity of apprentices from Idaho to supply Eastern Washington's contractors because Idaho is a "right-to-work" state. It is a continuous uphill battle that open-shop programs and contractors must wage in face of state and competitor-influenced discrimination.

Recently there has also been a trend to place even stricter training requirements on contractors participating in state and local public works projects, further discriminating against contractors who utilize open-shop programs and inserting the government in the business decisions of private companies, therefore influencing those contractors' and their employees' potential for success. These requirements are specifically tailored to favor joint programs and put open-shop training programs and contractors at a competitive disadvantage.

The Department needs to be aware of the significant costs incurred by joint programs. The finances required to establish, administer and sponsor open-shop program training are also a significant hurdle and heavily dependent on the program design and the trade. Businesses that sponsor apprentices must be willing to take on significant costs, including time from skilled employees, that include training and supervising apprentices, purchase of equipment for training, additional workers' compensation insurance, apprentices' wages, and, in many cases, tuition for related classroom-based training. The inflexible administrative processes and paperwork may deter companies from sponsoring registered apprentices. While some states mandate training and build costs into prevailing wage determinations, many employers are incentivized to sponsor and pay for training due to the ability to compensate apprentices at a percentage of the journeyworker rate while still meeting Davis Bacon Act wage requirements, allowing sponsors to recoup some of their investment. For smaller employers, which represent the bulk of the industry, these costs can prove to be especially difficult.

The Construction Industry Faces Unique Challenges and Solutions Should be Unique

For over a century the construction industry has faced many challenges as unique as the industry itself; workforce supply and quality training being atop of the list. As such, the industry has taken a proactive and responsible role to try and solve its workforce challenges and learned that on the job training is the best and proven way to upskill workers. While construction has led the way on apprenticeship development and utilization, the industry should not be penalized for its efforts.

In order to continue to face the challenges head on, all construction training programs should participate on a level playing field that provides equal opportunity for both programs and prospective workers to enter the industry, continually ensures high rigors of training, ensures programs are equally eligible or not for funding opportunities and treats participants equally as apprentices. As previously stated, the Department should promote all avenues of education and employment, allowing program innovation from all sectors of the industry—union and open-shop—to flourish on such a level playing field.

While the construction industry is the gold standard for on the job training, registered apprenticeship programs are disproportionately focused and discriminatory towards open-shop contractors. As such, the role and influence of government in training should be evaluated and reprioritized. Additional focus needs to be made on funding of alternate programs that have proven to promote careers in construction that ultimately lead to preparation and participation in training. Increasing federal Career and Technical Education (CTE) funding would benefit both joint and open-shop programs prepare the next generation of skilled construction workers. CTE provides introductory experience and skills to students who might otherwise not be interested in or exposed to the construction crafts.

CTE and apprenticeship programs share the common purpose of preparing learners for a successful career using career-focused technical skills training offered in an applied context. Given these commonalities, there are natural intersections between the two programs that support the formation of partnerships, which may benefit students and employers alike. Based on their expressed interest in a career path and participation in technical training, CTE students are well positioned to enter and succeed within apprenticeship programs. Like apprentices, CTE students engage in technical training integrated with classroom academics and often in combination with a work-based learning experience. Well-aligned programs allow CTE students to complete apprenticeships at a faster pace or younger age than their adult peers who are in apprenticeship-only programs. And when apprenticeship is aligned to fit within or be a natural extension of a CTE program, a larger number of students may choose to enter apprenticeship and persist once enrolled, building out the pipeline of workers entering a given profession. Expanding the alignment between existing CTE and apprenticeship programs would increase the quality of CTE programs through expanded industry input, expand post-program options, improve the quality of apprenticeship programs through stronger education connections and increase the number of qualified apprentices for high-demand, high-wage, and high-skill careers.⁷

⁷ U.S. Department of Education (2017), *A Planning Guide for Aligning Career and Technical Education (CTE) and Apprenticeship Programs*, retrieved from https://s3.amazonaws.com/PCRN/reports/Planning_Guide_for_Aligning_CTE_and_Apprenticeship_Programs.pdf.

Construction is the leader in administering industry apprenticeship programs and is what industry training should emulate. The Department should encourage the industry to participate further and lead the way for other industries that have less experience. Industry-led and joint apprenticeships in construction already demand strict standards of accountability and methods to ensure quality, with penalties for noncompliance. They have developed curricula, credentials, teaching methods and promotional structures that allow apprentices to learn skills, earn a wage and have the opportunity to one day start their own business.

AGC itself has also recognized the need for additional rigorous, flexible and comprehensive training outside that traditionally offered by apprenticeship programs. AGC offers a number of educational programs designed to enhance career development opportunities for individuals and improve the performance of construction companies and the industry. Through nationally developed programs delivered directly by AGC of America to those offered through AGC's network of chapters and member firms, AGC of America education programs and training resources address core topics essential to any construction professional and company.

AGC's curricula programs are designed to be instructor-led and delivered in-seat. These courses can be held by AGC Chapters, within a construction firm or through other organizations and academic institutions. AGC curricula addresses important industry topics, such as: Building Information Modeling, Lean Construction, Project Management, Supervision Fundamentals, and Supervisory Training. AGC also offers two national credentials for BIM and Lean Construction. Those that complete the entire BIM Education Program or Lean Construction Education Program are eligible to sit for an exam to earn a Certificate of Management-Building Information Modeling (CM-BIM) or Certificate of Management-Lean Construction (CM-Lean).

AGC also hosts three national management programs on Construction Project Management, Advanced Management and Leadership. These multi-day programs provide an intensive learning experience for those looking to increase their knowledge and advance their career. And, AGC's safety management education opportunities and resources provide construction professionals with what they need to know in the essential areas of safety and health, such as; Safety & Health Conference, Safety Management Training Course, Advanced Safety Management Training Course (ASMTC) and Online Safety Training.

The Department is wise to recognize that different industries face their own unique challenges and that the current registered model might not translate and allow training to flourish as it has in construction, but the construction industry also faces its own unique challenges with the current registered system and its ability to meet the workforce and skills demands. Contractors and projects already demand the rigors necessary to compete and meet the demands of the current industry and economy. Instead of lowering standards of training programs, the Department should evaluate the current requirements of the OA and SAAs to provide similar flexibility it intends to with this proposal to registered programs, allowing the expansion of the registered model into areas and trades within the construction industry where programs are not well established or considered significant. Instead of comparing the number of programs within construction to those of all industries as an evaluation of success, the Department should use an evaluation of demand for workers and the skills needed as a deciding factor to identify where opportunities are necessary.

AGC recognizes the vital role registered programs play in the industry and celebrates their achievements. In addition to the current registered system's successes, there are areas for

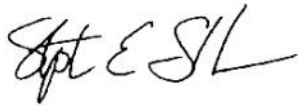
improvement, including making it easier for apprenticeship applicants to enroll in a program, encouraging collaboration and cross instruction amongst individual programs in similar geographic areas and improving transparency and data metrics on apprenticeship success rates and enrollments. Past regulatory changes regarding standards updates have been inconsistently applied and enforced. And finally, any future system must protect the current registered model's ability to continue to recruit, upskill and supply the industry with high-quality journeyworkers.

Finally, and as mentioned previously, very few usable outcome metrics for registered programs are currently tracked or publicly shared. The OA and SSAs collect data on outcomes, including employment and future earnings, but few make this data available in a usable form. While the Department proposes to require the tracking and disclosure of performance metrics and outcomes data for program impact, benchmarking and quality assurance, any performance measures considered for the proposed new system of programs should be required of the current registered programs likewise. It is important to give all prospective students and any investors greater information and data and publish the return on investment, so candidates have a better grasp of their earning potential. The better data students have to compare college, technical training or even an industry certification, the better suited they will be to follow the most appropriate path.

Conclusion

AGC reiterates its appreciation for the Department's efforts and focus promoting apprenticeships across all industries to address the nation's skills gap and workforce demand. AGC also appreciates the opportunity to engage in the rulemaking process and looks forward to working with the Department as it continues to amend regulations that impact construction employers. If the association can aid in any way, please do not hesitate to contact me.

Sincerely,



Stephen E. Sandherr
Chief Executive Officer
The Associated General Contractors of America