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March 18, 2024

U.S. Department of Labor
200 Constitution Avenue NW
Washington, D.C. 20210
Submitted via http://www.regulations.gov

Re: Notice of Proposed Rulemaking (RIN 1205-AC13)
National Apprenticeship System Enhancements

To Whom It May Concern:

The Signatory Wall and Ceiling Contractors Alliance (SWACCA) is a national, non-profit trade association that advocates for the interests of union-signatory wall and ceiling construction industry employers. SWACCA represents more than 400 wall and ceiling construction employers – including many of the largest employers in our industry – who perform framing, drywall, and interior and exterior systems work nationwide, primarily in the commercial construction industry. Our members employ many thousands of carpenters, drywall finishers, plasterers and other building trades personnel throughout the United States.

In recent years, SWACCA has been materially involved in consideration of regulations governing registered apprenticeship. In particular, we engaged throughout the rulemaking process on Industry-Recognized Apprenticeship Programs ("IRAPs") from 2018 through 2021, submitting public comments in response to the Department of Labor's ("the Department") Task Force on Apprenticeship Expansion [1]; the Department's request for information regarding IRAPs[2]; the Department's proposed rule regarding IRAPs[3]; and the Department's proposed rule rescinding IRAPs.[4] Our comments on this proposed rule are informed by this past engagement. As detailed below, SWACCA supports certain elements of the Department's latest proposed rule revising the regulations for registered apprenticeship, but also has significant concerns regarding certain aspects of this proposal. Accordingly, SWACCA offers the following comments concerning the proposed rule.

[1] SWACCA comment on Nov. 2017 Task Force Meeting, available at www.swacca.org/media/1036/2017-11-10-swacca-public-comment-november-2017-task-force-meeting.pdf (accessed March 6, 2024).
[2] SWACCA response to Information Collection Request titled "Industry-Recognized Apprenticeship Programs Accrediting Information," available at www.swacca.org/media/1122/2018-11-19-swacca-comments-on-irap-icr.pdf (accessed March 6, 2024).
[3] SWACCA comment on RIN 1205-AB85, available at www.swacca.org/media/1185/2019-08-26-swacca-comments-on-29cfr29-final.pdf (accessed March 6, 2024).
[4] SWACCA comment on RIN 1205-AC06, available at https://www.regulations.gov/comment/ETA-2021-0007-0007 (accessed March 6, 2024).

I. SWACCA supports elements of the proposed rule that would improve the registered apprenticeship system.

As a trade association comprised of signatory wall and ceiling contractors, SWACCA recognizes the value of the registered apprenticeship system. The proposed rule would improve several aspects of that system:

- Proposed section 29.7(a) provides, "[o]nly the Administrator can determine whether an occupation is suitable for registered apprenticeship." [5] Centralizing the decision of occupational suitability with the Department would, as the Department notes, protect against splintering of well-established, existing occupations.[6]

- Proposed section 29.7(b)(4) establishes a minimum of 144 hours of related instruction per 2,000 hours of on-the-job training.[7] These numbers are the same or similar to classroom and work hour requirements already in place for many construction programs.[8]

- SWACCA additionally supports the following proposed standards for apprenticeship programs set forth in sections 29.8 and 29.9: the 144 hours of related instruction for every 2,000 hours of on-the-job training (proposed section 29.8(a)(4)(ii)); a progressive wage scale (proposed section 29.8(a)(17)); the journeyworker-to-apprentice ratio (proposed section 29.8(a)(19)); and the prohibition of non-disclosure agreements that have the effect of preventing apprentices from filing a complaint with a governmental agency

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[5] National Apprenticeship System Enhancements, 89 Fed. Reg. 3118, 3277 (proposed Jan. 17, 2024) (to be codified at 29 C.F.R. pts. 29 and 30) [hereinafter "NPRM"].
[6] *Id.* at 3148. *See also, id.* at 3119 ("The Department's proposed updates to the suitability process are designed to include flexibilities that would support expansion of the registered apprenticeship model to emergent occupations in non-traditional apprenticeship industries while providing protections against the splintering of existing programs covering occupations previously established as suitable for apprenticeship training (which could have a negative impact on workers' wages and job quality).").
[7] *Id.* at 3277.
[8] *See, e.g.*, North Central States Regional Council of Carpenters Training Fund, Carpenter Apprenticeship Career (accessed Feb. 20, 2024), http://wedotraining.org/classcarp.html (noting 160 hours of classroom instruction each year and 6,240 hours of classroom learning and work experience over four years); Finishing Trades Institute of Upper Midwest, Become an Apprentice (accessed Feb. 20, 2024), https://www.ftium.edu/become-an-apprentice/ (noting 432 related training hours and 4,000-6,000 on-the-job training hours over two- and three-year drywall programs); Laborers Training Center, Apprenticeship Program (accessed Feb. 20, 2024), https://www.ltcmn.org/apprenticeship.aspx (noting 288 hours of training and 4,000 work hours over a three-year period).

(proposed section 29.9(e)).[9] Implementing these measures will help to improve apprentice training and education overall.

II. Registered apprenticeship programs should not be permitted to depart from the minimum requirements of Subpart A for any reason.

The NPRM at section 29.23 provides that the Department may grant exemptions to the standards for registered apprenticeship programs set forth in subpart A for "good cause."[10] Notably, there is no definition of "good cause" in the proposed rule; rather, the Department states that good cause "may be found in instances where the sponsor demonstrates to the Administrator that the granting of the exemption *will expand or support the safety or welfare of apprentices*."[11]

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The Department notes that, "[t]he provisions of part 29 establish the minimum requirements or a floor for program standards, and not a ceiling."[12] Moreover, the Department observes that in instances where a program has established higher program standards, proposed section 29.4 ("Relation to Other Laws and Agreements") "would make it clear that they, rather than the requirements of this part, are controlling."[13] Thus, the only plausible exemption from the requirements of subpart A would be a downward departure from part 29's minimum requirements (e.g., fewer classroom and/or on-the-job training hours). Such an exemption would swallow the rule and, ultimately, frustrate its stated purposes of, *inter alia*, "safeguard[ing] the welfare of apprentices" and "promot[ing] the formulation of qualified registered apprenticeship programs."[14]

III. Career and Technical Education apprenticeship programs ("CTE apprenticeship programs") are not appropriate in the construction industry.

The Department proposes in Subpart B to establish CTE apprenticeship programs as, "an additional model of apprenticeship that aligns State-approved CTE programs, in particular those funded under the Perkins program, with foundational elements of apprenticeship."[15] The program "would be most accessible and propitious for secondary and postsecondary

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[9] NPRM at 3278-3280.
[10] *Id.* at 3286.
[11] *Id.* at 3190 (emphasis added).
[12] *Id.* at 3140.
[13] *Id.*
[14] *Id.* at 3271 (Proposed § 29.1 ("Purpose and scope")).
[15] *Id.* at 3123.

students."[16] In the context of the construction industry, however, the CTE apprenticeship concept is highly problematic.

The proposed rule defines a "CTE apprentice" as "a participant at least 16 years of age…."[17] However, some state labor laws limit who can work on a construction jobsite. In New Jersey, for example, minors under the age of 18 are prohibited from being employed in "construction work," which is defined as "the erection, alteration, repair, renovation, demolition or removal of any building or structure; … and any function performed within 30 feet of such operations."[18] The FLSA prohibits minors under the age of 18 from working in "hazardous occupations," many of which are common in the construction industry.[19] The purpose of these laws is to protect minors from occupations deemed to be dangerous by legislatures or agencies. Such a prohibition would make on-the-job training, a critical component of any apprenticeship program, nearly impossible for CTE apprentices in the construction industry.

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The Department notes that CTE apprenticeship programs "would be designed to provide curriculum and on-the-job training for *industrywide skills and competencies* that may be applicable for any number of occupations."[20] It is not possible, however, to provide *industry-wide* training for construction. The construction industry is comprised of a variety of skilled trades, each of which is specialized enough that they have existing registered apprenticeship programs.[21] An apprentice who graduates from a building trades apprenticeship doesn't graduate as a "construction worker"; he or she graduates as a carpenter, insulator, electrician, painter, or construction craft laborer, to name a few. The CTE apprenticeship program's focus on industry-wide skills is incompatible with the nature of the construction industry.

Notably, the Department has acknowledged the widespread nature and effectiveness of apprenticeships in the construction industry. In promulgating the (since-rescinded) rule on IRAPs, the Department specifically excluded the construction industry from the new type of apprenticeship program. Data submitted showed that "construction apprenticeship programs are simply more widespread and train more apprentices than in other sectors"[22] and compelled

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[16] *Id.*
[17] *Id.* at 3272 (proposed § 29.2).
[18] N.J. Admin. Code § 12:58-4.2(a).
[19] U.S. Dep't of Labor, "What construction contractors should know about child labor requirements under the Fair Labor Standards Act" (accessed March 3, 2024), www.dol.gov/sites/dolgov/files/whd/youthrules/contractorsshouldknowaboutchildlabor.pdf.
[20] NPRM at 3137 (emphasis added).
[21] *See, e.g.*, Minnesota State Building and Construction Trades Council, Apprenticeship (accessed Feb. 23, 2024), https://mntrades.org/apprenticeship/ (listing 25 separate registered apprenticeship programs for the building trades).
[22] Apprenticeship Programs, Labor Standards for Registration, Amendment of Regulations, 85 Fed. Reg. 14294, 1349 (March 11, 2020).

the Department to determine "that a complete exclusion of construction, but no other sector, is most consistent with the goal of encouraging more apprenticeships in new industry sectors that lack widespread and well-established registered apprenticeship opportunities."[23] The same data warrants the same determination here.

If the Department is determined to proceed with CTE apprenticeship programs for construction, SWACCA has three recommendations: first, it should establish such a program as a pilot program which is limited in duration and application. Ideally, such a program would be established in a single state with a pre-existing, robust registered apprenticeship infrastructure for a specified duration, followed by an in-depth study of the program's results. This would allow program creators and participants, State CTE Agencies (once created or designated), and the Department time to identify and remedy any unforeseen problems with minimal impact to well-established registered apprenticeship programs. Second, any rulemaking to establish CTE apprenticeships covering construction should be through a joint rulemaking with the U.S. Department of Education that controls the Perkins program. Both DOL and the Education Department will have responsibility for different aspects of CTE programs targeting high schools and their respective regulations should be aligned at the outset. Third, CTE apprentices should not be treated as registered apprentices in any way for purposes of Davis-Bacon prevailing wages (consistent with the treatment of unregistered apprentices under the current apprenticeship system). This distinction is key, as it would ensure that CTE apprenticeship programs do not disrupt the prevailing wage system or jobsite work assignments. We understand that the proposed rule prohibits this and it is critical that this prohibition be maintained.

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IV. The proposed ban on non-competes ignores certain realities of union construction; the rule should allow for lawful, collectively bargained arrangements that already exist in the construction industry.

Proposed section 29.9(d) prohibits "a non-compete provision or other provision restricting the apprentice's ability to compete directly with the program sponsor or participating employer or to seek or accept employment with another employer prior to the completion of the registered apprenticeship program."[24] While SWACCA generally supports the Department's "broader goal of ensuring good jobs, increased earnings for workers, and competition among employers,"[25] the proposed ban could prohibit lawful, collectively bargained arrangements that exist in the construction industry that are negotiated for the benefit of workers, their unions, and signatory employers.

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[23] *Id.* at 14347.
[24] NPRM at 3280.
[25] *Id.* at 3165.

These include scholarship loan agreements (SLAs), hiring halls, and apprentice rotations. In promulgating the final rule, the Department should recognize the ability of labor organization representing workers who authorize contributions from their paychecks to support jointly trusteed apprenticeship programs and their employer partners to protect these investments in apprenticeship training through the collective bargaining process. The Department should acknowledge that the nature and purpose of such collectively bargained arrangements are different in kind from those imposed unilaterally by employers.

a. Scholarship Loan Agreements

An SLA provides that an apprentice shall repay the costs of training if he or she decides to work for a non-union employer. If read too broadly, section 29.9(d)'s proposed ban on non-competes could be interpreted to prohibit such an agreement (i.e., because it arguably "restricts the apprentice's ability … to seek or accept employment with another employer…"). The Department should exclude SLAs from the prohibition on non-competes because their purpose is to recoup the program's investment funded through hourly contributions from union member paychecks and not to restrict the apprentice's ability to find employment.

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As noted in a 2005 study of registered apprenticeship training, SLAs date back to the 1940s:

> The "scholarship-loan agreement" is a contract that protects investments in training and education made by the industry. The concept was initially implemented by the U.S. Navy shortly after World War II as a way of protecting its investment in college assistance provided to enlisted personnel. The Navy agreed to pay enlisted personnel a stipend to attend college in return for signing a commitment to serve in the Navy for a period of years.[26]

In the same study, the authors observed that, "[m]ulti-employer collective bargaining and the establishment of trust funds have helped the union sector to deal with the challenge of under investment in training by employers. However, these mechanisms do not totally resolve *the problem of training investments walking away when workers leave to work for firms that are not*

[26] Robert W. Glover and Cihan Bilginsoy, "Registered Apprenticeship Training in the U.S. Construction Industry," 47 *Education + Training* 336, 346 (May 2005), available at https://www.researchgate.net/publication/243463149_Registered_Apprenticeship_Training_in_the_US_Construction_Industry (accessed Feb. 21, 2024).

signatory contractors."[27] Courts, too, have found that SLAs are enforceable where they seek repayment of training costs.[28]

Moreover, SLAs are different than other non-competition agreements insofar as they do not prohibit workers from employment with any employer in the industry. SLAs permit workers the freedom to seek employment with any employer contributing to the jointly-trusteed training program that sponsors their registered apprenticeship program. They are only restricted from working for employers who did not help to bear that cost through participation in the sponsoring training fund. Furthermore, SLAs are frequently the product of collective bargaining or other collaboration between the union and an employer or multi-employer association.[29] In such a scenario, the workers' interests – including those of apprentices – are represented by the union. The terms of the agreement are negotiated on equal grounds by both the union and the employer. The proposed rule should not prohibit explicitly agreed-upon terms between the union that represents the workers and the employers that employ them.

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It is not inconceivable that an apprentice will complete all or part of his or her training and then seek employment with an employer that does not contribute to the training program that provided the training. Program sponsors should be allowed to protect their investment in worker training.

b. Hiring halls and apprentice rotations

Like SLAs, hiring halls are a common and long-established practice in the construction industry.[30] In an exclusive hiring-hall clause, an employer

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[27] *Id.* at 345 (emphasis added).

[28] *See, e.g.*, *Milwaukee Apprenticeship Training v. Howell*, 67 F.3d 1333, 1339 (7th Cir. 1995) (finding that repayment provision did not violate Wisconsin statute prohibiting non-compete agreements where provision was "simply an obligation to repay the cost of his training"); *Nat'l Training Fund for Sheet Metal and Air Conditioning Industry v. Maddux*, 751 F. Supp. 120, 121 (S.D. Tex. 1990) (finding that work-or-pay agreement did not violate public policy). The *Maddux* court reasoned that, "workers may agree that they will reimburse the company or union for valuable training, but only up to the line of recompense." 751 F. Supp. at 121.

[29] See, for example, article XII, section 12.24 the Agreement between SMACNA Greater Chicago and the International Association of Sheet Metal, Air, Rail and Transportation (SMART) Local No. 73 dated June 8, 2019 through May 31, 2023, available at https://www.smw73.org/assets/files/Digital-Version-SMACNA-and-Local-73-CBA%202019-2023.pdf (accessed Feb. 21, 2024).

[30] *See* National Labor Relations Board, "Hiring Halls" (accessed Feb. 21, 2024), available at https://www.nlrb.gov/about-nlrb/rights-we-protect/the-law/employees/hiring-halls ("Employers in the construction and maritime industries often choose to hire exclusively through referrals from union hiring halls"); Leslie W. Bailey Jr., *Construction Union Hiring Halls: Service Under a Collective Bargaining Agreement as a Prerequisite to High Priority Referral*, 19 Wm. & Mary L. Rev. 203 (1977), available at

agrees to only employ workers dispatched to it by the union. These provisions are the result of collective bargaining.

Parties may also collectively bargain for apprentices to be rotated among different contractors over the course of their apprenticeship program. For example, the contractors and the union in an industry may agree that the Joint Apprenticeship and Training Committee has authority to rotate apprentices among the contractors participating in the training program to ensure that each apprentice receives a well-rounded training experience.

Here again, the proposed language of section 29.9(d) could be read to prohibit these practices. Notably, unions and employers are prohibited – by federal and state antidiscrimination laws and often by language in CBAs – from unlawfully discriminating against apprentices in their referral and hiring practices. With such protections in place, the Department's proposed rule should not prohibit hiring hall and apprentice rotation provisions.

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To the extent the proposed language in section 29.9(d) forecloses the use of SLAs, hiring halls, and apprentice rotations in the construction industry, SWACCA recommends that the final rule include language providing that otherwise lawful provisions in collective bargaining agreements can supersede the proposed rule's ban on non-competes.

V. The proposed rule would significantly increase the administrative burdens on craftworkers and administrators without improving an apprentice's experience.

a. Administrative

The proposed rule establishes the standards that govern the registration and operation of apprenticeship programs, as well as the apprenticeship agreement that is signed by an incoming apprentice. While apprenticeship standards and apprenticeship agreements existed in prior law, the proposed requirements add significant administrative and managerial burdens for employers while adding minimal value to the program or apprentice experience.

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https://scholarship.law.wm.edu/cgi/viewcontent.cgi?article=2398&context=wmlr (general discussion of hiring halls in construction); Alexander Manson, *Exclusive Hiring Halls in the Construction Industry*, 9 Buff. L. Rev. 355, 356 (1960), available at https://digitalcommons.law.buffalo.edu/cgi/viewcontent.cgi?article=3096&context=buffalolawreview (noting that "courts have upheld the validity of this mode of hiring as not violative of the employer discrimination clause, absent acts of discrimination on the part of the employer, induced by the union in order to encourage membership").

The most concerning administrative burden is the proposed requirement in 29.8(a)(26)(b)(3).[31] This provision would require that a program "actively [monitor] each participating employer after their admission to the group program to assess whether such an employer is adhering to…the minimum standards of apprenticeship…and the applicable regulatory requirements for registered apprenticeship programs…."[32] The NPRM explains that "[w]hile not an explicit requirement, group program sponsors may need to dedicate staff as coordinators to ensure all the program partners and employers are coordinated and connected in the delivery of the registered apprenticeship program."[33] Additionally, employers would be required by the Program Standards Adoption Agreement outlined in proposed section 29.11 to comply with the standards, all requirements in the rule, and to "cooperate with, and provide assistance to the program sponsor to meet the program sponsor's obligations under this part and part 30 of this title, including by providing any apprenticeship-related data and records necessary to assess compliance with these regulatory provisions."[34] The proposed section 29.18 further requires that both the program sponsor AND employers maintain for five years "any records that the Registration Agency considers necessary to determine whether the sponsor has complied or is complying with the requirements of this part and any applicable Federal or State laws."[35] This includes but is not limited to records pertaining to employment decisions, recruiting, performance, personnel records in some cases, employer safety programs, incident logs, and workers compensation documentation, and more. Many of these items are the exclusive purview of employers; it is not reasonable to expect the apprenticeship program to be allowed access to this data, much less maintain it. Proposed section 29.18 also requires that employers allow the Registration Agency access to all such records for the purpose of conducting program reviews and investigating complaints. Employers also must permit access to apprentices and former apprentices to be interviewed, which is a burden to productivity.

In the aggregate, it would seem that the intention of the rule is for programs and the Registration Agency to engage in regular auditing and active monitoring of employers. Union programs already hold participating employers accountable to the program's standards by virtue of the collective bargaining agreement; however, there is no official record-keeping requirement and plan sponsors are not charged with ensuring compliance.

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[31] NPRM at 3279.
[32] *Id.*
[33] *Id.* at 3162.
[34] *Id.* at 3282.
[35] *Id.* at 3284.

Many of the records identified for program sponsors and employers to maintain concern employment laws and are the purview of other agencies and rules, such as the EEOC, the ADA, OSHA, etc. An expectation for programs to engage in redundant monitoring is a costly and time-consuming proposition for both programs and employers alike. Further, it is unlikely to significantly improve the apprentice experience.

The rule creates another unreasonable administrative burden in its requirements for apprenticeship agreements, outlined in 29.9(4). One of these is that each apprenticeship agreement must also be signed by any participating employers in the program. In union programs, there are often hundreds of participating employers. And, there can be hundreds of new apprentices each year. Not only is it unrealistic to expect hundreds of companies to counter-sign hundreds of apprentice agreements each year, but it would do nothing improve an apprentice's experience.

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b. Journeyworker Burden

The proposed rule includes a number of requirements of journeyworkers who provide on-the-job training to apprentices.

Section 29.12(4) of the proposed rule would require that a journeyworker be able to "apply industry-recognized methods for objectively and fairly evaluating and monitoring the progress of the apprentice during the apprentice term, including the ability to assess the attainment of competencies of apprentices acquired during their on-the-job training." Construction journeyworkers are highly skilled workers; however, they are not generally trained in how to evaluate or assess apprentices, nor would such a requirement be appropriate for a journeyworker in the construction industry. Construction journeyworkers should be able and willing to effectively share knowledge with an apprentice and provide mentorship, but their role as an on-the-job trainer is not the same as that of a formal educator. Nor is it intended to be; this need is filled by teachers who provide related instruction in a classroom environment. Proposed 29.8(a)(1) further requires a process for "regularly assessing and providing feedback to the apprentice regarding the apprentice's acquisition of job-related knowledge, skills and competencies during the on-the-job training component." Such a process would undoubtedly require a great deal of administrative work and would interfere with the journeyworker's primary construction duties. The realities of a construction jobsite do not provide an environment in which it is realistic for journeyworkers to perform these formal administrative and recordkeeping

tasks that way that somebody working in an office environment may be able to do.

Another challenge in the proposed rule appears in 29.12(3), which indicates that journeyworkers must have the ability to "effectively communicate and demonstrate the range of specialized practical knowledge, work processes, skills, and techniques necessary to acquire full proficiency in the occupation...." In the construction industry, most apprentices work with multiple journeyworkers throughout their apprenticeship period. This offers the apprentices the opportunity to learn nuances of their trade from journeyworker who are most experienced in them. It also permits apprentices the opportunity to witness varied work styles and methods. It is often not reasonable to expect one journeyworker to impart all the information necessary for full proficiency.

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VI. SWACCA recommends changes to three definitions in the proposed rule.

a. Pre-apprenticeship program

The proposed rule defines "pre-apprenticeship program" as:

> a structured education and workplace training program *that maintains a documented partnership with at least one registered apprenticeship program*, is designed to support access and equitable participation in apprenticeship programs by providing individuals who do not currently possess the minimum qualifications for admission into a registered apprenticeship program or registered CTE apprenticeship with the foundational knowledge and skills needed to gain acceptance into, and succeed in, a registered program, and provides participants with a hands-on introduction to the competencies and techniques in one or more occupations that are suitable for registered apprenticeship training, with access to educational and career counseling and other support services, and may include opportunities to earn industry-recognized credentials.[36]

Some existing pre-apprenticeship programs do not meet this definition. For example, there are community-based programs that do not have a partnership with an existing registered apprenticeship program. The Department recognized the existence and value of such programs in a 2012

[36] *Id.* at 3274 (emphasis added).

white paper titled "Recommendations to Encourage Registered Apprenticeship – Community-Based Organization Partnerships": "Community-Based Organizations (CBOs) are important groups that offer training to prepare individuals that lack adequate skills for apprenticeship as well as support them during their apprenticeships. CBOs offer a range of classes and services including math and language skills, job readiness skills, boot camps, job shadowing, peer groups, and providing childcare, transportation, uniforms and tools."[37] To the extent that the proposed definition of "pre-apprenticeship program" would exclude such programs, it should be modified to allow their continuation.

The NPRM indicates that "…[I]t is important for registered apprenticeship programs to partner and form agreements and partnerships with pre-apprenticeship programs to establish a reliable pipeline of apprentices into the program and ensure they are diversifying their recruitment methods…"[38] and "…[t]he Department views pre-apprenticeship, registered CTE apprenticeship, and registered apprenticeship collectively as a broader apprenticeship pathways system…leading to registered apprenticeship."[39] While it is exciting to contemplate an ecosystem that supports a multi-faceted approach to encouraging and supporting participation in registered apprenticeship programs, many existing programs have already solved for this by creating their own outreach, educational, and recruitment activities. The proposed rule seems to implement a near-mandate to form a written partnership with an external pre-apprenticeship program, when such available program(s) may not be superior to the pre-apprenticeship models a program already has in place.

Finally, it is noteworthy that some union collective bargaining agreements have classifications of workers that are called "pre-apprentices." Such workers are usually entry-level employees who have not yet entered the apprenticeship program. They are generally required to enroll as an apprentice after a specified period of time. These programs are valuable because they offer individuals the opportunity to experience a trade first-hand prior to committing to an apprenticeship program. These workers are not necessarily participants in a pre-apprentice program as defined in the

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[37] DOL Office of Apprenticeship, "Recommendations to Encourage Registered Apprenticeship – Community-Based Organization Partnerships" at 2 (2012) (accessed Feb. 25, 2024), https://apprenticeshipri.org/wp-content/uploads/2018/05/RA-CBO-Partnerships-White-Paper_2012.pdf. See, for example, the YouthBuild program, which has been implemented in more than 40 states. DOL Employment and Training Administration, YouthBuild (accessed Feb. 25, 2024), https://www.dol.gov/agencies/eta/youth/youthbuild; Minnesota Department of Employment and Economic Development, Youthbuild Program (accessed Feb. 25, 2024), https://mn.gov/deed/job-seekers/find-a-job/targeted-services/youth-employment/youthbuild.jsp.

[38] NPRM at 3136.

[39] *Id.*

proposed rule, however. This conflicting use of the term is sure to cause confusion. SWACCA recommends that the Department use a different term for these programs, such as "apprenticeship preparation programs."

b. Collective bargaining agreement

The proposed rule defines "collective bargaining agreement" as: "a written agreement negotiated between an employer (or a group of employers) and the bargaining representative(s) of a labor union *to which employees of the employer(s) belong* that addresses such topics as wages, hours, workplace health and safety, employee benefits, and other terms and conditions of employment."[40] The issue with the italicized language is that it doesn't address (and arguably excludes) workers working under a project labor agreement (PLA) or workers in a right-to-work state. SWACCA therefore proposes the following italicized language: "a written agreement negotiated between an employer (or a group of employers) and the bargaining representative(s) of a labor union *to which employees of the employer(s) are subject to* that addresses such topics as wages, hours, workplace health and safety, employee benefits, and other terms and conditions of employment." This broader language accounts for workers under PLAs and in right-to-work states.

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c. Journeyworker

The proposed rule defines "journeyworker" as: "an experienced worker who has attained proficiency in the skills and competencies required in an industry or occupation."[41] Under current regulations, a journeyworker is one who has "mastered the skills and competencies required for the occupation."[42] The difference between the two definitions is subtle but important: the proposed definition shifts the focus from occupational proficiency to industry proficiency. As noted above, industry-wide proficiency is not an appropriate standard in construction. Instead, only occupational proficiency is appropriate.

A definition of "journeyworker" focused on industry proficiency would have unintended consequences. For example, a project manager who has never

[40] *Id.* at 3272 (emphasis added).
[41] *Id.* at 3273. Notably, this definition is at odds with proposed section 29.12, which requires that journeyworkers providing on-the-job training have "[a] mastery of the relevant skills, techniques, and competencies of the occupation." *Id.* at 3282. Industry-wide "skills, techniques, and competencies" are not mentioned as a requirement in this section. It is also a circular definition, as the definition of "proficiency" is "…the demonstrated, measurable attainment by an apprentice of each of the relevant job skills and competencies that are necessary to perform successfully at the journeyworker level in a given occupation." *Id.* at 3174.
[42] 29 C.F.R. § 29.2.

worked in a trade but who has wider industry knowledge could be deemed a journeyworker, or a journeyworker carpenter who has broader knowledge of the interior systems industry could be considered a journeyworker in finished carpentry. It is doubtful that the Department would approve of either scenario. Additionally, the broader-focused definition could ultimately dilute the journeyworker-apprentice ratios. If, as in the example above, a project manager (or other administrative personnel) is counted as a journeyworker for ratio purposes, it would reduce supervision in the field by those with occupational proficiency in the trade.

In the construction industry, occupational proficiency is necessary as opposed to industry proficiency when defining journeyworkers. The proposed definition in section 29.2 should therefore specify that a journeyworker is one who is recognized as having the skills and competencies for his or her trade or occupation.

Thank you for the opportunity to submit comments on the proposed rule regarding National Apprenticeship System Enhancements.

Sincerely,

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