National Association of Home Builders

Executive Office
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ELECTRONICALLY SUBMITTED VIA REGULATIONS.GOV

Mr. Patrick Pizzella
Acting Secretary of Labor
U.S. Department of Labor
200 Constitution Avenue NW
Washington, D.C. 20210

RE: ***Comments on Proposed Rule:*** **Docket No. ETA-2019-0005 –** ***Apprenticeship Programs, Labor Standards for Registration, Amendment of Regulations (RIN 1205-AB85)***

Dear Mr. Pizzella:

On behalf of the National Association of Home Builders of the United States (NAHB) and Home Builders Institute (HBI), we are pleased to submit these comments in response to the Department of Labor's (DOL) Employment and Training Administration proposed rule on Apprenticeship Programs, Labor Standards for Registration, Amendment of Regulations that was published in the Federal Register on June 25, 2019 (84 Fed. Reg. 29,970) (Apprenticeship NPRM). As interested stakeholders in this regulatory activity, NAHB and HBI are concerned that DOL's proposal, which specifically excludes new construction apprenticeship programs from coverage in the Apprenticeship NPRM, will have a significant negative impact on the residential construction industry and small businesses, including home builders and specialty trade contractors.

NAHB is a Washington, D.C.-based trade association that represents more than 140,000 members who are involved in home building, remodeling, multifamily construction, property management, subcontracting, design, housing finance, building product manufacturing and other aspects of residential and light commercial construction. NAHB is joined in these comments by HBI, a nonprofit organization that provides training, mentoring, curriculum development and job placement services for the building industry.

While NAHB and HBI support the framework of DOL's proposed amendments to the Apprenticeship Rules for industry programs, the proposal fails in its stated mission to expand apprenticeships to critically underserved sectors by its exclusion of construction—more specifically, the residential construction sector—from participation. DOL's proposal specifically excludes new applications from Standards Recognition Entities (SREs) that involve construction, relying on its determination that construction apprenticeships are "well-established" and not needed in this new rulemaking.

NAHB and HBI are concerned that DOL's approach eliminates the ability of residential construction stakeholders to develop new apprenticeship programs designed to address the growing labor shortages in the residential construction industry. This comes at a time when the construction industry, as a whole, has 347,000 open construction positions, down from a record 434,000 in April,[1] and with construction laborers on the Bureau of Labor Statistics' (BLS) list of occupations with the most projected job growth between 2018 and 2026 with 747,600 more construction jobs expected to be added. Exacerbating the lack of skilled labor in residential

[1] Bureau of Labor Statistics, Job Opening and Labor Turnover Survey – June 2019 (Aug. 6, 2019). The total number of job openings was little changed at 7.3 million as of June 30, 2019.

construction is the absence of apprenticeship programs focused on the residential construction industry. DOL's proposal does nothing to alleviate these concerns.

Indeed, data shows that the majority of construction-focused apprenticeship programs target the *commercial* construction sector. The few residential programs NAHB has been able to identify (among its members and state and local home builders' associations), turn out very small numbers annually in proportion to the number of open jobs. These are not sufficient to meet the skilled labor shortage reported by builders across the country, especially when considering that enrollment in some programs has decreased. NAHB is concerned that DOL's proposal to exclude construction-sector apprenticeships in the proposed rule completely and indefinitely blocks the pathway for potentially new and innovative apprenticeship programs in the residential construction industry.

NAHB and HBI strongly urge DOL to reconsider these prohibitions and recognize that cutting out potential industries, specifically the residential construction industry, from the proposed amendments to the apprenticeship program stymies innovative approaches to training new workers. NAHB and HBI believe the residential construction sector should have the opportunity to develop new and innovative apprenticeship programs to address the critical skills shortages currently existing in the U.S. DOL should revise the proposed rule to allow residential construction programs to be included, and work with interested stakeholders to develop viable programs that will address cricital labor shortages.

NAHB and HBI appreciate DOL's consideration of these comments and welcome the opportunity to engage with the Department to find workable soulutions for the critical labor shortages faced by many in the construction industry, and specifically by builders in the residential sector. Please contact NAHB's Assistant Vice President of Workforce Development, Greg Zick, at (202) 266-8493 or via email at gzick@nahb.org if you have any questions or require any additional information.

Sincerely,

Gerald M. Howard
Chief Executive Officer
National Association of Home
Builders of the United States

Greg Ugalde
Chairman of the Board
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Ed Brady
President and Chief Executive Officer
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NATIONAL ASSOCIATION OF HOME BUILDERS OF THE UNITED STATES AND HOME BUILDERS INSTITUTE

Docket No. ETA-2019-0005 – Apprenticeship Programs, Labor Standards for Registration, Amendment of Regulations; Proposed Rule; Request for Comments

I. Introduction

A. About the National Association of Home Builders of the United States (NAHB) and Home Builders Institute (HBI)

Founded in 1942, NAHB is a Washington, D.C.-based trade association representing more than 140,000 members involved in home building, remodeling, multifamily construction, property management, specialty trades, design, housing finance, building products manufacturing, and all other aspects of the residential and light commercial construction industries. NAHB is affiliated with more than 700 state and local associations located in all 50 states and Puerto Rico. NAHB's members touch on all aspects of the residential construction industry. About one-third of NAHB's members are home builders and/or remodelers. The others are associates working in closely related specialties such as subcontractors/specialty trade contractors (*i.e.*, carpenters, plumbers, electricians, etc.), sales and marketing, housing finance, and manufacturing and supplying building materials.[1] NAHB's mission is to enhance the climate for housing and the building industry. NAHB promotes policies that ensure everyone has access to safe, decent and affordable housing, whether they choose to buy a home or rent.

NAHB's membership constructs approximately 80 percent of the new homes built each year in the United States, making housing a large engine of economic growth nationally. For example, in the first quarter of 2019, home building and remodeling accounted for approximately 14.7 percent of the U.S. gross domestic product (GDP).[2] NAHB strives to ensure that housing opportunities are available for all, and that it remains a national priority when laws are made, and policies are established. As part of those efforts, NAHB engages in promoting positive working relationships between state and local home builder associations and career and technical education institutions to promote and advance careers in the home building industry.

For example, NAHB has a Student Chapters program chartered by its Board of Directors, that is implemented through the local home builder associations. The Student Chapters program is dedicated to enriching the educational experience of students by offering them first-hand exposure to the real world of the building industry through NAHB membership, educational programming, and networking opportunities with local builders. Its purpose is to develop an educated and adaptable homebuilding industry that will be able to meet the needs of the job market for skilled trades. By working together, educators and NAHB members are able to develop curriculum that meets the needs of the residential construction industry while helping students obtain skills that will be valued in the industry and lead to successful careers.

Working with faculty advisers and drawing on the support of mentors and industry leaders in their

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[1] Carmel Ford, *Who are NAHB's Associate Members?* (May 1, 2009) (finding that 40 percent of NAHB Associate members are subcontractors and specialty trade contractors), http://www.nahbclassic.org/generic.aspx?sectionID=734&genericContentID=267457&channelID=311.

[2] Robert Dietz, Ph.D., *Housing Affordability Reducing Housing Share of GDP* (April 26, 2019), http://eyeonhousing.org/2019/04/housing-affordability-reducing-housing-share-of-gdp/.

local home builders' association, students are able to gain an understanding of the skills that will equip them for future career success. Students who participate in their local student chapter can compete in national competitions, apply for scholarships to assist with their education expenses, attend industry trade shows, and join as a student member of NAHB.

Joining NAHB in these comments is the Home Builders Institute (HBI), which serves as the workforce development arm of the residential construction industry developing and administering a wide range of educational and job training programs. HBI is a national nonprofit, which for more than 50 years, has provided training, mentoring, curriculum development and job placement services for the building industry. With an 85 percent job placement rate for graduates, HBI training programs are taught in local communities across the country to youth, adults, veterans, transitioning military personnel, justice-affected youth and adults, and displaced workers. Each year, HBI trains thousands of youth and adults in brick masonry; carpentry; electrical wiring; building construction technology; heating, ventilation and air conditioning; landscaping; painting; plumbing; solar installation; and weatherization. HBI's approach combines technical and employability skills with basic academics. Students can earn industry-recognized credentials such as an HBI pre-apprenticeship certificate, Occupational Safety and Health Administration (OSHA) 30 & 10-Hour Safety Training, CPR, First Aid and more.

For example, HBI's Safety Program is designed to promote workplace safety and health, with the belief that all injuries and accidents are preventable through the establishment of—and compliance with—safe work practices. HBI believes that the safety of their employees and students is of the utmost importance. HBI's in-depth focus on safety is accomplished through daily emphasis introduced through "HBI Safety Talks," a booklet containing individual, removeable inserts, which can be taken on a job site and fully cover every safety aspect of a specific technical function or possible safety hazard.

HBI is grounded in the industry's National Construction Skills for the construction trades. Developed by industry experts, construction professionals, and educators, the National Skills Standards Board created the National Construction Skills guidelines that serve as the basis for the Residential Construction Academy series. Since its inception, the guidelines from the National Skills Standards Board have met or exceeded American Psychological Association and ANSI standards for occupational credentialing. Students are taught by HBI's experienced instructors through its Residential Construction Academy Series or Pre- Apprenticeship Certificate Training (PACT) curriculum, which is an industry-validated curriculum and off-the-shelf training package based on the craft skills model. HBI students also practice skills, often working alongside contractors at job sites as they refurbish properties and facilities in local communities. The training and real-world experience gives students a solid foundation to become productive members of their communities, while sharpening technical, communication, leadership and time management skills. In addition, HBI offers job placement and transition assistance upon graduation, helping individuals find jobs, housing and transportation. HBI places approximately 88 percent of graduates in building sector employment or advanced training programs, including registered apprenticeships.

For a number of years, NAHB and HBI have been concerned by the shortage of skilled labor in the residential construction industry. NAHB has repeatedly raised this issue at all levels of government including in meetings with Congress, federal agencies, and the Executive Branch. HBI has been focused on the training side of this issue by developing various training programs to help provide skills training across targeted programs designed to address the labor shortage faced by home builders and skilled trades. Because of their experience and expertise, NAHB and HBI are well positioned to provide useful information, advice, and input to federal regulators such as DOL and its Employment and Training Administration.

B. About the Residential Construction Industry

The residential construction industry (*i.e.,* home building) in the United States is predominantly comprised of small employers. Several NAHB studies examining the structure and composition of companies and NAHB's members highlight this fact as over 95 percent of home builders fall within the U.S. Small Business Administration (SBA) definition of a small business. To qualify as a small business, SBA has established ceilings of $36.5 million for all types of builders (including residential remodelers), and $15 million for specialty trade contractors.

The vast majority of homes are constructed by small home builders and specialty trade contractors who compete in a fierce marketplace that challenges their economic survival. More than 80 percent of NAHB's builder members construct fewer than 25 homes per year, and more than half build fewer than 10 homes per year. A typical NAHB builder member firm is truly a small business. Seventy-three percent of NAHB's members have fewer than 10 employees.[3] Twenty-two percent of builders construct only one to three units per year.[4]

Further, home builders and remodelers typically subcontract out a large portion of their construction work to specialty trade contractors who can more efficiently deliver individual pieces of the construction process. Specialized subcontractors perform much, or even all, of the actual labor associated with most new home construction and renovation work. Work typically performed by subcontractors includes excavation, framing, roofing, plumbing, electrical, tile, finish carpentry, masonry, painting, dry wall, and paving.

In addition, residential construction is a highly regulated industry and home builders must comply with numerous federal, state and local statutes and regulations during the course of operating their businesses. Because activities in Congress, the federal agencies, the courts, and state and local governments affect residential construction at all levels, NAHB remains actively engaged on many fronts to ensure it has current information on changing regulations and laws.

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[3] Carmel Ford, *Who are NAHB's Builder Members?*, National Association of Home Builders (Special Studies April 11, 2018) (noting the median number of employees in 2017 was 5 and unchanged from 2015 and 2016, and up 1 from 2008 to 2014), https://www.nahbclassic.org/fileUpload_details.aspx?contentTypeID=3&contentID=261576&subContentID=710072.
[4] *Id.* at 3.

C. Skilled Labor Shortage: Impacts on the Residential Construction Industry

Currently, the residential construction sector employs more than 2.9 million people and NAHB's builder members will construct approximately 80 percent of the new housing units projected in the next 12 months, making housing one of the largest engines of economic growth in the country. Monthly employment data for July 2019[5] (the employment count data from the BLS establishment survey) indicates that total employment in home building stands at 2.912 million, broken down as 832,500 builders and 2.08 million residential specialty trade contractors.

NAHB has also been analyzing the economic impact the skilled labor shortage is having on the costs for residential construction.[6] In a survey of its members, NAHB determined the labor and subcontractor shortages remain widespread in July 2019, and are continuing to impact the industry in a number of ways—including putting additional upward pressure on new home prices—according to the results from special questions in a recent survey for the NAHB/Wells Fargo Housing Market Index (HMI).[7] The July 2019 HMI survey asked builders specifically about shortages in 15 different occupations. Shortages of labor directly employed by builders remained fairly widespread for each of the 15 occupations, ranging from a low of 47 percent for building maintenance managers to a high of 83 percent for framing crews. *See* Figure 1. The impact of the labor shortage on home prices is particularly significant, as this is one of the factors contributing to the ongoing and serious problem of housing affordability.[8]

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[5] U.S. Department of Labor, Bureau of Labor Statistics, *The Employment Situation – July 2019,* p. 28, https://www.bls.gov/news.release/pdf/empsit.pdf).

[6] Paul Emrath, Ph.D., *Labor Shortages Still Hurting Affordability* (Aug. 5, 2019), http://eyeonhousing.org/2019/08/labor-shortages-still-hurting-affordability/. *See,* Housing Market Index, *Special Questions on Labor and Subcontractors' Availability* (July 2019), http://eyeonhousing.org/wp-content/uploads/2019/08/July2019-SplQ-REPORT-EXTERNAL.pdf.

[7] *Id.*

[8] Danushka Nanayakkara-Skillington, *Housing Affordability Causes Ongoing Challenges in New Home Sales in June* (July 24, 2019), http://eyeonhousing.org/2019/07/housing-affordability-causes-ongoing-challenges-in-new-home-sales-in-june/.

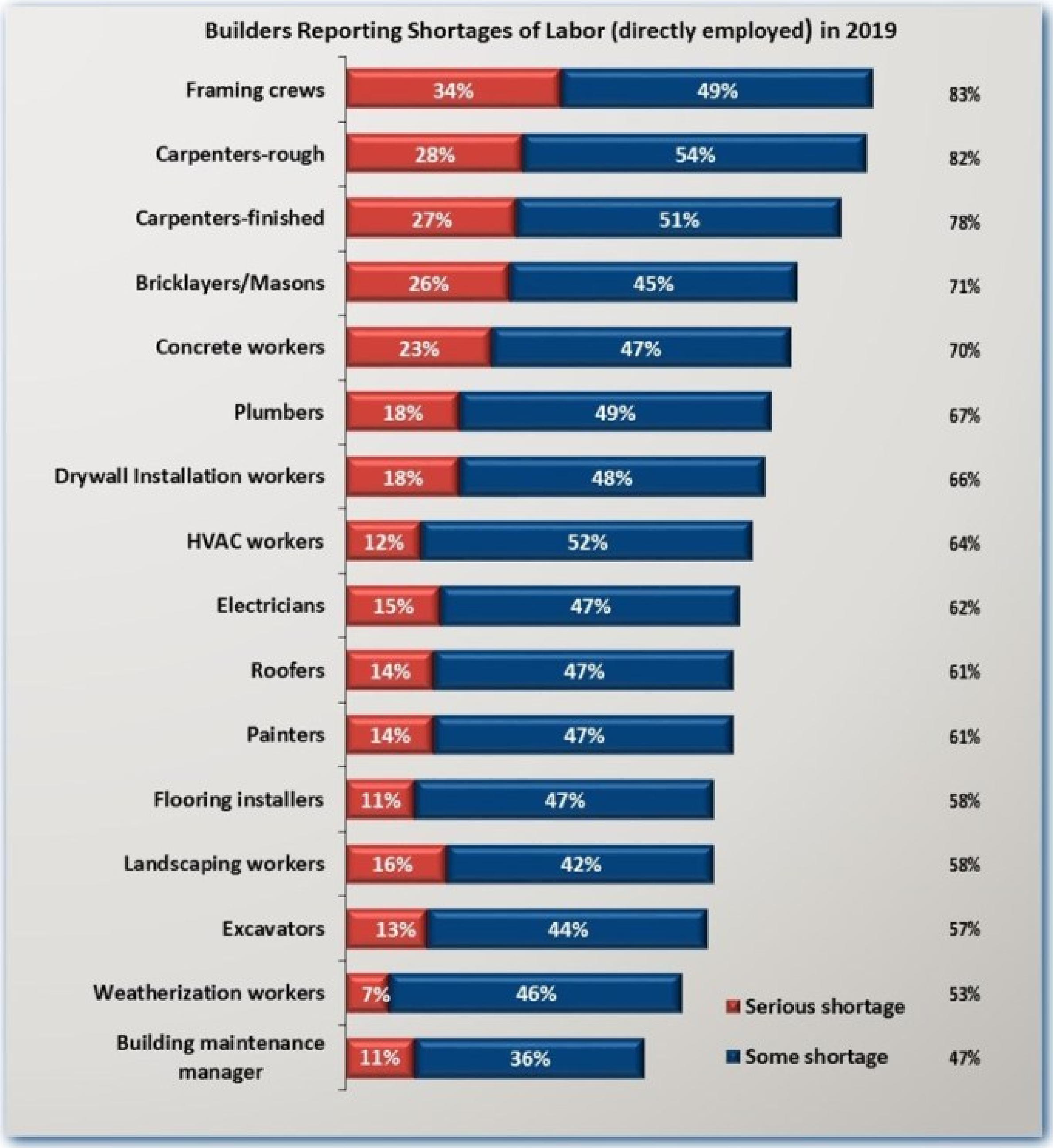

Figure 1 – Builders Reporting Labor Shortages (by Specialty Trade)

Many of the shortage percentages were little changed from where they were at this point last year. The share of builders reporting a shortage of rough carpenters actually ticked down a percentage point, from 83 percent in 2018 to 82 percent this year. Labor shortages in the other 14 occupations were either unchanged or even more widespread than they were in 2018. Averaged across the nine occupations NAHB has consistently covered since the 1990s, the incidence of shortages reached 69 percent in 2019—the highest number on record to date.

This shortage seems especially severe relative to housing starts (Figure 2), which still have not fully recovered from their historically low 2009-2011 trough. Nor, with the possible minor exception of rough carpenters, has the softness in new home production[9] during the first part of the year had a noticeable impact on the incidence of reported shortages.

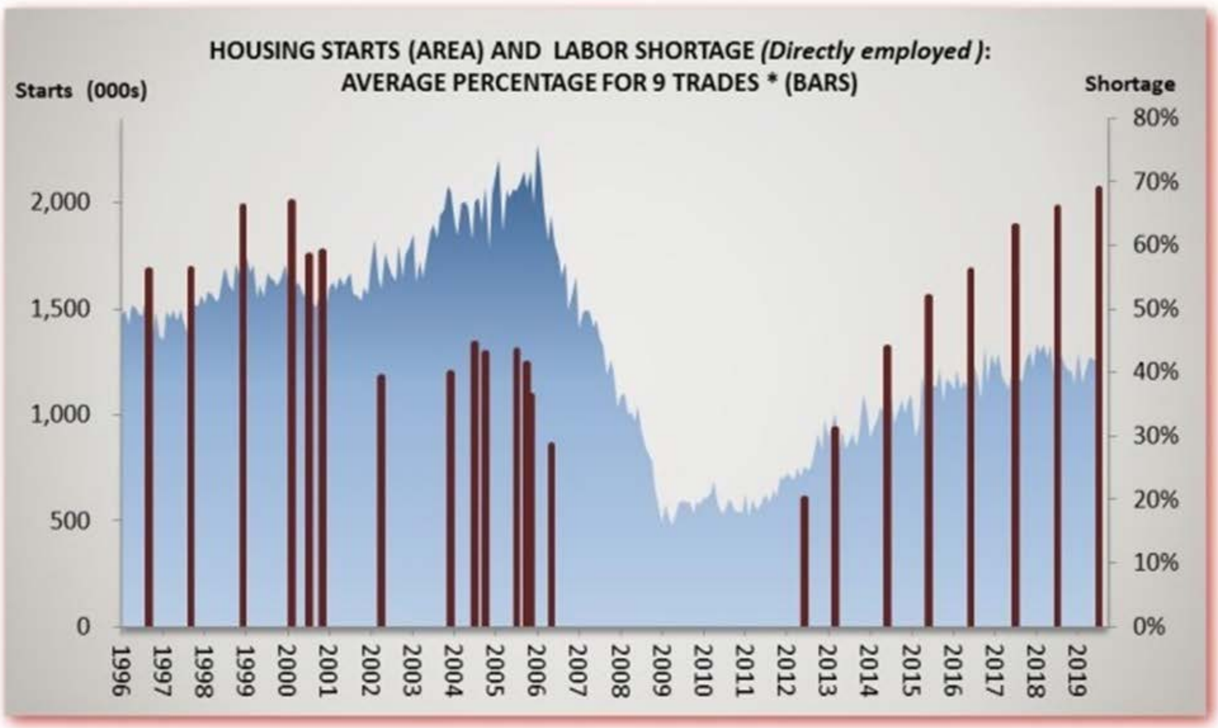

Figure 2 – Housing Starts and Labor Shortage

So far, the numbers reported above all pertain to labor directly employed by builders. But builders also employ workers indirectly, through the use of subcontractors. Recently, shortages of subcontractors have been more severe than shortages of labor builders directly employ. A possible reason is that workers who were laid off and started their own trade contracting businesses during the housing downturn have since returned to work for larger companies. This would improve the availability of workers directly employed by builders, while reducing the availability of subcontractors.

Since 2013, a persistent 5- to 7-point gap opened between the nine-trade average shortage of subcontractors and labor directly employed by builders, with subcontractor shortages being

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[9] Robert Dietz, Ph.D., *Housing Construction Weakness Continued in March* (April 19, 2019), http://eyeonhousing.org/2019/04/housing-construction-weakness-continued-in-march/.

consistently more widespread. This is significant, given that subcontractors account for three-fourths of construction costs[10] in a typical new home, and failure to take these workers into account can yield an incomplete and skewed picture of the residential construction industry. In 2019, the gap was still evident, although marginally narrowed for the first time in quite a while. The 2019 survey showed only a three-point spread between the nine-trade shortage averages for subcontractors and labor directly employed by builders. *See* Figure 3.

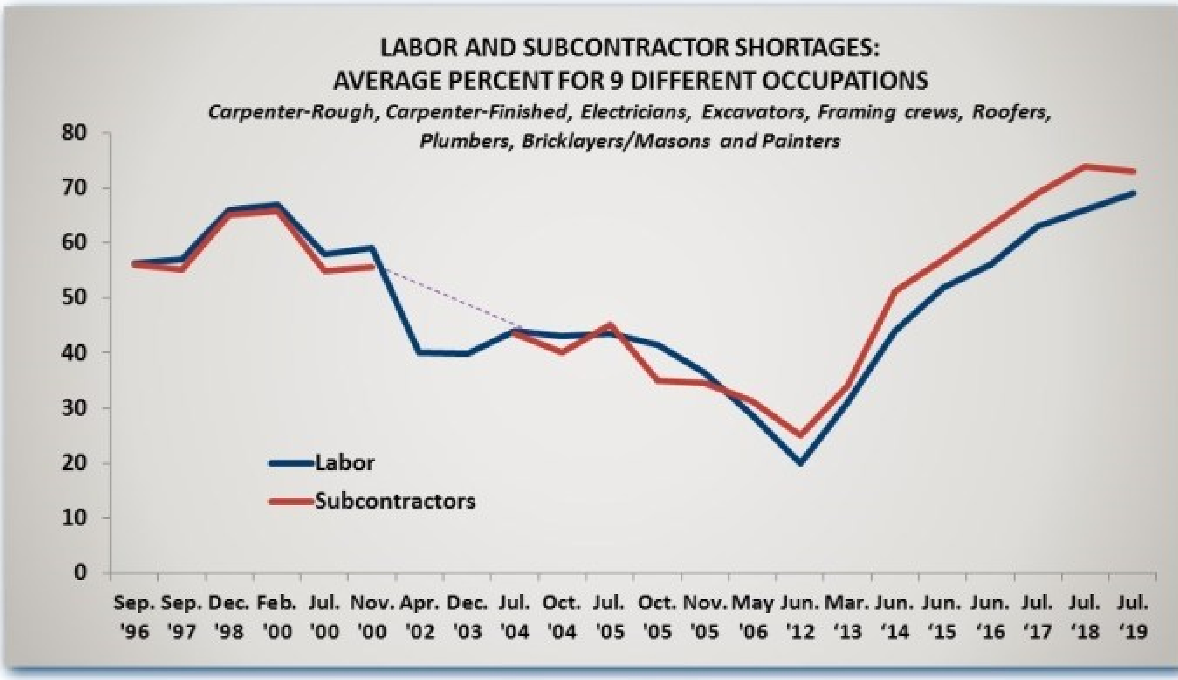

Figure 3 – Labor and Subcontractor Shortages

The July HMI survey asked builders about the effects labor shortages may be having on their businesses. *See* Figure 4. Four of these effects stand out as very common (cited by at least three-fourths of builders). Three effects are the same as the ones upon which NAHB has been reporting consistently over the past several years: causing builders to pay higher wages/subcontractor bids (reported by 87 percent of builders), making it difficult to complete projects on time (81 percent) and forcing them to raise home prices (75 percent).

[10] Paul Emrath, Ph.D., *Subcontracting: Three-Fourths of Construction Cost in the Typical Home* (Sept. 1, 2015), https://www.nahbclassic.org/generic.aspx?sectionID=734&genericContentID=247385&channelID=311.

Figure 4 – Effects of Labor Shortage Over Past 12 Months (July 2018-July 2019)

Based on comments from its builder members during a recent leadership meeting, NAHB added a new option to the list in 2019: difficulty finding subcontractors with well-trained employees. This turned out to be another common phenomenon. Seventy-nine percent of builders said that the shortage of labor was, in fact, making it difficult for them to find subcontractors with well-trained employees. *See* Figure 4.

The impact of the labor shortage on home prices is particularly significant, as this is one of the factors contributing to the ongoing and serious problem of housing affordability discussed in recent articles published by NAHB economists.[11]

The cost of housing is determined by a complex equation involving labor and materials prices; interest rates and financing costs; federal, state and local regulations; and supply and demand. In today's market, a limited supply of land, a serious shortage of skilled labor, and rising fees are all contributing to higher prices. NAHB analysis shows that regulatory requirements alone account for 25 percent of the cost of constructing a single-family home, and 30 percent of the cost of a multifamily unit. These factors make it difficult to increase the supply of affordable housing and to ensure that it meets the needs of increasingly diverse households.

[11] Danushka Nanayakkara-Skillington, *Housing Affordability Causes Ongoing Challenges in New Home Sales in June* (July 24, 2019), http://eyeonhousing.org/2019/07/housing-affordability-causes-ongoing-challenges-in-new-home-sales-in-june/.

For home builders, the ability to compete efficiently in the residential construction industry and optimally price a home depends on the degree to which overall costs are certain and predictable. This impact is of particular concern in the affordable housing sector where relatively small price increases can have an immediate impact on low to moderate-income homebuyers who are more susceptible to being priced out of the market. NAHB conducts studies on what it identifies as its "priced out effect."[12] Updated at the beginning of this year, NAHB estimates that at the national level, for every $1,000 increase in a home's price, 127,560 households are priced out of the market for a median priced new home.[13]

The federal government recently announced steps to address regulatory barriers that are inhibiting the development of housing and affordability. On June 25, 2019, President Trump signed the Executive Order 13878, Establishing a White House Council on Eliminating Regulatory Barriers to Affordable Housing, which establishes policy to address, reduce, and remove the multitude of overly burdensome regulatory barriers that artificially raise the cost of housing development and help to cause the lack of housing supply.[14] It directs the Council, which includes the Secretary of Labor, to identify and assess the actions that each government agency can take to minimize Federal regulatory barriers that unnecessarily raise the costs of housing development.

The residential construction industry is vitally important to maintaining a healthy economy. A strong housing sector provides a critical component of local economic development. Housing creates jobs, increases the demand for goods and services within a community, and generates revenues for local governments. Residential construction provides significant income and jobs for local workers and generates important benefits for local residents, businesses, and governments. The serious labor shortage in residential construction is driving the rise in housing costs, leading to a lack of housing supply to meet demand.

D. Federal Government Recognizes the Critical Shortage of Skilled Workers

Recently, the federal government has also taken steps to address the critical shortage of skilled workers that exists in the United States. In June 2017, President Trump signed Executive Order 13801, Expanding Apprenticeships in America, which increases apprenticeship programs, seeks to reform ineffective education and workforce development programs, and provide more affordable pathways to secure better jobs while easing the regulatory burden on such programs.[15] Executive Order 13801 directed the Secretaries of Defense, Labor, and Education, and the Attorney General, to "promote apprenticeships and pre-apprenticeships for America's high school students and Job Corps participants, for persons currently or formerly incarcerated, for persons not currently attending high school or an accredited post-secondary educational institution, and

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[12] Na Zhao, Ph.D., *U.S. Households Priced Out of the Market by Increases in House Prices* (January 2019) (2019 Priced Out Study), https://www.nahb.org/-/media/sites/nahb/research/housing-economics/housings-economic-impact/households-priced-out-by-higher-house-prices-and-interest-rates/US-2016-161129).
[13] 2019 Priced Out Study (identifying a new median priced home at $355,183 in 2019).
[14] Executive Order 13878 of June 25, 2019, *Establishing a White House Council on Eliminating Regulatory Barriers to Affordable Housing,* https://www.govinfo.gov/content/pkg/FR-2019-06-28/pdf/2019-14016.pdf).
[15] Executive Order 13801 of June 15, 2017, *Expanding Apprenticeships in America,* https://www.govinfo.gov/content/pkg/FR-2017-06-20/pdf/2017-13012.pdf.

for members of America's armed services and veterans."[16] It directed the Secretaries of Commerce and Labor to "promote apprenticeships to business leaders across critical industry sectors, including manufacturing, infrastructure, cybersecurity, and health care."[17] Executive Order 13801 also established the Task Force on Apprenticeship Expansion whose mission is "to identify strategies and proposals to promote apprenticeships, especially in sectors where apprenticeship programs are insufficient."[18]

Last year, again focused on the critical need to address skilled worker shortages, President Trump signed Executive Order 13845 in July.[19] As with Executive Order 13801, this executive order reaffirmed that the U.S. "is facing a skills crisis" with "more than 6.7 million unfilled jobs in the United States, and American workers . . . need the skills training to fill them."[20] Executive Order 13845 established the President's National Council for the American Worker and named as co-chairs, the Secretaries of Commerce and Labor, the Assistant to the President for Domestic Policy, and the Advisor to the President overseeing the Office of Economic Initiatives.[21]

The order also designated additional officials to serve on the Council including the Secretaries of Treasury, Education and Veterans Affairs, among others.[22] Tasks for the Council include examining how the legislative and executive branches can "work with private employers, educational institutions, labor unions, other non-profit organizations, and State, territorial, tribal, and local governments to support the implementation of recommendations from the Task Force on Apprenticeship Expansion" that was established in Executive Order 13801.[23]

As part of that assessment, Executive Order 13845 directed the Council to evaluate recommendations related to:

> (i) developing and increasing the use of industry-recognized, portable credentials by experienced workers seeking further education, displaced workers seeking skills to secure new jobs, students enrolled in postsecondary education, and younger Americans who are exploring career and education options before entering the workforce;
> (ii) *increasing apprenticeship*, earn-and-learn, and work-based learning opportunities;
> (iii) expanding the use of online learning resources; and

[16] *Id.* at Sec. 6.
[17] *Id.*
[18] *Id.* at Sec. 8(b). The Task Force on Apprenticeship Expansion (Task Force) issued a final report in May 2018. *See*, Final Report to the President of the United States (May 10, 2018), https://www.dol.gov/apprenticeship/docs/task-force-apprenticeship-expansion-report.pdf.
[19] Executive Order 13845 of July 19, 2018, *Establishing the President's National Council for the American Worker,* https://www.govinfo.gov/content/pkg/FR-2018-07-24/pdf/2018-15955.pdf).
[20] *Id.* at Sec. 1.
[21] *Id.* at Sec. 3.
[22] *Id.*
[23] Executive Order 13845 at Sec. 7(c).

(iv) increasing the number of partnerships around the country between companies, local educational institutions, and other entities, including local governments, labor unions, workforce development boards, and other non-profit organizations, in an effort to understand the types of skills that are required by employers so that educational institutions can recalibrate their efforts toward the development and delivery of more effective training programs.[24]

President Trump unveiled this executive order during the Pledge to America's Workers event[25] hosted at the White House and attended by members of Congress and representatives from 23 businesses and associations, including NAHB. During the event, each business and industry representative pledged to train and add workers in their respective industries, including NAHB's pledge to train 50,000 workers through HBI, to work in residential construction. Based on examples of numbers of new workers[26] pledged, it is apparent that the difficulty each sector will face in hiring those skilled workers will continue and remain challenging in the absence of well-targeted apprenticeship programs and other efforts that can train workers for these specific industries.

II. DOL's Proposed Rule Amending the Apprenticeship Programs and Labor Standards for Registration

The Department of Labor proposes to amend the regulations under the National Apprenticeship Act (NAA)[27] to address existing skills gaps by expanding the apprenticeship model to include new industries.[28] In response to Executive Order 13801 directing the Secretary of Labor to establish

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[24] *Id.* at Sec. 7(c)(i)-(iv) (emphasis added).
[25] Remarks by President Trump Hosting the Pledge to America's Workers Event (issued on July 19, 2018), https://www.whitehouse.gov/briefings-statements/remarks-president-trump-hosting-pledge-americas-workers-event/ (President Trump stated, "In that spirit, I'm proud to announce an exciting new challenge and the beginning of a new national movement. We're asking businesses and organizations across the country to sign our new pledge to America's workers. Today, 23 companies and associations are pledging to expand apprenticeships.").
[26] *Id.* For example, here are some of the commitments: Aerospace Industry Association pledged new opportunities for 48,000 students and workers over the next five years; American Hotel and Lodging Association announced 130,000 new opportunities with scholarships and certifications; American Trucking Association committed to 50,000 new opportunities over the next 5 years; Associated General Contractors of America committed to train or upskill over 172,500 construction craft workers and professionals over the next five years; Federal Express committed to train or reskill 512,000 people over the next five years; National Restaurant Association committed to training 370,000 people over the next 5 years; and the North America's Building Trades Unions committed to investing $6 billion, and train and recruit and register 250,000 apprentices over the next 5 years.
[27] 29 U.S.C. § 50.
[28] Apprenticeship Programs, Labor Standards for Registration, Amendment of Regulations, 84 Fed. Reg. 29,970 (June 25, 2019) (Apprenticeship NPRM) (discussing Executive Order 13801, Expanding Apprenticeships in America).

a Task Force on Apprenticeship,[29] and recommendations from the Task Force's May 2018 Final Report, DOL proposes to establish a new program to recognize Standards Recognition Entities (SREs) of Industry-Recognized Apprenticeship Programs (Industry Programs or IRAPs), identify what entities will be eligible to become SREs, and the responsibilities and requirements for these SREs.[30] The proposed rule will also identify the "hallmarks of the high-quality" apprenticeship programs DOL will recognize, and sets out how these Industry Programs will operate with existing registered apprenticeship programs.[31]

Currently, Title 29 of the regulation sets out the labor standards for the registration of apprenticeship programs, including eligibility and procedures for registering a program, criteria for eligible occupations, standards for apprenticeships, apprenticeship agreements, and other procedures.[32] In the Apprenticeship NPRM, DOL proposes separating the existing regulation into a new subpart A and adding a new subpart B formally establishing a process for organizations to apply to become DOL-recognized SREs of Industry Programs.[33] Once recognized, DOL states that the SREs would "work with employers and other entities to establish, recognize, and monitor high-quality Industry Programs that provide apprentices industry-recognized credentials."[34]

As proposed, subpart B will allow for the establishment of a new apprenticeship pathway separate and distinct from registered programs under subpart A. The Apprenticeship NPRM defines an SRE as "an entity that is qualified to recognize apprenticeship programs as Industry Programs . . . and which [DOL] recognize[s] as an SRE."[35] SREs could be "a consortium of entities" and DOL states, it "intends to encourage the creation of SREs over a broad range of industries and occupational areas."[36] DOL defines a high-quality apprenticeship program as one where "an individual obtains workplace-relevant knowledge and progressively advancing skills, that includes a paid-work component, and that result[s] in an industry-recognized credential."[37] DOL states that the hallmarks of quality include: paid work; work-based learning; mentorship; education and instruction; obtaining industry-recognized credentials;[38] safety and supervision; and adherence to equal employment opportunity obligations.[39] DOL does not view training programs as "high quality" if they only give apprentices "training about general skills and knowledge that most or all potential workers would already have—and could immediately deploy upon being hired."[40]

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[29] Task Force on Apprenticeship Expansion, Final Report to the President (May 10, 2018) (Task Force Report), https://www.dol.gov/apprenticeship/docs/task-force-apprenticeship-expansion-report.pdf.
[30] *Id.*
[31] *Id.*
[32] 29 C.F.R. Part 29—Labor Standards for the Registration of Apprenticeship Programs.
[33] 84 Fed. Reg. at 29,971.
[34] *Id.*
[35] *Id.* at 29,972.
[36] 84 Fed. Reg. at 29,972.
[37] *Id.*
[38] *See,* 84 Fed. Reg. at 29,975 (Types of credentials could be "a certificate, certification, degree, electronic badge, or other indicator that attests to an individual's acquisition of skills or knowledge." Such a credential "is one that is created by the industry that will use the credential, based on the particular competencies required within the specific industry.").
[39] 84 Fed. Reg. at 29,974.
[40] 84 Fed. Reg. at 29,974.

The Apprenticeship NPRM states the programs would be developed or provided by trade and industry groups, nonprofit organizations, companies, educational institutions, unions, or joint labor-management organizations. DOL views this approach as one that starts with recognized high-quality programs developed by SREs that will provide the flexibility needed for entities to tailor Industry Programs to their own needs.[41]

The Apprenticeship NPRM also delineates the process and standards by which an entity may apply for DOL recognition as an SRE and includes an evaluation process and criteria for qualification as an SRE.[42] The application process will require SREs to provide detail on their capability for obtaining input, support, and consensus from industry experts on the standards set by the SRE, as well as information on the industry experts and the process they used to set the standards.[43] SREs would also need to explain their methods in verifying the Industry Programs would provide or lead to an industry-recognized credential.[44] DOL proposes that SREs would be recognized for five years, with a reapplication requirement if they seek continued recognition after the five year period ends.[45] DOL also makes clear that participation as an SRE does not make that entity a "joint employer" with the entity that develops or delivers the Industry Program.[46]

In addition to the standards recognition for SREs and SRE responsibilities and requirements discussed above, the Apprenticeship NPRM also includes provisions for dealing with conflicts of interest, a quality assurance mechanism to determine SREs conformance with the regulations, and an expedited process for recognizing Industry Programs.[47] DOL further proposes complaint and review procedures for SREs, as well as procedures to examine the effect of an SRE's derecognition, and procedures for requesting an administrative review.[48]

DOL further discusses the scope and differences between subpart A and the proposed subpart B. DOL states that apprenticeship programs under subpart B should expand programs to new industry sectors and occupations along a parallel path to and distinct from existing apprenticeship programs under subpart A. The Apprenticeship NPRM proposes to "only recognize SREs that seek to recognize Industry Programs in sectors without significant registered apprenticeship opportunities."[49] In support of this position, DOL relies on the Final Report prepared by the Task Force on Apprenticeship Expansion.[50] DOL notes that the Task Force's Recommendation 14 suggested, "[t]he Industry-Recognized Apprenticeship program *should begin implementation with a pilot project in an industry without well-established Registered Apprenticeship programs*."[51]

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[41] 84 Fed. Reg. at 29,972.
[42] *See, e.g.,* 84 Fed. Reg. at 30,011 – 30,014.
[43] 84 Red. Reg. at 29,972 – 29,973.
[44] *Id.*at 29,973.
[45] *Id.*
[46] 84 Fed. Reg. at 29,976.
[47] *Id.* at 29,977 – 29,978.
[48] 84 Fed. Reg. at 29,979 – 29,980.
[49] 84 Fed. Reg. at 29,980.
[50] *Id.*
[51] 84 Fed. Reg. at 29,980 (citing Task Force on Apprenticeship Expansion, Final Report of the President of the United States (May 10, 2018)).

Although DOL acknowledges the recommendation, it opted not to adopt that approach because "the large skills gap requires a more immediate response than a pilot project would permit."[52] In addition, DOL states that, because of its focus on new programs, it "agrees that apprenticeship expansion should not come at the cost of existing registered apprenticeship programs." Accordingly, DOL proposes to only recognize SREs that seek to recognize Industry Programs in sectors without significant registered apprenticeship opportunities and will rely on the number of federal registered apprentices from prior years to estimate where such registered programs are already significant.[53] DOL would identify sectors where registered apprenticeship opportunities are already significant as those that have more than 25 percent of all federal registered apprentices per year on average over the prior five-year period, or that have more than 100,000 federal registered apprentices per year on average over the prior five-year period, or both.[54]

Based on those proposed thresholds, DOL states it expects to identify the U.S. Military and construction as sectors wherein registered apprenticeship opportunities are already "significant." Therefore, DOL states that at least initially, it will not accept applications from SREs seeking to recognize apprenticeship programs in these categories.[55] The Apprenticeship NPRM states that a program would be in construction "if it equips apprentices to provide labor whereby materials and constituent parts may be combined on a building site to form, make, or build a structure."[56] As a result, the proposal requires potential SREs to certify in their applications that they will not seek recognition for Industry Programs in construction.[57]

DOL stated that it recognizes "the need for flexibility over time" and especially as the economy and workforce needs change.[58] Consequently, DOL seeks comments on two aspects of its approach: (1) whether this method is the best measure of where there are significant registered apprenticeship opportunities, and (2) whether this method will appropriately manage the potential overlaps and conflicts between registered apprenticeship programs and Industry Programs.[59]

III. DOL's Proposal to Exclude Construction from the Rulemaking Manifests a Fundamental Lack of Understanding of the Residential Construction Industry

NAHB and HBI do not believe DOL's decision to exclude the construction sector from the Apprenticeship NPRM is well-reasoned and urges the agency to reconsider its approach. The residential construction industry is facing a shortage of skilled labor and this crisis will continue unabated for the foreseeable future unless something is done to train more skilled workers.

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52 84 Fed. Reg. at 29,980.
53 *Id.*
54 *Id.*
55 84 Fed. Reg. at 29,980 and note 19 (stating '[t]he 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.").
56 84 Fed. Reg. at 29,980.
57 *Id.* at 29,980 and 30,016 – 30,020 (certifying that all information in the application contained in the application is true and complete).
58 84 Fed. Reg. at 29,981.
59 *Id.* Because DOL proposed to exclude construction-focused apprenticeship programs from this rulemaking, NAHB and HBI are focusing most of their comments on this aspect.

Despite these labor shortages, DOL *repeatedly* states the Apprenticeship NPRM takes an industry-led, market driven approach to identifying new apprenticeship Industry Programs, while providing flexibility[60] to target skills areas that are most needed to address existing skills gaps. Again, NAHB and HBI respectfully disagree because DOL's view highlights a fundamental lack of understanding of how the residential construction industry works.

DOL relies on Executive Order 13801 and the Task Force Report to justify excluding construction and military programs because it claims these already have well-established apprenticeship programs.[61] Instead, DOL relies on the report to focus on industries "*without* well-established Registered Apprenticeship Programs."[62] As noted above, DOL "agrees that apprenticeship expansion should not come at the cost of existing registered apprenticeship programs."[63] Unfortunately, although the Task Force was comprised of well-respected and large industry members and union representatives, it did not consist of any representative from the residential construction sector. As a result, residential construction perspectives were not considered by the Task Force, which is evident when reviewing the Final Report and Task Force recommendations.

Although there are existing construction-related apprenticeship programs, likely the "well-established" programs DOL relies on to justify excluding construction from the SRE application process, the reality is that the clear majority of these programs *do not* focus on or target residential construction. Residential construction is traditionally an underserved segment and DOL's decision to exclude construction programs immediately negates any potential opportunities for new programs that would help small businesses overall, and the residential construction industry specifically. Nor does the Apprenticeship NPRM provide any time frame indicating when the Agency would consider new applications from SREs that involve construction generally, and specifically residential-focused programs.

What DOL also fails to appreciate is that the majority of construction apprenticeships are managed through labor unions. Significantly, most NAHB members do not use union labor, so finding skilled workers entering the residential construction workforce via union-based apprenticeship programs, those DOL views as "well-established," is even more challenging and less likely to occur. That is because most apprentices who graduate from existing union-run registered apprenticeship programs stay on the commercial construction side and do not move to residential.

Indeed, data from the Bureau of Labor Statistics (BLS) supports that perspective.[64] In an analysis of union members for 2018, BLS reports that the overall percentage of wage and salary workers in unions was 10.5 percent, which represents a decrease of 0.2 percent from 2017.[65] The overall

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[60] *See, e.g.,* 84 Fed. Reg. at 29,970, 29,972, 29,974, 29,976, 29,981 and 29,982.
[61] *See, e.g.,* 84 Fed. Reg. at 29,971; 29,980 (proposing to "recognize SREs that seek to recognize Industry Programs in sectors without significant registered apprenticeship opportunities").
[62] 84 Fed. Reg. at 29,980 (emphasis added); Task Force Report at 11, 34 (Executive Summary, Recommendation 14, respectively).
[63] 84 Fed. Reg. at 29,980.
[64] *See,* Bureau of Labor Statistics News Release, *Union Members—2018* (Jan. 18, 2019), https://www.bls.gov/news.release/pdf/union2.pdf.
[65] *Id.*

number of wage and salary workers who belong to unions was listed at 14.7 million.[66] In 1983 for example, numbers were higher, with 17.7 million union workers or 20.1 percent.[67] BLS summary data indicates that in 2018, only 14 percent of wage and salary workers were members of unions in the private construction industry in the United States.

In addition, CPWR – The Center for Construction Research and Training (CPWR),[68] reports that according to the rates estimated by Subject Matter Experts (SMEs),[69] "*very few* union members were employed in residential construction."[70] CPWR also reports that union membership varies among construction occupations as well.[71] In 2015, 40 percent of ironworkers and 39 percent of sheet metal workers—predominantly commercial construction occupations—were union members, while the rate of union membership was only 7 percent among painters and carpet and tile workers.[72]

This corroborates findings from an earlier study by The Aspen Institute that profiled residential construction workers.[73] According to that study, conducted in 2011, only 14 percent of workers in the construction industry belonged to unions, and in the residential construction sector, that proportion was likely much smaller. That is because, traditionally, even in areas with strong union representation in other sectors of the workforce, organized labor does not represent residential construction.

Instead of limiting the industries eligible to participate in the new Industry Programs, DOL should focus more on highlighting the good work that is already being done to *expand* apprenticeship opportunities in construction. That said, DOL should recognize that more still needs to be done, particularly in the residential construction sector, wherein workers are predominately nonunion and not fully represented in the existing industry-recognized programs.[74]

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66 *Id.*

67 *Id.*

68 CPWR was awarded NIOSH's National Construction Center cooperative agreement for 2014-2019, https://www.cdc.gov/niosh/construction/ncc.html. CWPR produced the Construction Chart Book with support from the National Institute for Occupational Safety and Health grant number OH009762. CPWR is a not-for-profit organization created by North America's Building Trades Unions.

69 CPWR defines Subject Matter Experts as "individuals with extensive experience in, and/or substantial knowledge of, union construction work. The SMEs represent three categories: management, unions, and other." https://www.cpwr.com/chart-book-6th-edition-labor-force-characteristics-union-membership-and-coverage-construction-and.

70 CPWR, *Union Membership and Coverage in Construction and Other Industries* (Construction Chart Book 6th Ed.) (emphasis added), https://www.cpwr.com/chart-book-6th-edition-labor-force-characteristics-union-membership-and-coverage-construction-and.

71 *Id.* at Slide 12d. Subject Matter Experts ratings for each union for each sector.

72 *Id.* at Slide 12c. Union membership, selected construction occupations, 2015 (Wage-and-salary workers).

73 The Aspen Institute, *Profiles of the Residential Construction Workforce and the Workers Defense Project*, https://assets.aspeninstitute.org/content/uploads/2017/07/Profiles-of-the-Residential-Construction-Workforce-and-the-Workers-Defense-Project.pdf.

74 Indeed, even the composition of the Task Force excluded the residential construction sector. Task Force members included representatives from Associated Builders and Contractors, Business Roundtable, American Association of Community Colleges, Northrop Grumman, Governor Daugaard (South Dakota), E3 Engage Educate Employ, Manpower Inc., U.S. Chamber of Commerce, National Institute for

For example, DOL should structure a new program authorizing or empowering third-party credentialing bodies to oversee employer-driven programs. These will establish efficient training programs and create more competent personnel on the jobsite. Most trainings (unless there is a safety department) are awareness trainings and do not establish the "hands on" simulation. Therefore, parameters should ensure quality standards are maintained as part of any program developed including: targeted and established curricula; identifying qualified subject matter experts to provide the training (including safety training and compliance); evaluation procedures to continually assess the programs; credentialing for trainees; and accountability to DOL.

As part of this program, DOL should establish minimum standards and oversight procedures to monitor the third-parties and program participants. DOL should set it up so that it is parallel to the existing registered apprenticeship system, instead of transferring responsibility to SREs who then must apply, reapply in the future, and meet certain criteria which adds another layer of unnecessary requirements. In addition, DOL should establish transparency for the process and define reporting and evaluation procedures as part of its oversight. Finally, DOL should support a pilot program to test these recommendations.

To ensure success, DOL should also establish clear metrics for stakeholders to demonstrate compliance, as well as measure progress for program participants. This should include tracking job placement of apprentices once they complete their programs. Currently, DOL does not keep track of apprentices following completion of their programs. As a result, DOL has no tangible employment data on workers after an apprenticeship ends. DOL's lack of data undermines its ability to effectively evaluate existing apprenticeship programs, even though, in the Apprenticeship NPRM, DOL discusses the need to focus on *new* programs in industries without well-established programs. It also does not comport with the recommendations from Executive Order 13801, which directed DOL to reform ineffective education and workforce development programs.[75] Realistically then, what constitutes a "well-established" program? What makes an existing registered apprenticeship program effective?

While DOL proposes that the Apprenticeship NPRM will focus on *new* programs and areas not currently served, DOL has no way to really measure the efficacy or success of existing programs. With that in mind, how can DOL argue that the focus of this proposed rule should be only on *new* programs in *new* industries not currently served? It is clear from BLS and industry data that the residential construction industry does not have "well-established" apprenticeship programs already in place. Accordingly, residential construction should not be excluded from the proposed parallel Industry Programs DOL seeks to establish through this NPRM.

Metalworking Skills, Dow Chemical Company, American Hotel & Lodging Association, United Brotherhood of Carpenters and Joiners of America, North America's Building Trades Unions, National Urban League, Mr. John Ratzenberger (Workforce Training Advocate), Governor Reynolds (Iowa), Association of Public and Land-Grant Universities, International Association of Sheet Metal, Air, Rail and Transportation Workers, National Restaurant Association, National Association of Manufacturers. Task Force Report at 9.

[75] *See, supra* n. 15, Executive Order 13801.

NAHB and HBI respectfully urge DOL to reconsider its approach and broaden the scope of the final apprenticeship rule to address existing shortcomings extant in current registered apprenticeship models.

IV. Specifically Excluding New Construction-Focused Apprenticeship Programs is Extremely Shortsighted and Ignores the Acute Skilled Worker Shortage in the Residential Construction Sector

The residential construction sector could greatly benefit from having industry-led apprenticeship programs developed to meet the severe labor shortages builders are facing. NAHB members report the most serious labor shortages among carpenters, framing crews, concrete workers, drywall installers, and bricklayers and masons.[76] Rather than offering flexibility for industry stakeholders, DOL specifically excludes applications[77] from potential SREs who may be working on developing new residential construction-focused programs and effectively prohibits these groups from applying.[78] That directly contradicts DOL's assertions that the proposed rule provides flexibility, and that it takes an industry-led market driven approach. Instead, DOL's approach ignores a segment of the industry that: (1) does not have well-developed apprenticeship programs, and (2) actually needs skilled workers for the foreseeable future.

DOL's approach is particularly problematic for NAHB and HBI because a 2017 study conducted by NAHB found relatively few young adults, ages 18 to 25 in the U.S., are planning careers in construction.[79] Seventy-four percent of survey respondents reported they knew the field in which they would want to have, or already have, a career. Of that group of respondents, only three percent identified a career in the construction trades, a result that was found across all the variables analyzed.[80]

NAHB and HBI have worked together over the years to address skills needed for the residential construction industry. HBI has often been referred to as the workforce development arm of the residential construction industry. HBI has worked for more than 50 years to provide training and skills to workers across a broad socioeconomic spectrum. Some of its long-standing programs include those working with Job Corps. Job Corps is the largest free residential education and job training program for young adults ages 16 to 24. HBI Job Corps serves more than 3,000 at-risk men and women each year, providing a qualified workforce for the building industry. Through the work of staff and graduates, HBI Job Corps has built relationships with corporations, home builder associations, small businesses and more. Each year, underserved youth get real, hands-on

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[76] *See, supra* n. 6, NAHB *Special Questions on Labor and Subcontractors' Availability* (July 2019), http://eyeonhousing.org/wp-content/uploads/2019/08/July2019-SplQ-REPORT-EXTERNAL.pdf.
[77] 84 Fed. Reg. at 30,016 (IRAP Standards Recognition Entity Application Form) (stating, "The Department will not accept applications from entities seeking to recognize apprenticeship programs in the construction industry or in the U.S. Military.").
[78] *Id.* Also excluded are potential SREs from the U.S. Military.
[79] Rose Quint, NAHB Special Study: *Young Adults & the Construction Trades* (March 1, 2017), http://www.nahbclassic.org/fileUpload_details.aspx?contentTypeID=3&contentID=255983&subContentID=694485&channelID=311.
[80] NAHB Special Study: *Young Adults & the Construction Trades* at 3.

building trades training through approximately 150 programs at more than 65 sites across the U.S.

HBI Job Corps programs across the country provide training in ten residential construction trades, employability skills education and job placement services. HBI has partnered with DOL's Job Corps for more than 40 years. Today, HBI Job Corps programs are located at 65 Job Corps sites. Despite this good work, and despite all of its experience in the industry and with stakeholders and trainers, because of the Apprenticeship NPRM, HBI Job Corps is prohibited from applying as an SRE to develop more in-depth *industry-led* apprenticeship programs or training. Rather, HBI is restricted to providing only pre-apprenticeship training before sending these workers out into the market to find additional training and skills.

Through HBI's participation in Job Corps, DOL requires that HBI place 20—soon to be 25—percent of its Job Corps graduates into apprenticeship programs. Without a prevalence of apprenticeships in residential construction, and the expansion of such programs precluded by construction's omission from the Apprenticeship NPRM, HBI is effectively investing time, resources, and funds into training workers who can even go into the sector for which the organization is intending to develop a future workforce.

In addition to HBI Job Corps, HBI established the HBI Veterans Program. Started in 2010, the program empowers our nation's veterans with the skills and experience they need to secure meaningful careers in the construction industry. In 2015, the program expanded to include soon-to-separate military personnel. HBI launched the program at Fort Stewart Army Base in Georgia with partners the Bob Woodruff Foundation and Soldier for Life. Students are active duty service members within six months of military separation.

When HBI began training at Fort Stewart, the expectation was to serve approximately 50 to 60 separating soldiers in the first year. That target was met within the first year and a second instructor was hired to accommodate a growing wait-list of student soldiers. HBI's Military and Veterans Program is planning to expand to other military bases.

This program uniquely supports transitioning military and veterans at every stage of the employment continuum—successfully connecting, assessing, training, certifying, placing them in high-growth construction careers, and charting participant progress for a minimum of one year. For veterans seeking skills and opportunity, the HBI Veterans Program promises job readiness and career connections—all while inspiring hope, confidence and long-term success in its graduates. Through Pre-Apprenticeship Certificate Training (PACT), the program provides the opportunity to learn the construction trades through a combination of academic learning and hands-on experience. PACT graduates emerge from the program highly skilled, certified and in-demand by businesses in the construction industry that are seeking qualified workers. What's more, students are trained in the multiplicity of jobs and careers in the construction industry, which increases their marketability and employment options. The program helps transitioning military and veterans achieve economic self-sufficiency and offers opportunities for lifelong learning and graduated earning potential.

Both of HBIs programs align well with the goals of Executive Order 13801,[81] to promote apprenticeship and pre-apprenticeship programs. However, more could be done with the right opportunities, especially for HBI, which is considered an industry leader in providing training. HBI would appreciate the opportunity to engage more fully by expanding into a provider of industry-recognized apprenticeship programs and not just be relegated to the pre-apprenticeship certificate training it currently offers. By expanding its focus, HBI could work with key stakeholders at its various sites around the U.S. to provide targeted education and training and help the residential construction industry by providing workers with the necessary skills to immediately enter the workforce at an advantage. Unfortunately, it can do none of these things due to the prohibitions in the Apprenticeship NPRM.[82]

In response to the Apprenticeship NPRM, NAHB conducted outreach to its members, as well as state and local home builder associations (HBAs), requesting specific information on any residential-focused apprenticeship or training programs they provide. NAHB has confirmed that indeed, not many residential-focused programs exist. For example, NAHB learned that a handful of state or local HBAs do have some type of apprenticeship program, two additional associations would like to start programs but have not because of the regulatory burdens, and one local HBA ended up deciding to wrap up its program due to lack of enrollment and decreasing graduation rates.

Of those programs: three are registered with DOL and four are registered through their state apprenticeship agencies; two of the state programs formed just in the last 2 years. Three of those programs have been in place for a number of years. For example, one program is more than 50 years old, another formed in the 1970's, and the third formed in the 1990's. California has a construction curriculum focused in a number of high schools state-wide but does not appear to have any formal apprenticeship program in place. In addition, a retired builder member in the St. Louis, MO, area discussed his long-term involvement with an apprenticeship program, but that program was offered by local labor unions and did not train workers for the residential sector.

With respect to the longer-term programs discussed above, NAHB learned that not all students enter the residential construction sector after completion. The 50-year-old program appears to be fairly robust and graduates approximately 30 to 50 students per year. It offers two-year programs for welding, facilities management, HVAC and carpentry, and a three-year electrical program. The program managers have plans to add masonry and diesel mechanics in the future. While most of their graduates start out in the residential sector, this HBA reported that most then move over to commercial construction when they reach their early 30's.

The program established in the 1970's can also be described as robust. This program is registered with the state department of education and the HBA reports it currently has approximately 420 students enrolled. The HBA anticipates approximately 50 participants complete the program annually, although that can vary with enrollment. About one-half of the programs in this state are open shop (as in the HBA program) with the remaining 50 percent

[81] *Supra,* n. 15, Executive Order 13801.
[82] DOL's decision to exclude construction apprenticeships frustrates NAHB's pledge to add 50,000 residential construction jobs in the next few years. *Supra* p. 11.

union. The HBA reported that only about 25 percent of their graduates enter the residential construction sector upon completion; the remaining 75 percent move into the commercial construction sector.[83]

The program started by a local HBA in the 1990's initially was registered with DOL and through the state requirements. When it began, it had 30-40 participants annually. Unfortunately, this HBA has gradually seen a decrease in enrollment as people are not as interested now in going into the trades. The HBA program was restricted to residential carpentry by the State Apprenticeship Board, so its reach was limited since any changes to the program had to be approved by the Board. Also, in that community, the HBA reported a robust union carpentry presence which competed with potential workers interested in carpentry. The HBA further reports that compliance with both the state and federal programs is extremely burdensome and, when combined with the lack of enrollment, the HBA has opted to wrap up the program once current students finish. While there is an organization offering apprenticeship training across the state, that program will not fully replace the HBA program because it is too expensive for smaller builders who cannot afford to pay for workers to participate; and it focuses primarily on commercial trades.

Of the two HBAs that reported establishing programs in the last two years, both are registered through state apprenticeship agencies, but only one is focused solely on residential construction. One of these programs is registered as a "Construction Technologist Program." Each have graduated five to eight students. One HBA has a two-year program focused on residential construction targeting jobs in carpentry. The other HBA provides a three-year program with the last year offering the ability to specialize in residential *or* commercial. This program also focuses on carpentry. Neither of these programs offer apprenticeship training in other skills areas.

The results of this survey support NAHB's view that while there may be scattered residential apprenticeship programs, they are not wide-spread. Moreover, NAHB and HBI respectfully suggest that the two longer-running apprenticeship programs, while arguably robust, are not sufficient enough for DOL to claim that no other residential construction-focused apprenticeships are necessary. Indeed, one of these programs, while well-established, produces more trained workers for commercial than residential. Similarly, the remaining programs do not train nearly enough workers and, collectively, the handful of existing programs nationwide will do little to address the significant labor shortages the residential industry faces.

It is ironic that even as the Apprenticeship NPRM seeks to exclude construction from the proposed amended regulations, the Task Force on Apprenticeship Expansion made the point (and DOL agreed) that "Industry-recognized apprenticeships provide a *new* pathway that gives industry organizations and employers more autonomy and authority to identify high quality apprenticeship programs and opportunities."[84] Yet, the pathway for potentially new and innovative apprenticeship programs in the construction industry is completely and indefinitely blocked by this rulemaking.

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[83] There is a second residential program in the same state, but it is a newer program and about half the size with respect to attendance and completion.
[84] Task Force Report at 33 (noting that "there is insufficient flexibility in program requirements within the Registered Apprenticeship program to meet the varying needs of different industries."); *see also,* 84 Fed. Reg. at 29,971.

NAHB and HBI strongly urge DOL to reconsider these prohibitions and recognize that cutting out potential industries, specifically the residential construction industry, from the proposed apprenticeship programs stymies innovative approaches to training new workers. The residential construction sector should have the opportunity to develop new and innovative apprenticeship programs to address the critical skills shortages currently existing in the U.S.

V. Conclusion

NAHB and HBI are disappointed that DOL specifically excluded the construction sector in the proposed regulatory amendments, particularly at a time of endemic labor shortages in the industry, and 347,000 open construction positions (down from a record-setting 434,000 in April). Further, NAHB and HBI disagree that residential construction is adequately represented in existing DOL-approved apprenticeship programs, because the vast majority of those programs do not focus on the needs of the residential construction sector. Regardless of the focus of existing construction apprenticeships, there is still a significant labor shortage in the construction industry as a whole, and specifically for the residential sector.

Accordingly, NAHB and HBI strongly urge DOL to reconsider its decision to exclude construction apprenticeships, and instead allow residential construction programs to be included in any final rule and work with interested stakeholders to develop viable programs that will address critical skilled labor shortages. NAHB and HBI suggest that through stakeholder meetings or hearings, the Agency could develop a strong final rule that would help it implement President Trump's goals in Executive Orders 13801 and 13845.

NAHB and HBI appreciate DOL's consideration of these comments and welcome the opportunity to engage with the Department to find workable solutions for the critical labor shortages faced by many in the construction industry, and specifically by builders in the residential sector. Finally, NAHB and HBI encourage DOL to continue to work with the entire construction industry to ensure that positive efforts and opportunities exist to increase the availability of skilled workers.