



**U.S. Department of Labor's  
Notice of Proposed Rulemaking:  
National Apprenticeship System Enhancements**

**RIN 1205-AC13**

**Joint Comments of the United Association of Journeymen  
and Apprentices of the Plumbing and Pipe Fitting Industry  
of the United States and Canada, AFL-CIO  
and**

**The Mechanical Contractors Association of America**

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## **I. Introduction**

### **A. The UA and the MCAA are Industry Leaders in Apprenticeship Training.**

The United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, AFL-CIO (“UA” or “United Association”) and the Mechanical Contractors Association of America (“MCAA”) submit these joint comments on the notice of proposed rulemaking issued by the United States Department of Labor (“Department”) regarding enhancements to the national apprenticeship system.

The UA and MCAA are uniquely qualified to respond to the proposed rule. The United Association represents 374,000 members nationwide in the plumbing and mechanical trades and MCAA represents approximately 2,600 businesses involved in heating, air conditioning, refrigeration, plumbing, piping, and mechanical service. The UA’s members work for MCAA contractors in plumbing, pipe fitting, gas fitting, sprinkler fitting, as HVAC-R technicians, and in related occupations. While MCAA contractors employ a substantial percentage of UA members, others work for plumbing contractors, in metal trades shops, and pipeline operations.

Providing top-tier training to individuals in these occupations has been a priority for the UA for over 135 years and MCAA and the UA collaborate to offer the highest caliber joint apprenticeship training. Training programs jointly administered by UA affiliates and MCAA contractors (“UA/MCAA Training Programs”) invest \$270 million per year in private funding to train apprentices and journeymen in the plumbing and mechanical trades. This investment is paid for largely with private funds generated by contribution obligations pursuant to collective bargaining agreements signed by the UA, MCAA and other union signatory employers. With this investment, over 57,072 apprentices are being trained in over 300 state of the art facilities in these programs, allowing MCAA contractors to be leaders of the plumbing and mechanical contracting industries. This significant experience has informed the response of the UA and MCAA to the proposed rule.

### **B. While the UA and MCAA Agree with the Goals of the Rulemaking, the Proposed Rule Must Be Modified So As Not To Undermine Successful Existing Registered Apprenticeship Programs.**

As more fully described below, the United Association and the MCAA appreciate the Department’s substantial efforts in seeking to update the regulations governing registered apprenticeship programs. Some of the proposed changes will strengthen the support for registered apprenticeship programs and ensure that all apprentices in registered programs receive the training necessary to prepare them for successful careers in their chosen occupation. However, key provisions of the proposed rule will undermine thriving registered apprenticeship programs in the plumbing and mechanical trades, as well as other building trades.

As the Department is aware, registered apprenticeship programs in building and construction trade occupations are the gold standard in job training.<sup>1</sup> Numerous studies, including those cited herein, confirm

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<sup>1</sup>ApprenticeshipUSA, *Apprenticeship Industries, Construction*, <https://www.apprenticeship.gov/apprenticeship-industries/construction> (last visited Mar. 11, 2024).



this point by demonstrating that these joint labor-management programs are the highest-performing and most utilized programs in apprenticeship training.<sup>2</sup>

One report that examined apprenticeship training programs across the country found that for one seven-year period, 75 percent of all newly indentured apprentices joined construction industry programs.<sup>3</sup> This study also reflects the superior performance of these programs:

Joint programs (with union participation) were found to have much higher enrolments and greater participation of women and ethnic/racial minorities. Joint programs also exhibit markedly better performance for all groups on rates of attrition and completion. Joint programs have developed various innovations, including college credit for training and scholarship loans to expand apprenticeship and improve quality and retention, although there are no quantitative evaluations of the effectiveness of many of these specific measures.<sup>4</sup>

Further, while many studies analyze apprenticeship operations in individual states, they often reach the same key conclusions; namely, that union or joint labor-management programs are the most successful because: (a) they are more effective in training and graduating workers; and (b) they have a significantly better track record in recruiting women and workers of color.

For instance, a Michigan study, based on an analysis of information from the Department's Registered Apprenticeship Partners Information Data System (RAPIDS), found that "[u]nion programs train 80 percent of apprentices" in the state's construction industry.<sup>5</sup> This study also found that the union programs demonstrated superior performance under all relevant benchmarks, including:

- Union programs train 80 percent of apprentices;
- Union programs train a disproportionate share of women (90 percent) and minorities (87 percent);
- Apprentices are more likely to complete union programs (42 percent compared to 22 percent); and
- Apprentices earn more after completing union programs (\$22.21 per hour compared to \$14.55 per hour).<sup>6</sup>

In addition, while occupations in the construction and building trades have the highest performing programs in the construction industry, the UA/MCAA Training Programs are, in turn, among the most successful in the construction industry. This is evident not only from the huge annual financial commitment

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<sup>2</sup> A list of additional studies supporting these comments on apprenticeship programs in the building and construction industries is attached hereto as Appendix A.

<sup>3</sup> Glover & Bilginsoy, Registered Apprenticeship Training in the US Construction Industry, Ed. & Training (May 2005); <https://repositories.lib.utexas.edu/bitstream/handle/2152/114744/2005-Registered%20Apprenticeship%20Training%20in%20the%20U.S.%20Construction%20Industry.pdf?sequence=3>.

<sup>4</sup> *Id.* at 2.

<sup>5</sup> Public Sector Consultants, Inc., *Benefits of Michigan Apprenticeship Programs*, (Apr. 2017), <https://publicsectorconsultants.com/wp-content/uploads/2017/05/Benefits-of-Apprenticeships-FINAL-April-2017.pdf>.

<sup>6</sup> *Id.* at 1.



to these programs, but also by the fact that UA/MCAA Training Programs continue to demonstrate superior performance in the most competitive construction markets. For example, a recent and ground-breaking report surveying over 1,500 construction projects shows that UA/MCAA workforces deliver 15 percent higher productivity and that unionized workforces provide 4 percent lower total project costs and significantly less risk of schedule delays and cost overruns.<sup>7</sup>

Such advantages, and the benefits provided to construction clients in the private and public sector, are the result of the high quality and consistent training received by UA members.<sup>8</sup> These results were also attributed to superior project staffing offered by UA/MCAA teams. In the UA's case, this advantage has been further bolstered by the fact that it has added nearly 50,000 new members in the last several years. These growing ranks will benefit both contractors and projects owners as they receive first-in-class training through UA/MCAA Training Programs.

This experience underscores how important it is for the Department to ensure any rulemaking does *not* undermine existing apprenticeship programs in any way, especially those programs that have been performing with the highest levels of success. Specifically, our concern is that proposed changes to the current national apprenticeship system will weaken the minimum standards to which registered apprenticeship programs should be held. Likewise, the proposed rule would pose significant and unnecessary administrative burdens on existing successful programs by mandating compliance with National Occupational Standards created by the Department of Labor. Moreover, the creation of Career & Technical Education (“CTE”) Apprenticeships would undermine registered apprenticeship programs by allowing shorter programs that are cheaper to maintain and flood the market with unqualified workers. These actions will undermine the best apprenticeship programs and curtail their ability to serve crucial markets and expand to meet growing demand. As discussed in these comments, the proposed rule must be revised in several important respects to prevent these results.

The continued growth and vitality of registered apprenticeship programs in the building and construction industry occupations is needed now more than ever. The construction industry is facing massive growth involving increasingly complex projects. The UA and MCAA are diligently working to train a large influx of workers to perform work on essential infrastructure and clean energy systems, and to meet the needs of the boom in advanced manufacturing facilities required by projects needed for microchip and data storage production. The necessity of this work, and the high degree of skill required to complete it, means that merely increasing the number of program sponsors or apprenticeship programs in these trades is insufficient if the quality of training and minimum standards for providing this training are not strictly enforced. If anything, construction and the other sectors we serve need *higher* quality and *greater* reliability standards for our apprenticeship programs.

Existing programs in the plumbing and mechanical contracting sectors, as well as the construction industry at large, offer best practices that should be bolstered and used as examples for other industries. They should not be threatened, which is exactly what will happen if the final rule permits the creation of CTE Apprenticeships or allows exemptions to minimum standards of apprenticeship. Relevant parties in the

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<sup>7</sup> McFadden, Santosh & Shetty, *Quantifying the Value of Union Labor in Construction Projects*, Project Eval. Sys. (Dec. 2022), <https://www.ipaglobal.com/wp-content/uploads/2023/02/Value-Union-Labor-Construction-Projects-IPA-Study.pdf>.

<sup>8</sup> *Id.* at 18.



industry, including current and future apprentices, may be unable to accurately determine which programs offer high quality and tested training and which programs offer quicker and less skilled CTE Apprenticeships or offer apprenticeship training while being exempt from any number of minimum requirements. This lack of clarity would be a major disservice to any program in any affected industry.

The proposed rule also poses the distinct threat of unfair competition. Apprenticeship programs may utilize provisions of the proposed rule, including CTE apprenticeships and exemptions from minimum standards, to provide cheaper, faster and less rigorous training. Other provisions of the proposed rule, including those that prohibit scholarship loan agreements and define pre-apprenticeship programs in a way to potentially exclude many of those successfully used in the building and construction trades, would further undermine and overburden existing and successful programs. Moreover, once an apprenticeship program is registered with a registration agent, employers using such programs automatically obtain federally supported benefits, regardless of the quality of training provided. These include extremely valuable legal rights and benefits, such as: (a) the right to pay apprentice wages on prevailing wage projects; (b) the opportunity to receive substantial government grants; and (c) the ability to qualify for lucrative tax credit under the new Inflation Reduction Act. Such benefits may be available to programs that provide less rigorous and effective training under the proposed rule. These benefits call for more, not less, rigorous and effective apprenticeship standards.

In sum, if the Department's primary focus is to better serve apprentices and enhance apprenticeship training, simply increasing the number of programs will not achieve these aims unless standards ensuring quality training are maintained. If the Department is truly going to reach these goals, it should provide guidance that helps program sponsors in new industries and sectors mirror the practices of successful apprenticeship programs while preserving the integrity of these programs and the highly valuable services they provide. The remainder of our comments are based on these critical tenants, which encourage the positive aspects of the proposed rule and recommend elimination or substantial revisions to those components that are counterproductive to the fundamental goals of our National Apprenticeship System.

## **II. The UA and MCAA Strongly Support Certain Provisions in the Rule Which Will Bolster Successful Registered Apprenticeship Programs and the Safety and Welfare of Apprentices**

The UA and MCAA agree that maintaining quality apprenticeships and the welfare and safety of apprenticeship should be a governing tenant of these regulations. To that end, the UA and MCAA strongly support the changes in the proposed rule which set a minimum requirement of 2,000 hours of on-the-job training ("OJT") and 144 hours of related instruction ("RI") for every 2,000 hours of OJT. (Proposed Rule § 29.8(a)(4)). Our vast experience in training apprentices strongly indicates that these minimum hours will ensure that apprentices receive quality training necessary to impart the knowledge, skills, and competencies required to perform their trade. By ensuring adequate training, these changes will positively impact the quality of training provided by registered apprenticeship programs, as well as the safety and wellbeing of apprentices, those working with apprentices, and the public in general.

Similarly, the UA and MCAA support the proposed rule's changes to the extent they give the Department the sole authority to determine which occupations are suitable for registered apprenticeship. (Proposed Rule § 29.3(c)). Reserving this authority will allow the Department to ensure that states do not



recognize occupations that are not suitable for apprenticeship or that undercut programs in occupations that are suitable.

Moreover, the UA and MCAA are in favor of stronger reporting and enforcement provisions for registered apprenticeship programs. The proposed rule, and particularly the provisions requiring annual reporting and publication of program metrics including the annual completion rate and cohort completion rate, will allow registration agents to determine which programs are not meeting the basic goal of turning out qualified apprentices. However, reporting and disclosure alone is not sufficient to safeguard the welfare of apprentices. While programs that report poor completion rates may be subject to technical assistance, under the proposed rule, remedial or enforcement action will be left to the discretion of the registration agent and may not be sufficient in all instances. A failure to graduate apprentices is a key indicator that a program is not meeting the basic requirements of an apprenticeship program. A program with few or no graduates cannot adequately prepare apprentices for a career. In other words, a program that only recruits workers and claims to train them without consistently turning out certified journeyworkers is exploiting workers and failing to meet its obligations as a registered apprenticeship program. Such training contravenes the very purpose of the National Apprenticeship Act, 29 U.S.C. § 50, and the Department's rulemaking. Therefore, programs that report annual completion rates of zero for multiple consecutive years should be subject to deregistration.<sup>9</sup>

### **III. The UA and MCAA Oppose Certain Provisions of the Proposed Rule**

#### **A. Exemptions From the Requirements of 29 CFR Part 29 Should Not Be Allowed.**

The UA and MCAA oppose the inclusion of section 29.23 in the proposed rule, which grants the Administrator of the Department's Office of Apprenticeship authority to entertain and grant requests for exemptions from any or all of the provisions contained in subpart A of the proposed 29 CFR Part 29.<sup>10</sup> Registered apprenticeship programs, especially those in the building and construction trades, are recognized to provide high quality training and offer significant career opportunities for graduates. Graduates of these programs have a well-earned reputation for being the safest and most efficient workers. Permitting exceptions to the basic minimum requirements for registered apprenticeship programs provided in subpart A would allow a program to masquerade as equal to the more rigorous registered apprenticeship programs while permitting them to evade minimum requirements these other programs must meet. In this way, the proposed regulation undermines the reputation for high quality training that registered apprenticeship programs rightfully maintain.

Granting exceptions to the requirements of subpart A would also provide an unfair competitive advantage. If one registered apprenticeship program in an occupation is allowed to skip the minimum requirements of subpart A, it could have an advantage over other registered apprenticeship programs in that occupation. For example, if a program is allowed an exemption to the required minimum terms of apprenticeship set forth in section 29.8(a)(4) of the proposed rule, that program would turn out apprentices at a higher rate and spend less on training apprentices than other programs. The exempt program would not

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<sup>9</sup> The precise number of years in which a program may report zero graduates without being subject to deregistration may vary by industry. In occupations in the building and construction trades, programs should be required to graduate apprentices for three out of five consecutive years. This is consistent with certain public works state and local procurement laws.

<sup>10</sup> The UA and MCAA submit that Subpart B of the proposed rule should be removed. If it remains, then the UA and MCAA oppose section 29.24(g)(10) of the proposed rule for the same reasons as set forth in this section.



only have a competitive advantage over other programs in the same occupation, but it would most certainly provide lower quality training for apprentices in that occupation.

For these reasons, the UA and MCAA oppose the inclusion of Section 29.23 in the proposed rule and recommend that this provision be removed in its entirety. If the Department maintains this provision in the final rule, the “good cause” standard for granting exemption requests should be clarified and strictly defined to guard against abuse in the future. If exemptions must be granted, in order to be consistent with the purpose of the regulations and the necessities of the workplace, exemptions should be limited only to those instances in which the program sponsor demonstrates on the basis of objective evidence that the exemption is necessary for the health and welfare of apprentices in the occupation.

If the exemption process is maintained, the final regulations should require that any exemption process be modelled on OSHA’s process for considering exemptions from safety standards, referred to as a “request for variance”. The process OSHA uses to consider a request for variance is a good model for the Department to follow in considering exemptions from basic standards protecting apprentices. The process generally includes publication of a preliminary Federal Register notice announcing the application and requesting public comments so that “interested persons [can] submit within a stated period of time written data, views, or arguments regarding the application”. (29 CFR § 1905.14(b)(2)(iii)). OSHA’s variance process also protects interested parties by allowing “any affected employer, employee, or appropriate State agency having jurisdiction over employment or places of employment covered in an application” to request a hearing on the exemption application. (29 CFR § 1905.15(a)). Hearings on requests for variance allow testimony, the taking of depositions, and discovery to gather evidence. (29 CFR § 1905.25). Once a decision is made on a request for variance, OSHA publishes notice of the decision in the *Federal Register*. The UA and MCAA believe a similar process is appropriate to safeguard apprentices and other industry stakeholders if the provision granting exemptions from the minimum standards of 29 CFR Part A is maintained in the final rule.

**B. National Occupational Standards Are Unnecessary and Would Be Harmful to Registered Apprenticeship Programs in the Plumbing and Mechanical Trades.**

The UA and MCAA appreciate the Department’s intent to create resources for program sponsors in order to accelerate development of registered apprenticeship programs. However, sufficient tools already exist without the creation of National Occupational Standards. The Department’s standards builder tool permits interested program sponsors to easily create standards of apprenticeship that are appropriate for their own unique situation. Moreover, Guideline Standards provide an easily-used template for the creation and registration of standards of apprenticeship. These tools have long been recognized as successful templates for the creation and expansion of registered apprenticeship programs.<sup>11</sup>

In comparison to the tools already in existence, National Occupational Standards would be harder to apply for new programs. National Occupational Standards do not permit the kind of customization that may be needed for new program sponsors; instead, all program sponsors would be required to substantially align

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<sup>11</sup> Advisory Committee on Apprenticeship (ACA), *Biennial Report to the Secretary of Labor*, p. 8-9, (May 10, 2023), <https://www.apprenticeship.gov/sites/default/files/Final%20ACA%20Biennial%20Report%20-%20May%2010%202023.pdf>.





with National Occupational Standards, even if doing so would be unfeasible or overly burdensome for the program sponsor. This requirement to comply with apprenticeship standards over which the program sponsor has no control may dissuade program sponsors from starting new registered apprenticeship programs.

National Occupational Standards would also be harmful for established registered apprenticeship programs. Many programs in the plumbing and mechanical trades have operated successfully for decades. These programs would be required to comply with National Occupational Standards promulgated in the covered occupations. In forcing compliance, National Occupational Standards would cause significant administrative burdens and costs on existing registered apprenticeship programs, enrolled apprentices, and participating employers.

Any such burden on registered apprenticeship programs in the plumbing and mechanical and other building trades occupations is unnecessary. Registered apprenticeship programs in these occupations have been delivering high quality and effective training to the construction industry for decades. The Department has recognized that the construction sector stands out as the sector with the highest utilization of registered apprenticeship programs.<sup>12</sup> The fact that high quality training programs already exist and are thriving in the plumbing and mechanical trades, and other building trades occupations, means that National Occupational Standards are not necessary to promote apprenticeship in these trades.

At the very least, the final rule should be clarified to explicitly provide that National Occupational Standards are not appropriate for occupations in the building and construction trades. Given the high rate of registered apprenticeship programs in the building and construction trades, National Occupational Standards are not necessary to promote apprenticeship in these occupations. And given the high-quality training these programs provide, forcing changes on them by requiring compliance with National Occupational Standards would be burdensome at best and harmful at worst. The Department has previously recognized that any disruption to registered apprenticeship programs in the building and construction trades is not warranted, especially when the Department's purpose is to expand apprenticeships into new sectors and industries.<sup>13</sup> This continues to be true.

If the final rule maintains the provisions on National Occupational Standards and does not exempt the building and construction trades, the UA and MCAA request that the final rule be amended to require any National Occupational Standards be created by negotiated rulemaking consistent with the Negotiated Rulemaking Act of 1990 (Pub. Law 101-648 November 29, 1990). National Occupational Standards must be developed by a committee composed of industry experts that includes representatives from both employers and unions involved in registered apprenticeship programs training workers in the relevant occupation. Utilizing such industry experts who already sponsor registered apprenticeship programs in the occupation and have a stake in the creation of National Occupational Standards would be more efficient than seeking public comment on standards created by the Department. This process would be more likely to achieve consensus and it would ensure that relevant unions and employer associations are necessary participants in any committee creating National Occupational Standards.

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<sup>12</sup> Apprenticeship Programs, Labor Standards for Registration, Amendment of Regulations, 85 Fed. Reg. 14349 (Mar. 11, 2020).

<sup>13</sup> *Id.*



### **C. National Program Standards Should Continue to Be Required to Comply with Local Requirements.**

The UA and MCAA support the codification of the Department’s current practice of registering certain programs on a national basis. However, the final rule should be modified to clearly maintain the language in the current regulations regarding the applicability of certain state specific requirements. Pursuant to the current regulations, program sponsors who receive reciprocity must continue to meet any wage and hour provisions and apprentice ratio standards of the reciprocal state. (29 C.F.R. § 29.13(b)(7)). Wage and hour provisions and apprentice ratio standards may vary greatly by geographic area given the varying costs of living and specific work performed in an occupation. Requiring program sponsors to comply with these local requirements is crucial for maintaining the welfare and safety of apprentices. This requirement should be maintained in the final rule.

### **D. The UA and MCAA Oppose the Creation of CTE Apprenticeships.**

The need for the excellent training provided by registered apprenticeship programs in the building and construction trades is especially important in light of the hazardous work performed by many individuals engaged in occupations in the building trades. The continued need for this training is further underscored by the evidence showing graduates of registered apprenticeship programs have significantly better safety performance records.<sup>14</sup>

The proposed CTE apprenticeships are not appropriate for occupations in the building trades. CTE apprenticeships would require fewer hours of on-the-job training and related instruction. CTE apprenticeships could also be geared towards individuals as young as 16 who are not old enough to comply with DOL hazardous work orders prohibiting people under 18 from performing a range of construction tasks, such as:

- Operating motor vehicles;
- Operating power-driven hoisting apparatus (such as cranes, forklifts, construction elevators, loaders, and Bobcats);
- Operating power-driven saws;
- Operating guillotine shears;
- Operating abrasive cutting discs;
- Working in excavation or backfilling trenches;
- Working on or about a roof, and
- Operating power-driven compactors or balers.<sup>15</sup>

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<sup>14</sup> Wuellner & Bonauto, Are Plumbing Apprentice Graduates Safer than their Non-Apprentice Peers? Workers’ Compensation Claims Among Journey Level Plumbers by Apprenticeship Participation, J. Safety Res. (Dec. 2022), <https://pubmed.ncbi.nlm.nih.gov/36481026/>.

<sup>15</sup> U.S. Department of Labor, Wage and Hour Division, *What Construction Contractors Should Know About Child Labor Requirements Under the Fair Labor Standards Act*, <https://www.dol.gov/sites/dolgov/files/whd/youthrules/contractorsshouldknowaboutchildlabor.pdf>.



Many states also have more restrictive child labor laws related to construction. For example, New York’s child labor rules bar youth under 18 from being involved in wrecking, demolition, roofing, or excavating operations and the painting or exterior cleaning of a building structure from an elevated surface, and prohibit exposure of youth under this age from exposure to “ionizing radiation, silica or other harmful dust” which are common in construction.<sup>16</sup> Even for construction work that is not subject to a hazardous work order, such young people may lack the maturity to make safe decisions under pressure. Given this, CTE apprenticeships could lead to a proliferation of unskilled, untrained, and unsafe young workers on a hazardous job site. Construction occupations present uniquely hazardous features. These occupations are highly labor intensive and require considerable precision and safety training. A single, uneducated worker could present a serious danger to everyone else on the job. For this reason alone, CTE apprenticeships are not appropriate for building and construction trades and these occupations should be excluded from any CTE apprenticeship provisions in the final rule.

CTE apprenticeships could also be used as a less costly replacement for registered apprenticeship programs. In this way, they could undercut the use of highly skilled personnel that are critically needed on the job site. In addition to excluding building and construction trades from CTE apprenticeships, it is vital that the Department clarify that CTE apprentices are not “apprentices” for the purposes of existing federal legislation which confers privileges and benefits on program sponsors of registered apprenticeship programs and participating employers. The final rule should therefore make clear that a CTE apprentice is not an “apprentice” for the purposes of Davis Bacon and related acts, the Inflation Reduction Act, the Workforce Innovation Opportunity Act (“WIOA”), Executive Order 14119—Scaling and Expanding the Use of Registered Apprenticeships in Industries and the Federal Government and Promoting Labor-Management Forums or Regulation (March 6, 2024) and any other existing federal law, executive order or regulation which provides benefits to sponsors and/or employers utilizing registered apprentices.

The UA and MCAA applaud the Department’s desire to engage younger individuals in the registered apprenticeship system and providing a pathway to registered apprenticeship. The CTE Apprenticeship model created by the proposed rule is not necessary to do this, however. Registered apprenticeship programs, particularly in the building and construction trades, already have tools that allow them to engage individuals in or just out of high school. Many UA/MCAA Training Programs enter into linkage agreements with local high schools or community colleges to provide pathways to registered apprenticeship programs for students. Pre-apprenticeship programs have also been used successfully to promote engagement of individuals in this age demographic. Pre-apprenticeship programs could be supported and provided with additional resources to further engage individuals between the ages of 16-24. The CTE education model could also be expanded to allow partnerships with pre-apprenticeship programs so that individuals could gain educational credits and simultaneously graduate from a quality pre-apprenticeship program. These graduates can seek direct entry or accelerated credit in registered apprenticeship programs through the use of linkage agreements. This continued support of existing models – pre-apprenticeship and CTE education – would further the stated purposes without the need to create an entirely new and untested model for CTE apprenticeship which raises considerable concerns about the safety and welfare of apprentices and those who work with CTE apprentices.

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<sup>16</sup> New York State Department of Labor, *State Prohibited Occupations for Minors*, <https://dol.ny.gov/state-prohibited-occupations-minors> (last visited Mar. 11, 2024).



### **E. The Proposed Rule’s Prohibition on Non-Compete Agreements is Overly Broad and Will Negatively Impact Valuable Scholarship Loan Agreements**

The Proposed Rule’s prohibition on non-compete agreements between a program sponsor or participating employer and an apprentice, plus the broad definition of what constitutes a prohibited non-compete agreement, is overly broad and would prevent the continued use of agreements that are successfully used by many UA/MCAA Training Programs. These scholarship loan agreements, or SLAs, do not prohibit apprentice mobility and are not predatory monetary punishments. For those reasons, and as further described herein, the rule should be revised to as to continue allowing SLAs.

UA/MCAA Training Programs are provided free of cost to apprentices. These programs spend tens of thousands of dollars in private investments per apprentice to provide valuable training at no cost to the apprentice. In order to protect this investment and to continue to provide high-quality training without passing along any cost to the apprentice, many of these programs utilize SLAs. SLAs are agreements in which an apprentice acknowledges the program sponsor’s costs incurred in providing training and agrees to pay back these costs in one of two ways: (1) by working in the trade for a contractor required by a collective bargaining agreement to make contributions to a welfare benefit fund that funds apprentice and journeyman training; or (2) by cash reimbursement from the apprentice.

SLAs are not punitive agreements designed to deter competition or labor market mobility. The amount of an SLA is limited to the cost incurred by the program sponsor in providing the training and is not inflated to act as a punitive measure or restrict apprentice movement. SLAs also do not limit apprentices to one, or even a couple, of employers. Because SLAs permit in-kind contributions from any employer providing contributions to an apprenticeship training trust fund, apprentices are free to seek employment among a vast number of employers across the country without triggering a repayment obligation.

Instead, SLAs are reasonable agreements that protect the assets of these plan sponsors in line with applicable legal requirements. Registered apprenticeship programs in the unionized building trades are generally funded by multiemployer welfare benefit plans governed by the Employee Retirement Income Security Act of 1974, as amended (“ERISA”). Under ERISA, these training plans must be administered in accordance with fiduciary duties, including the duty to administer the plan exclusively for the purpose of providing benefits to participants and their beneficiaries and defraying reasonable expenses of administering the plan. (29 U.S.C. § 1104(a)(1)). The training funds that finance registered apprenticeship programs are not seeking to profit from SLAs or to restrict labor mobility. They are not seeking a competitive advantage. Instead, by enforcing SLAs, these plans are seeking to protect plan assets and administer the plan in accordance with applicable fiduciary duties.

Prohibiting SLAs may have a chilling effect on training. Training funds sponsoring registered apprenticeship programs may be less likely to enroll apprentices if it is unclear whether the fund will be able to cover its costs through in-kind employer contributions. Moreover, these non-profit programs may be at a competitive disadvantage with programs that require costs to be paid by apprentices out-of-pocket during the term of apprenticeship. The final rule should therefore be revised to permit the continued enforcement of SLAs by joint labor-management training trust funds.



**F. The Definition of Pre-Apprenticeship Program Should Clarify that the Hands-On Training Component is Voluntary.**

The UA and MCAA appreciate the Department’s willingness to define pre-apprenticeship programs in the proposed rule. However, the definition should be changed to clarify that hands-on training is *not* necessary for a program to be considered a pre-apprenticeship. Our main concern in this regard is that “hands-on” training in this context could be construed to mean mandatory OJT and to exclude commonly used classroom learning techniques. This restrictive definition of pre-apprenticeship is not necessary and could present serious problems in terms of ensuring the safety of inexperienced workers employed in the construction industry.

Pre-apprenticeship programs are widely used in the building and construction industry. Most pre-apprenticeship programs in the trades have been launched through the leadership of the local Building Trades Councils and supported by the individual local trade unions in these councils and their respective signatory employer organization, including the UA and MCAA. In designing such programs, the union sector often works with community groups, local government agencies and other stakeholders who share this same end goal of recruiting candidates for careers in construction and successfully placing them in registered apprenticeship programs. Many of these programs do not include OJT requirements but instead focus on other essential needs of people seeking access to registered apprenticeship programs. The essential skills taught by these pre-apprenticeship programs include remedial education, coursework in the respective trades, preparation for apprenticeship entry exams and assistance in basic life skills (*e.g.*, obtaining driver’s licenses).

For example, pre-apprenticeship programs supported by the Building Trades in both New York City and Chicago do not have OJT components but have achieved considerable success in both placing individuals in registered apprenticeship and promoting diversity and inclusion. Approximately 70 percent of the individuals in New York City’s BuildingWorks program are given direct access to local union apprenticeship programs affiliated with the Building Trades unions.<sup>17</sup> In addition, BuildingWorks has been highly effective in helping diversify the city’s unionized construction workforce, over half of whom are now people of color.<sup>18</sup> Likewise, the Technical Opportunities Program (“TOP”) operated by Chicago Women in Trades is a comprehensive pre-apprenticeship program designed to recruit women into the construction trades.<sup>19</sup> This program assists 70 percent of its graduates to launch construction careers, the “vast majority” of which begin with placement in union apprenticeships.<sup>20</sup>

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<sup>17</sup> N.Y. State Dep’t of Labor, *Registered Apprenticeship Programs that Utilize BuildingWorks (Previously Called Minority Worker Training Program or MWTP) as a Direct Entry Provider*, <https://dol.ny.gov/location/building-works-previously-called-minority-worker-training-program-or-mwtp> (last visited Mar. 11, 2024).

<sup>18</sup> Hershander, *Can New York City’s Infrastructure Boom Change the Face of Its Workforce?*, Cap. & Main, (Nov. 24, 2023), <https://capitalandmain.com/can-new-york-citys-infrastructure-boom-change-the-face-of-its-workforce>.

<sup>19</sup> Chicago Women in Trades, *Technical Opportunities Page*, <https://cwit.org/trade-programs/technical-opportunities-program/> (last visited Mar. 11, 2024).

<sup>20</sup> Berry, *Women are Forging a Space of Their Own in Chicago’s Manufacturing Industry*, Reader (Jan. 18, 2018) <https://chicagoreader.com/news-politics/women-are-forging-a-space-of-their-own-in-chicagos-manufacturing-industry>, (last visited Mar. 11, 2024).



Pre-apprenticeship programs do not, in all instances, require hands-on training to be effective. The purpose of a pre-apprenticeship program is to prepare individuals who do not currently possess the minimum qualifications to gain access to registered apprenticeship programs. The definition in the proposed rule embraces this purpose. While a traditional “hands-on” component may be appropriate to teach knowledge and skills needed for acceptance into some registered apprenticeship programs, such teaching methods are not needed in all circumstances.

For example, basic math skills are crucial for apprentices entering into most registered apprenticeship programs in the plumbing and mechanical trades. Some applicants who do not possess these skills may be excellent candidates for a pre-apprenticeship program focused on teaching the math skills needed for success in a registered apprenticeship program in these occupations. These apprenticeship readiness courses could be excluded from the definition of pre-apprenticeship programs because they do not contain OJT or any other traditional “hands-on” component which is not necessary for the teaching of basic math skills.

Instead of mandating hands-on learning in all instances, the definition of pre-apprenticeship program should give sponsors flexibility to incorporate the learning methods that they determine are necessary given the specific needs of the program. The Department has recognized the need for this flexibility since 2012.<sup>21</sup> Guidance recently issued by the Department also does not require hands-on training for quality pre-apprenticeship programs, but instead focuses on hands-on experience, including “simulated lab experience, or work-based learning environment.”<sup>22</sup> Definitions of pre-apprenticeship in regulations issued under WIOA also do not mandate hands-on training. (29 C.F.R. § 30.2; 20 C.F.R. § 681.480). The UA and MCAA request that the definition of pre-apprenticeship be similarly clarified to provide necessary flexibility to sponsors of apprenticeship readiness programs.

#### **G. The Definition of Journeyworker Should Not Be Changed.**

Finally, the UA and MCAA do not see the need to redefine the standard for a journeyworker in these regulations. A journeyworker in the plumbing and mechanical trades is an individual who has attained mastery of the skills and competencies required for his or her occupation. This level of skill is adequately reflected in the current regulations. (29 C.F.R. § 29.2). The proposed rule would instead define a journeyworker as one who has attained “proficiency” in skills needed for the industry and not the specific occupation in which the journeyworker is engaged. (Proposed Rule § 29.2). Proficiency reads as a lesser standard of achievement than the mastery reflected in the reality on a job site and the current regulations. This is especially true given that the proposed rule appears to hold instructors to a higher standard, requiring individuals who teach apprentices to have a mastery of the relevant skills, techniques, and competencies of the occupation. (Proposed Rule § 29.12(a)(1)). Moreover, in order to be a safe and effective worker, a journeyworker must obtain mastery of the skills specific to his or her occupation, and not just the industry in

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<sup>21</sup> U.S. Dep’t of Lab., Emp. and Training Admin, *Training and Employment (TEN) No. 13-12, Defining a Quality Pre-Apprenticeship Program and Related Tools and Resources*, (Nov. 30, 2012) [https://wdr.doleta.gov/directives/corr\\_doc.cfm?DOCN=5842](https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=5842) (defining a quality pre-apprenticeship program as one that provides hands-on training “when possible”); 29 C.F.R. § 30.2 (defining “pre-apprenticeship” without reference to hand-on training).

<sup>22</sup> U.S. Dep’t of Lab., Emp. and Training Admin, *Training and Employment (TEN) No. 23-23, Quality Pre-Apprenticeship Programs* (March 5, 2024), <https://www.dol.gov/agencies/eta/advisories/ten-23-23>.



general. For these reasons, the UA and MCAA oppose the modification to the definition of journeyworker in the proposed rule.

### III. Conclusion

UA/MCAA Training Programs are the highest caliber and should continue to be encouraged and supported. It is in the best interest of apprentices, program sponsors, participating employers and the public at large to continue supporting high quality training from registered apprenticeship programs. Ensuring and supporting top-tier training in the construction industry is more important now than ever, given the massive investments being made to the nation's infrastructure and manufacturing capabilities. The Department should continue to support UA/MCAA Training Programs, and other registered apprenticeship programs in the building and construction trades, by modifying the proposed rule as described above.

Respectfully submitted,

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## APPENDIX A

### Additional Studies & Reports on Apprenticeship Training Programs in the Construction Industry

1. Cihan Bilginsoy, Institute for Construction Employment Research, in *Diversity, Equity, and Inclusion Initiatives in the Construction Trades*, 42–43 (March 2022), [https://tradeswomentaskforce.org/system/files/iceres\\_study\\_diversity\\_equity\\_and\\_inclusion\\_initiatives\\_in\\_the\\_construction\\_trades.pdf](https://tradeswomentaskforce.org/system/files/iceres_study_diversity_equity_and_inclusion_initiatives_in_the_construction_trades.pdf) (last accessed June 22, 2023).
2. Larissa Petrucci, *Constructing a Diverse Workforce: Examining Union and Non-Union Construction Apprenticeship Programs and Their Outcomes for Women and Workers of Color*, University of Oregon (2021), [https://cpb-us-e1.wpmucdn.com/blogs.uoregon.edu/dist/a/13513/files/2021/11/Constructing\\_A\\_Diverse\\_Workforce.pdf](https://cpb-us-e1.wpmucdn.com/blogs.uoregon.edu/dist/a/13513/files/2021/11/Constructing_A_Diverse_Workforce.pdf)
3. Frank Manzo & Erik Thorson, *Union Apprenticeships: the Bachelor's Degrees of the Construction Industry*, Illinois Economic Policy Institute (Sept. 23, 2021), <https://illinoisepi.files.wordpress.com/2021/09/ilepi-union-apprentices-equal-college-degrees-final.pdf> (last accessed June 23, 2023).
4. Robert Bruno & Frank Manzo, *The Apprenticeship Alternative: Enrollment, Completion Rates, and Earnings in Registered Apprenticeship Programs in Illinois*, Illinois Economic Policy Institute & University of Illinois at Urbana-Champaign (Jan. 6, 2020), <https://illinoisepi.files.wordpress.com/2020/01/ilepi-pmcr-the-apprenticeship-alternative-final.pdf> (last accessed June 23, 2023).
5. Lawrence Mishel, *Diversity in the New York City Union and Nonunion Construction Sectors*, Economic Policy Institute (Mar. 2, 2019), <https://www.epi.org/publication/diversity-in-the-nyc-construction-union-and-nonunion-sectors/#:~:text=Black%20workers%20are%20far%20more,blue%2Dcollar%20union%20construction%20workers> (last accessed June 23, 2023).
6. Stephen Herzenberg, Diana Polson, & Mark Price, *Construction Apprenticeship and Training in Pennsylvania*, Keystone Research Center, Capital Area Labor-Management Council, Inc., 11 (2018), [Construction Apprenticeship and Training in Pennsylvania - KRC \(keystoneresearch.org\)](https://www.keystoneresearch.org/research/construction-apprenticeship-and-training-in-pennsylvania) (last accessed March 14, 2024).
7. Nikki Luke, et. al., *Diversity in California's Clean Energy Workforce: Access to Jobs for Disadvantaged Workers in Renewable Energy Construction*, UC Berkeley Labor Center, Green Economy Program (Aug. 2017), <https://laborcenter.berkeley.edu/pdf/2017/Diversity-in-Californias-Clean-Energy-Workforce.pdf> (last accessed June 21, 2023).
8. Robert Bruno & Frank Manzo, *The Impact of Apprenticeship Programs in Illinois: An Analysis of Economic and Social Effects*, Illinois Economic Policy Institute (Aug. 24, 2016), [https://illinoisepi.org/site/wp-content/themes/hollow/docs/wages-labor-standards/pcmr-ilepi-impactofapprenticeshipprograms\\_newcover.pdf](https://illinoisepi.org/site/wp-content/themes/hollow/docs/wages-labor-standards/pcmr-ilepi-impactofapprenticeshipprograms_newcover.pdf) (last accessed June 23, 2023).



9. Esther Fuchs, et al., Columbia School of International and Public Affairs, *Expanding Opportunity for Middle Class Jobs in New York City: Minority Youth Employment in the Building and Construction Trades* (2014), <https://faircontracting.org/wp-content/uploads/2019/05/Expanding-Opportunity-For-Middle-Class-Jobs-in-New-York-City-Minority-Youth-Employment-in-the-Building-and-Construction-Trades.pdf> (last accessed June 23, 2023).
10. Matt Helmer & Dave Altstadt, *Workforce Strategies Initiative, Apprenticeship: Completion and Cancellation in the Building Trades*, Aspen Institute (2013), <https://www.aspeninstitute.org/publications/apprenticeship-completion-cancellation-building-trades/> (last accessed June 23, 2023).
11. Barbara Byrd & Marc Weinstein, University of Oregon: Labor Education and Research Center, *Construction Apprenticeship in Oregon: An Analysis of Data on Union and Open Shop Apprenticeship Programs* (April 2009) (originally published in 2005), [Construction Apprenticeship in Oregon | LERC-DEV \(uoregon.edu\)](https://www.lerc-dev.uoregon.edu/publications/construction-apprenticeship-in-oregon/) (last accessed March 14, 2024).
12. Annetta Argyres & Susan Moir, Labor Resource Center, University of Massachusetts Boston, *Building Trades Apprentice Training in Massachusetts: An Analysis of Union and Non-Union Programs, 1997-2007* (2008), [https://scholarworks.umb.edu/cgi/viewcontent.cgi?article=1001&context=lrc\\_pubs](https://scholarworks.umb.edu/cgi/viewcontent.cgi?article=1001&context=lrc_pubs) (last accessed June 23, 2023).
13. Sarah S. Etherton et. al., *West Virginia University Extension Service, Institute for Labor Studies and Research, Building Trades Apprentice Training in West Virginia: A Comparison of Union and Non-Union Building Trades Programs in the 1990s* (2002), <https://faircontracting.org/wp-content/uploads/2022/03/Building-Trades-Apprentice-Training-in-West-Virginia-A-Comparison-of-Union-and-Non-Union-Building-Trades-Programs-in-the-1990s.pdf> (last accessed June 23, 2023).