August 8, 2019

Adele Gagliardi
Administrator
Office of Policy Development and Research
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, D.C. 20210

Submitted via the Federal eRulemaking Portal at http://www.regulations.gov

RE: Apprenticeship Programs, Labor Standards for Registration, Amendment of Regulations (RIN 1205–AB85)

Ms. Gagliardi:

The Signatory Wall and Ceiling Contractors Alliance (SWACCA) is a national alliance of wall and ceiling contractors committed to working in partnership with their workers and their customers to provide the highest-quality, most efficient construction services. Through the superior training, skill, and efficiency of their workforce – which begins at apprenticeship – SWACCA contractors provide high-quality and cost-effective construction services to their customers and solidly middle-class jobs to their employees. SWACCA prides itself on representing construction contractors that accept responsibility for paying fair wages and benefits, and abide by health and safety standards, workers compensation laws, and unemployment insurance requirements.

SWACCA's membership includes more than 350 construction employers that participate in registered apprenticeship Programs. Those Registered Programs are located across the country and cover many thousands of Registered Apprentices. SWACCA members rely on these programs to train their collective workforce. In fact, many key management-level employees of SWACCA member companies, and even many company owners themselves began their construction industry careers as apprentices registered in these programs.

The registered apprenticeship programs in which SWACCA members participate are privately funded and self-sustaining. They are part of a well-functioning private market. Because registered apprenticeship programs are critical to the success of SWACCA members and their workforce, SWACCA members and other participating employers invest millions of dollars in their registered apprenticeship programs every year. SWACCA members have a deeply vested interest in ensuring the continued success of these programs to protect that investment and ensure

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that registered apprenticeship programs continue to meet their workforce training needs.

In general, SWACCA is concerned that the Industry Programs the Administration is seeking to inaugurate will become a vehicle for simply training workers to the minimum requirements of the jobs participating employers must fill immediately. Absent meaningful oversight, enforceable standards, and a commitment to substantial private investment, SWACCA does not believe these programs will serve as a means to provide for the progressive skills development over time that is necessary to empower workers to climb a career ladder to economic security and self-sufficiency. Moreover, we believe that the aura of legitimacy these programs will receive by being acknowledged in federal regulations will undermine significant investments that have been made in proven, registered apprenticeship programs that have served as a path to the middle class for generations of workers.

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SWACCA respectfully submits the following comments focusing on the impact that Industry Programs as proposed in the Department's Notice of Proposed Rulemaking entitled "Apprenticeship Programs, Labor Standards for Recognition, Amendment of Regulations" published June 25, 2019 (the NPRM) will have on the privately-funded, effective and substantially widespread registered apprenticeship programs in the construction industry that are critical to our members and the men and women they employ.

1. SWACCA recommends changes to the approach proposed by the Department to identify sectors where registered apprenticeship programs are effective and substantially widespread.

SWACCA agrees with the Administration's many statements that apprenticeship expansion through Industry Programs should not come at the cost of undercutting existing registered apprenticeship programs that are already effective and substantially widespread. This is especially important in the construction industry, where the annual private investment in a nationwide system of registered apprenticeship programs is nearly a billion dollars per year.[1] This private investment in construction industry registered apprenticeship programs must be protected through cautious and thoughtful implementation of new apprenticeship structures to ensure it does not deter continued investment by employers in these highly successful programs that are not dependent on taxpayer support.

[1] *See* White House Press Briefing with Sean Spicer 6/12/17 (video and transcript), Secretary of Labor Alexander Acosta comments, https://www.conservativedailynews.com/2017/06/press-briefing-sean-spicer-6-12-17/amp/ (last accessed August 19, 2019).

The President's Task Force for Apprenticeship Expansion recommended that the Industry-Recognized Apprenticeship Programs should begin implementation with a pilot project in an industry without well-established registered apprenticeship programs.[2] This recommendation is mindful of the enormous private investment that has been made in registered apprenticeship programs and the success they have achieved in the construction industry where registered apprenticeship programs are well-established. While DOL did not expressly adopt this recommendation, the Department has been clear in Training and Employment Notice No. 03-18 (July 27, 2018) and the NPRM that it is implementing the intent of this recommendation to ensure Industry Program not undermine registered apprenticeship where it is already effective and substantially widespread. This is clear from the language in the TEN and the NPRM that declines to allow Standards Recognition Entities (SREs) to certify Industry Programs in construction. Implicit in this protective measure is the acknowledgement that Industry Programs constitute government intervention to establish competing programs with lower standards that threaten to undercut registered apprenticeship programs in construction at the expense of hundreds of thousands of apprentices educated through these programs and the private businesses that have invested in them for decades.

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a. The final rule should permanently exclude Industry Programs from the construction industry.

The Department recognition of the success of the registered apprenticeship programs in the construction industry by proposing to *initially* proscribe SREs from certifying Industry Programs in the construction is insufficient. SWACCA urges the Department to permanently prohibit Industry Programs from being recognized in the construction industry because, as the NPRM makes clear, apprenticeship programs are already effective and substantially widespread in our industry. Even unusually limited data set upon which this rule is based, the construction industry has had approximately 48% of all federal registered apprentices on average over the prior 5-year period. According to DOL's partial data, construction has had approximately 144,000 federal registered apprentices per year. From 2015 to 2018 the number of federal registered construction industry apprentices increased from 132,100 to 166,629—an increase of more than 25% over the past three years.[3] Privately-funded, registered apprenticeship programs are not just effective and substantially widespread in the construction industry – they are *thriving* in the construction industry.

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[2] Task Force on Apprenticeship Expansion, Final Report to the President of the United States, 34 (May 10, 2018), https://www.dol.gov/apprenticeship/docs/task-force-apprenticeship-expansion-report.pdf (last accessed August 19, 2019).

[3] *See* United States Department of Labor Employment and Training Administration, Apprenticeship Data and Statistics, https://doleta.gov/oa/data_statistics.cfm (last accessed August 5, 2018).

A permanent proscription is the only way to ensure that the initiation of industry programs will not potentially undercut this privately funded system that DOL has cited as the proverbial "gold standard" it would like to see other industries achieve.

b. If the Department will use apprenticeship data to identify industries where apprenticeship programs are effective and substantially widespread, the Department should use complete data.

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The NPRM states that the goal of establishing Industry Programs is to create an additional and parallel pathway to encourage expansion of apprenticeships beyond those industries where registered apprenticeships already are effective and substantially widespread. The phrase "effective and substantially widespread" originated in President Trump's June 15, 2017 Executive Order Expanding Apprenticeships in America. The proposed rule narrows the analysis of "effective and substantially widespread" by seeking to identify sectors with "significant registered apprenticeship opportunities." Sectors would be identified as such if they have had more than 25% of all federal registered apprentices per year on average over the prior 5-year period, or if they have had more than 100,000 federal registered apprentices per year on average over the prior 5-year period, or both, as reported through the prior fiscal year by the Office of Apprenticeship.

The federal data on which these analyses would be based captures apprentice registrations only from the 25 federally administered Office of Apprenticeship (OA) states/territories and the limited number of federally administered programs in State Apprenticeship Agency (SAA) states. DOL must not restrict itself to data "reported through the prior fiscal year by the Office of Apprenticeship" to identify for purposes of a rule of nationwide applicability sectors in which apprenticeship opportunities are significant based on numerical thresholds. The NPRM explains that the use of this limited pool of federal data was proposed due to limitations in data the Department receives from the states. The NPRM noted but did not explain the limitations on the state data the Department receives in the proposed rule. It is critical that for a nationally applicable standard the Department obtain data from registered apprenticeship programs in all state/territories and incorporate that data into its analysis of industry apprenticeship opportunities and whether they meet certain thresholds. Failing to do so is unacceptable. The Department would not set salary thresholds for overtime under the FLSA using data from only half the states.

Nevertheless, in the NPRM it is using federal apprenticeship data from just the 25 federally administered OA states/territories[4] and the limited number of federally administered programs in SAA states to assess federally registered apprenticeship opportunities on a nationwide basis. **The federal data excludes apprentice registrations from the 28 SAA states and territories.[5]** It is simply arbitrary and capricious for the Department to propose to make critical determinations in a national federal apprenticeship rule based on a database that *excludes data on registered apprenticeships from half of our country*.

DOL can obtain more complete data. For example, SWACCA was able to locate a Tableau-hosted database that contains data from the registered apprenticeship Partners Information Data System (RAPIDS), which is administered by the Department.[6] This database includes 225,433 active apprentices in the construction industry for the period of October 1, 2017 through September 30, 2018 (the Department's FY2018). The ETA Data and Statistics Page reported that there were 166,629 active apprentices in the construction industry for Fiscal Year 2018 registered in OA programs ("federal data").[7] Over the five-year period ended September 30, 2018, the RAPIDS database recorded an annual average of 177,450 active apprentices in the construction industry.[8] The Department reported in the NPRM that the federal data set recorded an average of approximately 144,000 federal registered apprentices over the prior five-year period. Based on this information SWACCA estimates that the RAPIDS database recorded 58,804 more active construction industry apprentices in FY2018 than the limited federal data used for this NPRM, and 33,450 on average over the prior five-year period compared to the limited data set DOL proposes to rely upon.

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RAPIDS currently captures individual record data from 25 OA states/territories and 15 of the 28 SAA states/territories.[9] While it is an improvement over Federal Apprenticeship Data, *the RAPIDS data is also incomplete*. The data of 13 states remains outside the RAPIDS database.[10]

The following states are not participating in RAPIDS as of August 2019: Connecticut, Delaware, District of Columbia, Kansas, Massachusetts, Minnesota,

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[4] *See* Exhibit 1, List of Office of Apprenticeship (OA) States/Territories and State Apprenticeship Agency (SAA) States/Territories (attached).
[5] *Id.*
[6] The RAPIDS Database can be accessed at https://public.tableau.com/profile/alexander.jordan#!/vizhome/basecamp/LatestApprenticeshipData (last accessed August 20, 2019).
[7] *See* Employment and Training Administration, Apprenticeship Data and Statistics, https://doleta.gov/oa/data_statistics.cfm (last accessed August 5, 2018).
[8] *See* RAPIDS Database, *supra* note 6.
[9] *See* Exhibit 2, List of States/Territories Participating in RAPIDS (attached).
[10] *Id.*

New Mexico, New York, North Carolina, Oregon, Vermont, Washington, and Wisconsin.[11] SWACCA was able to obtain the following relevant data points through its own research:

- The State of Connecticut reports approximately 6,500 active apprentices as of August 20, 2019. Of that number, approximately 5,980 registered apprentices are in construction industry programs.[12]
- The State of Delaware reports 1,488 active apprentices as of August 21, 2019. Of that number, approximately 1,419 registered apprentices are in construction industry programs.[13]
- The State of Massachusetts reports 9,502 active apprentices as of May 2018. Of that number, approximately 8,450 registered apprentices are in construction industry programs.[14]
- The State of Minnesota reports 12,224 active apprentices for their 2019 fiscal year. Of that number, approximately 10,879 registered apprentices are in construction industry programs.[15]
- The State of New Mexico reports 1,747 registered apprentices as of August 21, 2020. Of that number, approximately 1,604 registered apprentices are in construction industry programs.[16]
- The State of New York reports 830 registered apprenticeship programs. Of that number, 504 programs are in the construction industry (197 union programs, 307 non-union programs). Of more than 18,000 active apprentices in total, approximately 14,300 registered apprentices are in construction industry programs.[17]

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[11] *Id.*
[12] This information was obtained directly from the Connecticut Department of Labor, Office of Apprenticeship Training, 200 Folly Brook Blvd., Wethersfield, CT. 06109-1114, (860) 263-6085.
[13] This information was obtained directly from the Delaware Department of Labor, Office of Apprenticeship Training, 4425 N. Market Street, 1st Floor - #93, Wilmington, DE, 19802, (302) 761-8330.
[14] Massachusetts Executive Office of Labor and Workforce Development, Apprenticeship Expansion in Massachusetts: Strategic Plan at page 5, https://www.mass.gov/files/documents/2019/05/24/Apprenticeship%20Expansion%20Plan%202018%20Final.pdf (last accessed August 19, 2019).
[15] This information was obtained directly from the Minnesota Department of Labor and Industry, Apprenticeship Minnesota, 443 Lafayette Road N., St. Paul, MN 55155, (651) 284-5090.
[16] This information was obtained directly from the New Mexico Department of Workforce Solutions, Labor Relations Division, 401 Broadway NE, Albuquerque, NM 87102, (505) 841-8077.
[17] New York Department of Labor, Registered Apprenticeship in New York State at page 1, https://labor.ny.gov/apprenticeship/ApprenticeshipBooklet.pdf (last accessed August 19, 2019). The publication did not specify the date on which the data was recorded.

- The State of North Carolina reports 7,679 active apprentices as July 1, 2019. Of that total, approximately 1,867 registered apprentices are in construction industry programs.[18]
- The State of Oregon reports 10,245 active apprentices as of August 22, 2019. Of that total, approximately 9,785 registered apprentices are in construction industry programs.[19]
- The State of Vermont reports 1,595 active apprentices as of August 22, 2019. Of that total, approximately 962 registered apprentices are in construction industry programs.[20]
- The State of Washington reports 15,734 active apprentices as of August 21, 2019. Of that total, approximately 13,104 registered apprentices are in construction industry programs.[21]
- The State of Wisconsin reports 13,798 active apprentices for the 2018 calendar year.[22] Of that total, approximately half or 6,900 registered apprentices are in construction industry programs.[23]

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From this data we know that more than 75,000 construction industry apprentices were not recorded in the RAPIDS database in FY2018.[24] The RAPIDS database includes 58,804 more construction industry apprentices than the federal data. Therefore, the Department's federal data set failed to capture more than 133,804 apprentices. The actual number of construction industry apprentices nationwide exceeds 300,000 – nearly double the figure referenced in the NRPM.

TABLE 1: FY2018 Active Construction Industry Apprentices Data Set Comparison		
Federal Data	RAPIDS	RAPIDS plus Non-RAPIDS States*
166,629	225,433	300,683

*This figure accounts for the most recent data available from 11 of the 13 non-RAPIDS states.

[18] This information was obtained from the North Carolina Community College System, 200 W. Jones St., Raleigh, NC, 27699, (919) 807-7175, which is the administrator and approving agency for apprentices on behalf of the Department of Labor.
[19] This information was obtained directly from the Oregon Bureau of Labor & Industries, 800 NE Oregon St., Suite 1045, Portland, OR 97232, (971) 673-0821.
[20] This information was obtained directly from the Vermont Department of Labor, P.O. Box 488, Montpelier, VT, 05601-0488, (802) 828-5250.
[21] Access Washington, https://data.wa.gov/Labor/ARTS-Public-Data/mcr6-ujqw (last accessed August 21, 2019)
[22] Wisconsin Department of Workforce Development, Characteristics of Active Apprentice Contracts at page 1, https://dwd.wisconsin.gov/apprenticeship/appr_stats/active_appr_characteristics_bytrade.pdf (last accessed August 19, 2019).
[23] Wisconsin Department of Workforce Development, Apprenticeship in Wisconsin at page 5, https://dwd.wisconsin.gov/apprenticeship/pdf/apprenticeship_booklet.pdf (last accessed August 19, 2019).
[24] The 11 states collectively reported a total of 98,512 active registered apprentices, approximately 75,250 of whom were in construction industry programs.

Apprenticeship data from all states and territories is readily available. There is no reason DOL cannot obtain and use data from all of the relevant jurisdictions given their reliance on DOL approval to grant registered status under the Fitzgerald Act. DOL cannot justify the use of incomplete data to set a national standard simply because the creation of Industry Programs is something the Administration wants to complete in time for the election season in 2020. The Department's proposal to rely on the incomplete federal data set is arbitrary and capricious.

i. The Department's reliance on limited federal data to identify sectors where apprenticeship opportunities are significant is arbitrary and capricious as defined by the Administrative Procedures Act.

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The NPRM is issued under the informal rulemaking procedures of the Administrative Procedure Act.[25] Under the APA, a reviewing court shall hold unlawful and set aside agency action, findings, and conclusions found to be "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law."[26]

An agency rule is arbitrary and capricious if the agency has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.[27] The agency must examine the relevant data and articulate a satisfactory explanation for its action including a "rational connection between the facts found and the choice made."[28] In reviewing that explanation, the court must "consider whether the decision was based on a consideration of the relevant factors and whether there has been a clear error of judgment."[29]

The NPRM identifies two sectors where apprenticeship opportunities are significant. The Department made this finding, and proposes to make ongoing findings, based on its review of a limited data set – federal apprenticeship data – that includes registered apprenticeship data from *only* the 25 OA states and federally administered programs in SAA states. The federal apprenticeship data excludes apprenticeship data from 28 states/territories and captures just 166,629

[25] 5 U.S.C. 553.
[26] 5 U.S.C. 706(2)(A).
[27] Motor Vehicle Manufacturers Association v. State Farm Auto Mutual Insurance Co., 463 U.S. 29, at 43 (1983).
[28] *Id.* (quoting Burlington Truck Lines v. United States, 371 U.S. 156, at 168 (1962)).
[29] *Id.* (quoting Bowman Transportation, Inc. v. Arkansas-Best Freight System, Inc., 419 U.S. 281, at 285 (1974)).

construction industry apprentices of more than 300,000 construction industry apprentices in all programs nationwide.

There is no rational connection between an analysis of the limited federal apprenticeship data and a finding regarding the availability of apprenticeship opportunities in a *nationwide* sector. Federal apprenticeship data fails to consider relevant apprenticeship opportunities in more than half the states/territories that would be affected by the proposed rule. This is a serious flaw.

SWACCA strongly agrees with the Department's finding that registered apprenticeship opportunities are significant in the construction industry. However, the Department reached that finding by reviewing a limited data set that fails to consider apprenticeship data from more than half the states/territories. **The actual number of construction apprenticeship opportunities is much higher than the figure considered by the Department.** SWACCA has put forward a more complete data set in these comments, which identifies more than 300,000 active construction industry apprentices nationwide. SWACCA urges the Department to rely on this nationwide data to find that apprenticeship opportunities are significant in the construction industry. This finding should be clearly articulated in the final rule to permanently exclude Industry Programs from construction.

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If the Department declines to permanently exclude Industry Programs from construction and insists on relying on numerical thresholds about the nationwide participation in registered apprenticeship in a given sector, SWACCA urges the Department to establish a data collection process or other mechanism to include data from *all states and territories* in a true national database. This data source should be established in the final rule. If the Department feels it cannot do this in a final rule, it should re-propose the NPRM. Either way, the Department *must* address its arbitrary and capricious use of such a limited data pool to assess thresholds for measuring the significance of apprenticeship in an industry on a nationwide basis.

c. The thresholds proposed to identify sectors where apprenticeship opportunities are significant are not reasonable.

In addition to using flawed data to determine if registered apprenticeship is significant in a given industry, the thresholds towards which this data is being applied are also problematic and need to be reconsidered. The NPRM offers a brief explanation for why 25% of all registered programs is a reasonable basis for identifying significant programs. However, the NRPM offers no explanation of the logic for the 100,000-apprentice threshold. Neither threshold is a reasonable basis to determine that apprenticeship opportunities are significant in a specific sector.

The expansion of Industry Programs into industries where registered apprenticeship opportunities are significant should only be done through an industry-specific rulemaking process. This process would ensure a thorough evaluation of apprenticeship opportunities in the industry sector at issue. If the Department proceeds with static thresholds in a final rule SWACCA recommends the following changes:

i. The proposed threshold of 25% of all apprentices per year on average over the prior 5-year period is not reasonable to identify sectors where registered apprenticeship opportunities are significant.

The first threshold proposed to identify industries where apprenticeship opportunities are significant is a sector that has 25% of all federal registered apprentices per year on average over the prior 5-year period. This threshold is not a reasonable basis to identify sectors where registered apprenticeship opportunities are significant.

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The popularity of registered apprenticeship programs is growing. The Office of Apprenticeship on its Data and Statistics website reports that the number of active apprentices in registered apprenticeship programs grew by an astounding 56% between 2013 and 2018.[30] Moreover, the proposed rule includes a process through which Industry Programs could apply for expedited registration under the registered apprenticeship provisions of 29 CFR 29. This provision in combination with growing popularity should be expected to lead to more registered apprenticeship programs, which will dilute the effectiveness of the 25%-threshold proposed by the Department.

As more industry sectors begin to embrace registered apprenticeship programs additional sectors should achieve the success that has already been achieved by the construction industry. If just three or four other sectors achieve a high level of success with registered apprenticeship, the 25% threshold proposed by the Department might no longer apply to any sector. This would happen not because registered apprenticeship is no longer significant in one industry, but instead because registered apprenticeship will have become significant in other industries.

Because it measures significance according to the success or lack thereof of apprenticeship opportunities in other sectors, the proposed 25%-of-all-apprentices threshold is not a reasonable basis for determining the significance of apprenticeship opportunities in a particular sector. It therefore does not adequately protect the current registered apprenticeship system in sectors where

[30] *See* ETA Apprenticeship Data and Statistics, supra Note 7.

apprenticeship opportunities are now significant, like the construction industry, from the potential of being undercut by Industry Programs.

ii. The proposed threshold of 100,000 apprentices per year on average over the prior 5-year period should be lowered to 30,000 apprentices per year on average over the prior 5-year period to identify industries where registered apprenticeship opportunities are significant.

The second threshold proposed to define "significant" is a sector that has had more than 100,000 federal registered apprentices per year on average over the prior 5-year period. While this threshold could not be undermined by the success of other industries, it does not appear to be based on any standard or logic.

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Moreover, the Employment and Training Administration's apprenticeship data supports a conclusion that the 100,000-apprentice threshold is not a reasonable measure. For example, the *total number of active apprentices* in ETA's very limited federal data set was just 150,170 in 2013.[31] In 2018, the construction industry alone had more active apprentices with 166,629 reported in the ETA's federal data.[32]

The proposed threshold of 100,000 apprentices per year on average over the prior 5-year period should be significantly lower. The significance of registered apprenticeship programs in an industry should not be determined by an arbitrary figure that is currently met only by the construction sector. Instead, a more appropriate threshold should be established that is reasonable according to the number of apprentice opportunities in other industries that aspire to become significant. The threshold used to identify sectors in which apprenticeship opportunities are significant should be established well below the levels at which those industries currently perform but significantly above the levels at which other industries perform.

The construction industry led all industries in the federal data set with 166,629 active apprentices reported in 2018 while manufacturing reported 15,630 active apprentices.[33] USMAP followed with 98,435 active apprentices in 2018. *Only construction recorded more than 100,000 apprentices in any year for which data is shown on ETA's apprenticeship data and statistics website.*

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[31] *See* United States Department of Labor Employment and Training Administration, Apprenticeship Data and Statistics 2013, https://www.doleta.gov/oa/data_statistics2013.cfm (last accessed August 5, 2018).
[32] *See* ETA Apprenticeship Data and Statistics, supra Note 7.
[33] *Id.*

According to the ETA's Apprenticeship Data and Statistics website, public administration and manufacturing recorded the third and fourth most apprentices respectively in 2018. There were 19,447 active apprentices reported for public administration and 15,630 active apprentices reported for manufacturing during that fiscal year.[34]

If Industry Programs are not permanently excluded from the construction industry, a threshold of 30,000 apprentices per year on average over the prior 5-year period is reasonable in light of the Department's federal apprentice data. This threshold would protect the current registered apprenticeship system from being undercut where it is already successful while still setting an aspirational threshold for other industries.

A 30,000-apprentice threshold exceeds that of any industry that has not been deemed significant by the Department in the proposed rule. That is, only construction and the military have enrolled more than 30,000 active apprentices in any year according to available data on the ETA's Apprenticeship Data and Statistics website. Second, a threshold of 30,000 active apprentices is 50% more than the number of active apprentices in the Public Administrative industry and roughly *double* the active apprentice figure of the second largest private industry, manufacturing. Thus, a 30,000-apprentice threshold would not function within the foreseeable future to exclude Industry Programs from any private industry other than construction and would simultaneously ensure that Industry Programs do not undercut the current registered apprenticeship system that is so highly successful in the construction industry. Should a new sector reach the 30,000-apprentice threshold the private investments made in those registered apprenticeship programs would then be protected from being undercut by further expansion of Industry Programs.

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The final rule should permanently exclude Industry Programs from the construction industry. If it does not, SWACCA recommends that the final rule use a threshold of 30,000 apprentices per year on average over the prior 5-year period to identify sectors where registered apprenticeship opportunities are already significant. The 30,000-apprentice figure is reasonable and has a logical basis in the Department's federal data.

2. The provision that identifies sectors where registered apprenticeship opportunities are substantial should not sunset after any period of time.

SWACCA urges the Department to proscribe the certification of Industry Programs in the U.S. Military and construction sectors. Both sectors and especially

[34] *Id.*

construction have achieved long-standing success with registered apprenticeship. The protection of these Registered Programs from being undercut by Industry Programs should not be temporary in any way.

As previously noted in these comments and the NPRM, construction industry has achieved an unprecedented level of success with registered apprenticeship programs. Industry Programs could only be permitted in the construction industry at great expense to highly successful construction industry registered apprenticeship programs, and the employers and apprentices that rely on them. Industry Programs are being proposed to address America's skills gap and expand apprenticeship to new industries. A sunset provision that would permit Industry Programs to be certified in the construction industry risks undercutting construction industry registered apprenticeship programs and the high-quality skills training they currently provide to at least 166,629 members of America's workforce. Thus, a sunset provision would do nothing to expand apprenticeship to new industries. It could only function to put registered apprenticeship programs, their massive private investment, and their high-quality skills training opportunities at risk.

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There is no reasonable basis to sunset a provision that protects construction industry registered apprenticeship programs from being undercut by Industry Programs at any point in the future. SWACCA urges the Department to exclude any such a provision from the final rule. Furthermore, if the Department determines that Industry Programs should be permitted in the construction industry at some point in the future, the Department should only propose that change through a new rulemaking process at such time that the Department deems it necessary. A new, construction industry-specific rulemaking using complete, national data would ensure considerable input from industry stakeholders, and especially those who are making private investments in training their workforce as opposed to those who may be seeking government assistance.

3. The SRE application review process described in the NRPM is insufficient to protect the integrity of apprenticeship programs recognized by the U.S. Department of Labor.

SREs would function as quasi-governmental accrediting agencies on behalf of the Department of Labor to recognize individual Industry Programs that would be marketed to the American people. A less-than-thorough process of reviewing and overseeing SREs will not only undermine existing, significant registered apprenticeship opportunities in construction, it will also harm American workers and confidence in programs approved by the government.

The NPRM describes the following process to review and reach a final determination on a prospective SRE's application:

- Step 1: A Program Analyst would spend 1 hour reviewing the application package submitted online by the SRE applicant. The Department estimates that 90% of applicants would pass the Program Analyst's cursory review.
- Step 2: A three-member review panel (one Program Analyst employed by the Department, two Training and Development Managers employed by Federal contractors) would spend 8 hours reviewing an application to make a recommendation for recognition or denial to the Administrator.
- Step 3: The review panel described in Step 2 would meet in person to discuss their review findings for one hour per application.
- Step 4: The Department estimates that 70% of SRE applicants would be forwarded by the Review Panel to the Administrator. The Administrator would then spend 15 minutes reviewing each satisfactory SRE application forwarded by the review panel to make a final determination as to SRE recognition.

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The Department proposes that five individuals would spend an estimated total of 26 hours and 15 minutes reviewing and making a final determination on a prospective SRE's application. The process would exclusively involve the Department's internal review of the written application. There would be no opportunity for input from any industry experts, stakeholders, or members of the public. This process is proposed to recognize an SRE as a quasi-governmental agency that would in turn grant accreditation to an unlimited number of Industry Programs over the following five-year period. The proposed SRE application review process is plainly insufficient to protect the integrity of U.S. Department of Labor recognized apprenticeship.

The U.S. Department of Education (DOE) has a better process in place for recognition of its accrediting agencies, which the Department's SRE recognition process should mirror. Several differences exist between the SRE recognition process described in the NPRM and the DOE's accreditor recognition process. Two primary differences are: 1) the existence of a national advisory committee that reviews applications and makes recommendations to the DOE; and 2) opportunities for public input.[35]

[35] The procedures and criteria for recognizing accrediting agencies are contained in Title 34 of the Code of Federal Regulations. A summary overview of the DOE's accreditor recognition process is available at https://www2.ed.gov/admins/finaid/accred/accreditor-federal-recognition-process-steps.pdf (last accessed August 20, 2019).

a. The Department should establish a national advisory committee for Industry Recognized Apprenticeship under proposed Subpart B.

SWACCA recommends that the Department follow the Education Department's accreditor recognition standards and establish a national advisory committee to provide recommendations to the Department regarding SREs and serve as a forum for discussion about issues related to the recognition of SREs and Industry Programs. The committee would review and make recommendations to the Administrator regarding SRE applications. Consistent with procedures the Education Department follows, meeting notices and agendas would be published in the *Federal Register* inviting written public comments at least 90 days prior to each meeting date. Meeting materials, including the complete applications submitted by SRE applicants, would also be made available to the public at the time of publication in the *Federal Register* to ensure a meaningful opportunity to provide written comments on an applicant. Finally, meetings would be open to the public with reasonable opportunity for the public to speak at the meetings.

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b. The Department should establish formal opportunities for public review and comment regarding Standards Recognition Entity applications.

Even if DOL declines to mirror the national advisory committee model used by the Education Department to assess certifying entities, the Department must at least ensure a formal opportunity for public review and comment on SRE applications if it wants this process to be credible. If the Department does not adopt SWACCA's recommendations regarding a national advisory committee with opportunity for public review and feedback regarding SRE applications, SWACCA recommends that 90 days prior to the Department granting recognition to an SRE, the Department should publish the following items in the *Federal Register* for public review and comment:

- Notice of the Department's intent to grant recognition to an SRE;
- The SRE applicant's application materials; and,
- The Department's review report (i.e. determination) regarding the SRE's application.

Following the public review and comment period, the Department would issue its response to the public comments along with its final determination as to the SREs application. While less than ideal in SWACCA's view—and certainly less rigorous than the process the Education Department uses, this process would at least ensure an opportunity for public notice and comment regarding SRE applications.

4. The proposed definition of the construction industry should be maintained in the final rule.

The construction industry is a broad sector that includes many disciplines and related apprenticeship programs. Due to the breadth of the industry, there is a risk that without a clear definition there could be confusion or disagreement as to whether certain apprenticeship programs would be eligible for certification as Industry Programs.

The proposed rule incorporates a long-standing definition of the building and construction industry from case law interpreting the Employee Retirement Income Security Act and the Labor Management Relations Act. Importantly, the Department's approach focuses on the work apprentices are actually trained for, and is a rationale method of preserving well established registered apprenticeship programs in construction.

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By contrast, deciding whether an SRE seeks to recognize programs in construction based on an applicant-supplied NAICS code would be under protective because NAICS codes are a function of an entity's primary business activity, and some entities (or consortia of entities) that would train apprentices for construction work do not have construction as their primary activity.

SWACCA agrees with the Department's proposed approach to defining the construction industry using an existing, well-understood definition that focuses on the actual work apprentices are trained to perform. In addition to the ERISA-based definition in the NPRM, another definition the Department might consider is the definition of construction 29 C.F.R. 5.2(j). This existing and well-understood definition of construction used to implement Davis-Bacon also focuses on the actual work and individual performs and not the industry in which an employer is deemed to be operating. We commend the Department's thoughtful assessment of the best way to define construction and urge that the proposed definition or the definition at 29 C.F.R. 5.2(j) be used in the final rule.

5. The Form proposed for entities seeking to be certified as SREs contains critical provisions that should be maintained in the final rule.

The proposed Industry-Recognized Apprenticeship Program Standards Recognition Entity Application Form includes critical provisions that should be maintained in the final rule, including:

- A statement that the Department will not accept applications from entities seeking to recognize apprenticeship programs in the construction industry

- A statement affirming that the applicant will not recognize programs in the construction industry
- The definition of the construction industry

These items are crucial to ensure that SREs do not certify Industry Programs in the construction industry. SWACCA commends the Department for including these items on the proposed form. SWACCA urges that these items are maintained in application form published in the final rule.

6. Ready, reliable access to information about SREs and the Industry Programs they certify is critical to the success of the proposed rule.

Section 29.24 of the proposed rule indicates that the Administrator will make publicly available a list of SREs and the Industry Programs they recognize. Paragraph 29.22(j) provides a list of information that an SRE must make publicly available on an annual basis for each Industry Program it recognizes. The ready, reliable availability of comprehensive information about SREs and the Industry Programs they recognize is critical to the success of the proposed Subpart B apprenticeship structure and to protect the integrity of DOL recognized apprenticeship. SWACCA urges the Department to collect this data and more, and to publish that data to a public website maintained by the Department of Labor's Office of Apprenticeship.[36]

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   a. The Office of Apprenticeship should maintain a public, online database of information about SREs and Industry Programs they recognize.

SWACCA believes that public disclosure should be key components of the regulatory enforcement mechanism because SREs and Industry Programs will not receive direct, ongoing oversight from the Department. Publishing information about SREs and Industry Programs to a public website would ensure the industry participants, individuals considering an apprenticeship, and members of the public at large will have reliable, ready access to the information. This structure would facilitate review by potential apprentices, industry stakeholders, and other interested parties. It would permit any interested party to identify the most successful SREs and Industry Programs. That information could be used to support growth of the most successful entities and replication of best practices among less successful SREs and Industry Programs. Finally, it would enhance regulatory compliance and enforcement by facilitating oversight and public review.

[36] Personally identifiable information of a program's participants and confidential commercial or financial information that could reasonably result in a competitive disadvantage if disclosed and that is unrelated to an individual assessing the nature or quality of a program should be redacted from the publicly available information.

The process of collecting this data could be largely automated through the online system for the online SRE application form the Department anticipates developing. SWACCA believes that this online process would be the most efficient approach to data collection and would minimize the burden on SREs while maximizing the availability of data to interested parties.

i. The information that will be made public about SREs should be expanded and maintained in a public, online database administered by the Department.

Section 29.24 of the proposed rule indicates that the Administrator will make publicly available a list of SREs and the Industry Programs they recognize. SWACCA recommends that the Department, in addition to a list of SREs and the Industry Programs they recognize, make the following information from SREs and SRE applicants available to the public at a website maintained by the Department of Labor's Office of Apprenticeship:

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- The complete application package submitted by entities seeking to be certified as an SRE;
- All submissions to the Administrator by SREs regarding the recognition of Industry Programs; and,
- The complete performance data submitted to the Administrator for each Industry Program recognized by the SRE.

SREs should be required to submit this data electronically for publication to a public website administered by the Department's Office of Apprenticeship.

ii. The information that will be made public about Industry Programs recognized by SREs should be expanded and maintained in a public, online database administered by the Department.

Paragraph 29.22(j) of the proposed rule provides a list of information that an SRE must make publicly available on an annual basis for each Industry Program it recognizes. This information includes 1) Up-to-date contact information for each program; (2) The total number of apprentices annually enrolled in each program; (3) The total number of apprentices who successfully completed the program annually; (4) The annual completion rate for apprentices; (5) The median length of time for program completion; and (6) The post-apprenticeship employment rate. This information is critical to evaluating the performance of an Industry Program. SWACCA commends the Department for proposing that this information be made publicly available. SREs and/or Industry Programs should be required to submit

this data for publication to a public website maintained by the Department's Office of Apprenticeship.

Paragraph 29.22(a)(4) of the proposed rule requires that Industry Programs provide a written notice to apprentices of what wages apprentices will receive and under what circumstances apprentices' wages will increase. The proposed rule would further require Industry Programs to disclose any ancillary costs or expenses that will be charged to apprentices. This information must be collected by the certifying SRE. In addition to the information described in Section 2.22(j) SREs should be required to submit this data for publication to a public, online database administered by the Department's Office of Apprenticeship.

b. The criteria used by the Department to evaluate the success of Industry Programs should be maintained in a public, online database administered by the Department.

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The Department has requested comments on which performance measures would be most helpful in assessing program impact and quality assurance. The Department suggested that performance measures related to post-apprenticeship employment and wages and employer retention could be helpful in this regard. SWACCA agrees. The information described in Paragraph 29.22(j) of the proposed rule would be very helpful to assessing program impact and quality assurance. SWACCA further recommends that the Department collect the following data from SREs and/or Industry Programs:

- The wage rates paid to program graduates upon completion
- The employment rate of Industry Program graduates one year following program completion
- The wage rates paid to program graduates one year following program completion
- The employment rate of Industry Program graduates five years following program completion
- The wage rates paid to program graduates five years following program completion

SWACCA recommends that this data be collected in a standardized format via surveys of Industry Programs and/or program participants and submitted electronically to the Administrator for publication to an online databased maintained by the Department's Office of Apprenticeship to facilitate review by potential apprentices, industry stakeholders, and other interested parties for the reasons previously discussed in these comments.

7. The proposed complaint process should be enhanced to increase its efficacy and promote regulatory compliance.

An effective enforcement mechanism is critical to ensure that SREs and Industry Programs are operating in compliance with the regulations and to protect the integrity of DOL recognized apprenticeship. Effective regulatory enforcement will support the long-term success of Industry Programs.

SWACCA believes that public oversight and input should be key components of the regulatory enforcement mechanism because SREs and Industry Programs will not receive direct, ongoing oversight from the Department. SWACCA recommends that the proposed complaint procedure in Section 29.26 be enhanced in several regards to ensure that it is a useful mechanism for guaranteeing the quality of Industry Programs and the protections of men and women participating in them.

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a. The complaint process should be available to any interested party.

The complaint process proposed by the Department is limited to an apprentice, the apprentice's authorized representative, a personnel certification body, an employer, a Registered Program representative, or an Industry Program. The complaint process should also be available to any interested party to ensure that any party with information that might impact a SRE's continued qualification will have a bona fide opportunity to submit that information via a formal complaint to the Administrator.[37]

b. The complaint process should be expanded to provide an opportunity to submit a complaint about an Industry Program.

The complaint process proposed by the Department is limited to complaints about SREs. No formal process is established to file a formal complaint about an Industry Program. Presumably such complaints could also be relevant to the certifying SRE's continued qualification. If the Department intends to accept complaints against Industry Programs through the SRE complaint process that should be clearly articulated in the final rule. If the Department does not intend to accept complaints against Industry Programs via the SRE complaint process, a separate process that mirrors the SRE complaint process should be established in the final rule for complaints against Industry Programs.

[37] The Department may be concerned that an open complaint procedure will lead to a high volume of illegitimate complaints. That concern could be alleviated by requiring interested parties to make a statement of interest as part of their complaint submission.

c. The complaint process should provide that complaints must be filed with 9*0* days of *actual knowledge* of the circumstances giving rise to the complaint.

The complaint process proposed by the Department provides that complaints must be filed within 60 days of the circumstances giving rise to the complaint. This deadline should be amended to permit individuals to file a complaint within a reasonable period of time after they become aware of the circumstances giving rise to the complaint. SWACCA recommends that complaints should be accepted within 90 days of the complainant's actual knowledge of the circumstances giving rise to the complaint. This process will ensure that individuals with complaints have an opportunity to be heard while also ensuring that complaints are filed timely. A deadline that does not consider the complainant's actual knowledge of the circumstances giving rise to the complaint risks the Department's tacit acceptance of a regulatory violation on the basis that an individual, possibly an apprentice, learned about the alleged violation on the 61st day following its occurrence.

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8. Standards Recognition Entities should be prohibited from certifying their own programs.

The proposed rule would permit an SRE to recognize its own Industry Programs without any direct oversight or involvement from the Department if "specific policies, processes, procedures and/or structures" to provide for impartiality and mitigate any potential conflicts of interest are described in detail in the SRE's application. The Department offered the following example: a large manufacturer could establish Industry Programs for different functions within its plants, provided that the personnel developing standards for the programs are distinct from personnel evaluating the programs. The example provided by the Department is farcical and inconsistent with the proposed rule. In any event, an SRE should not be permitted to recognize its own Industry Programs.

First, an organization chart cannot ensure that employees of a company could impartially review and recognize an Industry Program developed by their co-workers. All employees within a single organization ultimately answer to the same authority. Therefore, it is not possible for an SRE to be impartial in recognizing its own programs, regardless of any policy, process, procedure or structure.

Second, the example provided in the NPRM appears to be inconsistent with the proposed rule. Section 29.20(a) describes the types of entities that can become SREs, which include:

(i) Trade, industry, and employer groups or associations;

(ii) Educational institutions, such as universities or community colleges;
(iii) State and local government agencies or entities;
(iv) Non-profit organizations;
(v) Unions;
(vi) Joint labor-management organizations; or
(vii) A consortium or partnership of entities such as those above.

The proposed rule does not state that a large manufacturer or any other individual employer could become an SRE. On the other hand, the proposed rule does not expressly limit SREs to the stated categories. The NPRM states that, "by not limiting the types of entities that may receive recognition, the Department intends to encourage the creation of SREs over a broad range of industries and occupational areas." If the Department intends that individual employers may become SREs and recognize their own problems – as described in the example put forward in the NRPM – that should have been stated in the NPRM. It was not, and SWACCA urges the Department to categorically bar individual employers from becoming recognized as SREs.

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Employers can offer apprenticeship programs now without any government approval or oversight – they simply do so on an independent basis without any third-party recognition. Apprenticeship programs apply for third-party recognition to receive the air of legitimacy that recognition lends to any program. Third-party recognition – especially third-party recognition that comes under the purview of a federal agency – induces individuals to more seriously consider participating in a program. Third party recognition can also grant approved programs access to benefits that would not otherwise be available.

An SRE would be incentivized to recognize its own Industry Programs because under the NPRM such recognition delivers a semblance of approval from the U.S. Department of Labor. Further, it would grant the Industry Program the opportunity to apply for expedited registration as registered apprenticeship programs under Subpart A. This would make a program's apprentices cognizable under Davis-Bacon and provide the program with access to taxpayer monies through the Workforce Opportunity Investment Act system. Because it is not realistic to believe that the inherent conflicts of interest could be resolved, the final rule should prohibit SREs from recognizing their own Industry Programs.

9. Industry Programs should be required to comply with the same Equal Employment Opportunity and affirmative action requirements as registered apprenticeship programs.

Registered apprenticeship programs are required to comply with the requirements of 29 CFR 30 which sets forth stringent policies and procedures to promote equality of opportunity in registered apprenticeship programs.[38] 29 CFR 30 includes a general duty to engage in affirmative action, a requirement to develop and maintain an extensive affirmative action plan, comprehensive recordkeeping requirements, and complaint and enforcement provisions.[39]

The proposed rule would require an Industry Program to affirm its adherence to all applicable federal, state, and local laws pertaining to Equal Employment Opportunity (EEO); however, Industry Programs would not be required to comply with the policies and procedures of 29 CFR 30 under the proposed rule.

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There is no reasonable basis for applying 29 CFR 30 to registered apprenticeship programs but not Industry Programs. There should be no difference between Industry Programs and registered apprenticeship programs when it comes to matters related to equal employment opportunity and affirmative action. SWACCA recommends that Industry Programs be required to comply with the same EEO and affirmative action obligations as registered apprenticeship programs. The final rule should require Industry Programs to comply with the policies and procedures of 29 CFR 30 to maintain the same EEO requirements across all apprenticeship programs established pursuant to 29 CFR 29.

10. The proposed rule is Economically Significant for purposes of Executive Order 12866 and a Major Rule as defined by the Congressional Review Act.

The Office of Information and Regulatory Affairs (OIRA) concluded in its regulatory review that the proposed rule is not an economically significant regulatory action under Section 3(f) of Executive Order 12866. OIRA further concluded that the proposed rule was not a "major rule" as defined by the Congressional Review Act. SWACCA respectfully disagrees with these conclusions and finds them to be unjustified based on facts that the Administration has already acknowledged.

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[38] *See* Apprenticeship Programs; Equal Employment Opportunity, 81 Fed. Reg. 92,026, (Dec. 19, 2016).
[39] *Id.*

a. The proposed rule is likely to have an annual effect on the construction industry sector of the economy of more than $100 million.

The analysis as to the economic significance of the proposed rule must further consider the significance of the private investment that has been made in construction industry registered apprenticeship programs. North America's Building Trades Unions claim an annual investment of $1.6 billion in construction industry apprenticeship programs.[40] The Department has stated that the private investment in building trades construction industry apprenticeship programs is nearly $1 billion annually. The proposed rule is likely, if it permits Industry Programs to be recognized in the construction industry *at any point in the future*, to disrupt that investment by permitting parallel Industry Programs to compete with existing registered apprenticeship programs. If the presence of parallel Industry Programs impacts the private investment in construction industry registered apprenticeship programs by just 10% *the proposed rule would have an annual effect on that investment of at least $100,000,000*. This impact would be entirely within the construction industry sector of the economy.

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b. The proposed rule is Economically Significant for purposes of Executive Order 12866 and a Major Rule as defined by the Congressional Review Act

A Notice of Proposed Rulemaking is economically significant pursuant to Executive Order 12866 if it is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.[41]

The CRA defines a major rule as "any rule that the Administrator of the Office of Information and Regulatory Affairs [OIRA] of the Office of Management and Budget [OMB] finds has resulted in or is likely to result in—(A) an annual effect on the economy of $100,000,000 or more; (B) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (C) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based

[40] North America's Building Trades Unions, NABTU Statement on Apprenticeship NPRM (June 25, 2019), https://nabtu.org/press_releases/statement_dol_apprenticeship_nprm_/) (last accessed August 21, 2019).
[41] Exec. Order 12866, 58 Fed. Reg. 51,735 (Oct. 4, 1993).

enterprises to compete with foreign-based enterprises in domestic and export markets.[42]

SWACCA argues that permitting Industry Programs to be recognized in the construction industry now or at any point in the future would displace *at least* 10% of the private investment made in construction industry registered apprenticeship programs, and possibly much more by drawing apprenticeship candidates that would otherwise participate in registered apprenticeship programs, drawing employers that would otherwise participate in registered apprenticeship programs, and in some cases possibly replacing certain registered apprenticeship programs. Through these means it is reasonable to conclude that Industry Programs recognized in the construction industry would displace more than 10% of the private investment made in registered apprenticeship programs. Thus, if the Department does not expressly prohibit SREs from recognizing Industry Programs in the construction industry, the proposed rule is likely to have an economic impact on the construction industry of *at least $100,000,000 per year*.

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Because the proposed rule does not expressly prohibit SREs from recognizing Industry Programs in the construction industry, the Department should designate the proposed rule as economically significant for purposes of Executive Order 12866 and as a major rule for purposes of the Congressional Review Act and comply with the corresponding requirements.

Conclusion

The construction industry has achieved tremendous success with registered apprenticeship programs. The construction industry is *the* industry in which apprenticeship is the most effective and substantially widespread. This success is a direct result of heavy private investment over many decades. SWACCA is a proud contributor to and beneficiary of the success of construction industry registered apprenticeship programs.

The privately funded, effective and substantially widespread registered apprenticeship programs in the construction industry are critical to SWACCA's members and the men and women they employ. The proposed rule, because it does not establish meaningful oversight, enforceable standards, and a commitment to substantial private investment for Industry Programs; because it does not categorically prohibit Industry Programs from being recognized in the construction industry; and because it may permit Industry Programs to be recognized in construction based on an arbitrary and capricious path of analysis,

[42] 5 U.S.C. 804(2).

puts registered apprenticeship programs, and the construction industry's $1 billion annual private investment made in those programs, at risk.

SWACCA urges the Department to take all steps necessary to incorporate these comments into its efforts toward the laudable goal of expanding apprenticeship in industries that have not developed effective and substantially widespread registered apprenticeship programs.

Thank you for your consideration and the opportunity to submit these comments.

Sincerely,

Matt Townsend
President

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EXHIBIT 1

List of Office of Apprenticeship (OA) States/Territories and State Apprenticeship Agency (SAA) States/Territories

OA	SAA
AK	
AL	
AR	
	AZ
CA	
CO	
	CT
	DC
	DE
	FL
GA	
	GU
	HI
IA	
ID	
IL	
IN	
	KS
	KY
	LA
	MA
	MD
	ME
MI	
	MN
MO	
MS	
	MT
	NC
ND	
NE	
NH	
NJ	
	NM
	NV
	NY
	OH
OK	
	OR
	PA
	PR
	RI
SC	
SD	
TN	
TX	
UT	
	VA
	VT
	WA
	WI
WV	
WY	
25	**28**

EXHIBIT 2
List of States/Territories Participating in Registered Apprenticeship Partners Information Data System (RAPIDS)

OA States	SAA States in RAPIDS	SAA States Outside of RAPIDS
AK		
AL		
AR		
	AZ	
CA		
CO		
		CT
		DC (&)
		DE (&)
	FL	
GA		
	GU	
	HI**	
IA		
ID		
IL		
IN		
		KS (&)
	KY	
	LA	
		MA
	MD**	
	ME	
MI		
		MN
MO		
MS		
	MT**	
		NC
ND		
NE		
NH		
NJ		
		NM
	NV	
		NY
	OH	
OK		
		OR
	PA	
	PR**	
	RI**	
SC		
SD		
TN		
TX		
UT		
	VA (!)	
		VT (&)
		WA
		WI
WV		
WY		
25	**15**	**13**

** Joined RAPIDS 2.0
(!) Began the process of joining RAPIDS 2.0
(&) Exploring the possibility of joining RAPIDS 2.0