



VIA ELECTRONIC SUBMISSION

March 18, 2024

Michelle Paczynski  
Administrator, Office of Policy Development and Research  
Employment and Training Administration  
U.S. Department of Labor  
200 Constitution Ave. NW, Room N-5641  
Washington, DC 20210

**Re:** RIN: 1205-AC13, National Apprenticeship System Enhancements [Docket ID: ETA-2023-0004]

Dear Ms. Paczynski:

Associated Builders and Contractors hereby submits the following comments to the U.S. Department of Labor in response to the above-referenced proposed rule published in the Federal Register on Jan. 17, 2024.<sup>1</sup>

### **About Associated Builders and Contractors**

ABC is a national construction industry trade association representing more than 23,000 member companies. ABC and its 68 chapters help members develop people, win work and deliver that work safely, ethically and profitably for the betterment of the communities in which ABC and its members work.

ABC's membership represents all specialties within the U.S. construction industry and is comprised primarily of general contractors and subcontractors that perform work in the industrial and commercial sectors for government and private sector customers.<sup>2</sup>

The vast majority of ABC's contractor members are small businesses. This is consistent with the U.S. Census Bureau and U.S. Small Business Administration's Office of Advocacy's findings that the construction industry has one of the highest concentrations of small businesses (82% of all construction firms have fewer than 10 employees)<sup>3</sup> and industry workforce employment (nearly 81% of the construction industry is employed by small businesses).<sup>4</sup> In fact, construction companies that employ fewer than 100 construction

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<sup>1</sup> See <https://www.federalregister.gov/documents/2024/01/17/2023-27851/national-apprenticeship-system-enhancements>.

<sup>2</sup> For example, [ABC's 33rd National Excellence in Construction Awards program from 2023](#).

<sup>3</sup> U.S. Census Bureau 2021 County Business Patterns:  
<https://data.census.gov/table?q=CBP2021.CB2100CBP&tid=CBP2021.CB2100CBP&hidePreview=true> and  
<https://www.census.gov/programs-surveys/cbp/data/tables.html>.

<sup>4</sup> 2022 Small Business Profile, U.S. Small Business Administration Office of Advocacy (2022), at page 4,  
<https://advocacy.sba.gov/wp-content/uploads/2022/08/Small-Business-Economic-Profile-US.pdf>.

professionals comprise 99% of construction firms in the United States and account for 69% of all construction industry employment.<sup>5</sup>

In addition to small business member general contractors and subcontractors that build private and public works projects, ABC also has large member general contractors and subcontractors that perform construction services for private sector customers and federal, state and local government customers procuring construction contracts subject to respective private and government acquisition policies and regulations.

For example, according to data extracted from [usaspending.gov](https://www.usaspending.gov) and compared to ABC membership, of the \$233.5 billion worth of federal NAICS 23-classified construction contracts within the United States and territories awarded from FY 2009-FY 2023 exceeding \$35 million, ABC prime contractors won more than 50% of the 2,221 federal contracts and 52% of all such contracts by value.<sup>6</sup> These federal contracts were successfully performed using a highly skilled craft workforce who were enrolled or graduated from government-registered apprenticeship programs, as well as other high-quality workforce development programs not registered with the government.

Of interest to this notice of public rulemaking, thousands of ABC member contractors participate in government-registered apprenticeship programs—known as GRAPs—administered by their company, ABC’s 68 chapters across the United States, other construction trade associations and other community and education system workforce development providers. Likewise, ABC member contractors signatory to union agreements participate in the National Joint Apprenticeship Training Committee—known as JATC—GRAPs affiliated with unions.

In addition, nationwide, ABC’s network of 68 chapters currently provide more than 450 GRAPs in over 20 construction industry trades such as electrical, plumbing, carpentry, HVAC, welding, etc.<sup>7</sup> None of these ABC chapter GRAPs are affiliated with unions.

ABC’s diverse membership is bound by a shared commitment to the merit shop philosophy in the construction industry. The philosophy is based on the principles of nondiscrimination due to labor affiliation and the awarding of construction contracts through open, competitive bidding based on safety, quality and value.

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<sup>5</sup> U.S. Census County Business Patterns by Legal Form of Organization and Employment Size Class for the U.S., States and Selected Geographies: 2021, available at <https://data.census.gov/table/CBP2021.CB2100CBP?q=CBP2021.CB2100CBP&hidePreview=true>.

<sup>6</sup> TheTruthAboutPLAs.com <https://thetruthaboutplas.com/wp-content/uploads/2023/12/ABC-Members-Won-A-Significant-Number-of-Large-Scale-Federal-Contracts-of-35M-FY09FY23-030524.png>.

<sup>7</sup> To locate one of more than 450 GRAPs provided by ABC chapters, visit [www.abc.org/grapmap](http://www.abc.org/grapmap).

## **Background on NPRM**

On Jan. 17, 2024, the DOL published a substantial proposed rule—180,170 words<sup>8</sup> on 626 printed pages—that would significantly overhaul regulations for GRAP providers, GRAP employer participants and state government entities who approve and regulate GRAPs.

According to the DOL, the NPRM will update existing regulations “by enhancing worker protections and equity, improving the quality of registered apprenticeship programs, revising the State governance provisions, and more clearly establishing critical pipelines to registered apprenticeship programs, such as registered career and technical education (CTE) apprenticeships. The proposed rule would improve the capacity of the National Apprenticeship System to respond to evolving employer needs, provide workers equitable pathways to good jobs, and increase the system's long-term resilience.”

The DOL’s NPRM acknowledges that, “despite its growth and resiliency, registered apprenticeship is underutilized as a workforce development solution in the United States.”<sup>9</sup>

ABC agrees with the DOL’s acknowledgement that the government-registered apprenticeship system is underutilized in the United States and more can be done to modernize it in order to build capacity and ensure long-term resilience of mutual benefit to employers and apprentices. However, as discussed further in this comment letter, the DOL NPRM proposes dozens of new burdensome and costly recordkeeping and reporting requirements that the DOL estimates will cost GRAP providers and employer participants more than \$1.3 billion over the next 10 years, according to its own flawed and inadequate regulatory cost analysis. The NPRM eliminates popular flexible competency-based approaches to workforce development that attract apprentices and employers into the GRAP system. There are dozens of additional provisions that may be problematic for GRAP stakeholders and CTE providers, as discussed further in these comments.

In a Dec. 18, 2023, press release, ABC said, “As currently written, the Biden DOL’s proposal threatens to undermine significant investments recently made by taxpayers in infrastructure, clean energy and manufacturing projects procured by government and private owners.”<sup>10</sup>

The DOL’s NPRM was also panned by both the chairwoman of the U.S. House Education and the Workforce Committee, Rep. Virginia Foxx, R-N.C., and the ranking member of the Senate HELP Committee, Sen. Bill Cassidy, R-La., both of whom have committee jurisdiction over the DOL and apprenticeship issues.

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<sup>8</sup> Researchers have found that the average adult reader can read 238 words per minute while reading silently, which means it would take stakeholders reading this proposed rule from start to finish more than 12 hours of uninterrupted time. <https://scholarwithin.com/average-reading-speed>.

<sup>9</sup> <https://www.federalregister.gov/d/2023-27851/p-116>.

<sup>10</sup> ABC: Biden’s Proposal Overhauling Government-Registered Apprenticeship Programs Will Exacerbate Construction Industry Labor Shortage, Dec. 18, 2023. <https://www.abc.org/News-Media/News-Releases/abc-bidens-proposal-overhauling-government-registered-apprenticeship-programs-will-exacerbate-construction-industry-labor-shortage>.

Rep. Foxx's statement derided the new rule, stating, "If the goal was to make an already dysfunctional registered apprenticeship system less workable and relevant to the needs of workers and employers, this proposed rule appears likely to succeed."<sup>11</sup>

Sen. Cassidy's statement criticized the rule's circumvention of Congress, seeking to implement a new regulation "395 times longer than the legislation it is supposedly interpreting."

According to Cassidy's statement:<sup>12</sup>

"The regulations would inject political ideology into the National Apprenticeship System, including diversity, equity, and inclusion (DEI) policies. The rule would allow DOL to dissolve the apprenticeship programs of employers accused by labor unions of misconduct without a requirement that the charges are verified by the National Labor Relations Board (NLRB). This would empower unions to intimidate and coerce employers with baseless accusations. It would also give unions veto authority over new apprenticeship programs, limiting job training opportunities for American workers. This comes at a time when workforce shortages continue and the labor force participation rate remains well below pre-COVID levels.

"Additionally, the rule gives the U.S. Department of Labor's Office of Apprenticeship and State Apprenticeship Agencies enforcement authority over labor disputes, a role already performed by the NLRB. Ultimately, the proposed regulation applies more bureaucracy to a system in need of flexibility when responding to pressing workforce needs."

The Biden proposal was also blasted in a Wall Street Journal editorial:<sup>13</sup>

"DOL's manifest goal is to limit non-union programs that do not result in more union jobs. The rule would let the department dissolve programs accused by unions of misconduct or found to be non-compliant with minor government regulations and DEI benchmarks.

"One result of DOL's regulations will be fewer job-training opportunities for minorities. The rule will also undercut the Administration's industrial policy and climate agenda. The Inflation Reduction Act's myriad green energy tax credits require employers to utilize apprentices from government-approved programs. Good luck finding them.

"President Biden's message to non-union apprentices: You're fired."

Likewise, ABC is concerned that, together, these added costs and burdens will chill current and future participation in the GRAP system.

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<sup>11</sup> House Committee on Education and Workforce Press Release, Foxx on DOL's Latest Apprenticeship Power Grab, Dec. 15, 2023, <https://edworkforce.house.gov/news/documentsingle.aspx?DocumentID=409907>.

<sup>12</sup> U.S. Senate Committee on Health, Education, Labor and Pensions press release, Ranking Member Cassidy on Biden's Proposed Apprenticeship Rule, Ignoring Congressional Authority, Dec. 15, 2023, <https://www.help.senate.gov/record/newsroom/press/ranking-member-cassidy-on-bidens-proposed-apprenticeship-rule-ignoring-congressional-authority>.

<sup>13</sup> Wall Street Journal, Editorial, Biden to Apprentices, You're Fired, Dec. 18, 2023, <https://www.wsj.com/articles/department-of-labor-apprenticeship-rule-biden-administration-unions-ad7c7773>.

On the other hand, there are a few provisions of the NPRM that, if defined and administered effectively, may benefit the growth of the GRAP system by improving multistate GRAP reciprocity for employers performing work in multiple states and reining in bad state government actors who refuse to approve nonunion GRAPs in a timely manner and use restrictive and unfair apprenticeship-to-journeyworker ratio policies to favor certain types of GRAPs and employer GRAP participants when procuring and awarding government grants and taxpayer-funded construction contracts, respectively. ABC's comments suggest ways for the DOL to improve the NPRM to address these issues.

As a whole, ABC is disappointed that the DOL has missed an opportunity to make the GRAP system more attractive to employers, GRAP providers, apprentices and state government regulators by reducing regulatory burdens and anti-competitive GRAP policy gatekeeping that have made the current system unworkable for many employer and multiemployer GRAP providers. ABC is concerned that identified and unknown provisions of the NPRM will limit the number of apprentices, employers, association and community GRAP providers, which is likely to exacerbate the construction industry's short- and long-term skilled labor shortage and undermine significant taxpayer and private investments in workforce development and U.S. infrastructure, clean energy and manufacturing construction projects.

On Jan. 17, 2024, ABC urged the DOL to extend the current 60-day comment period deadline of March 18, 2024, in order to provide adequate time for ABC to analyze the substantial proposed rule, solicit member feedback and provide meaningful input on the proposal from GRAPs run by ABC members, ABC chapters and community and education providers and CTE partners. ABC requested a modest 30-day extension from the current deadline to ensure that the DOL can receive thorough input from all stakeholders affected by this proposed rule if its goal is to publish a final rule that can help industry GRAPs, including those in the construction industry, meet the needs of the marketplace.<sup>14</sup>

On March 5, the DOL issued a blanket denial of all extension requests without addressing any of the specific concerns raised by ABC's letter.<sup>15</sup>

Unfortunately, due to the unreasonable time constraints imposed by the DOL, ABC is unable to comment on every aspect of the lengthy and dense proposed rule. Despite this, ABC expects many aspects of the proposal to result in unintended consequences that will negatively disrupt the GRAP system and create problems for the CTE ecosystem. Nevertheless, ABC trusts that our comments, as well as those provided by employers and ABC chapters that participate in the current GRAP and CTE systems, might improve the DOL rule and the DOL's understanding of the many challenges GRAP employers, GRAP participants and GRAP providers face under current regulations.

In addition, the DOL's outreach to construction industry GRAP stakeholders not affiliated with unions prior to publishing the NPRM was inadequate. Soliciting meaningful feedback from GRAP participants that already account for almost a third of all GRAP apprentices in FY 2023

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<sup>14</sup> See <https://www.regulations.gov/comment/ETA-2023-0004-0007>.

<sup>15</sup> <https://www.regulations.gov/document/ETA-2023-0004-0082>.

and present a tremendous opportunity for GRAP expansion via employers and trade associations with additional GRAP capacity and workforce needs would have provided value in achieving the NPRM's alleged goals.

Likewise, ABC was disappointed that it was not invited or nominated to participate in the Advisory Committee on Apprenticeships, which provided recommendations incorporated into the NPRM. The exclusion of ABC input has resulted in the ACA and DOL missing an opportunity to understand and accommodate the needs of employer and association participants in the GRAP system that are not affiliated with labor unions. In addition, ABC's 2023 nomination of ABC Director of Workforce Development Tim Mongeau to the ACA was recently denied without explanation.<sup>16</sup>

An ABC-led coalition of construction and business associations submitted a May 9, 2023, letter to the ACA<sup>17</sup> expressing concerns that their proposed recommendations for the DOL's forthcoming NPRM,<sup>18</sup> while perhaps well-intentioned, may ultimately result in fewer apprentices being upskilled by making GRAPs less attractive to employers and employee participants. Specifically, the letter urged the committee to reject recommendations that would discourage GRAP providers and employer participants from utilizing GRAPs and instead ensure flexibility and ease of access.

In addition, the letter objected to the ACA's lack of transparency and the questionable process that denied public stakeholders the opportunity to comment on the ACA's controversial proposed recommendations before they were approved by the ACA and submitted to the DOL without meaningful public feedback and debate. ABC recommends the DOL include ABC in future ACA activity and make necessary changes that will result in broader industry inclusion and process improvements for future rulemakings related to the GRAP system.

In section 29.6, the NPRM establishes proposed transition periods for the rule's changes. For the NPRM's extensive changes to apprenticeship suitability determinations, the NPRM states these rules would take effect 90 days following the effective date of the final rule for occupations not yet deemed apprenticeable.<sup>19</sup> ABC urges the DOL to extend this time period to at least 120 days to provide sufficient time for the regulated community to fully understand the updated process and avoid unnecessary delays to applications already in process.

The NPRM also proposes to implement a wide range of changes to apprenticeship standards from sections 29.8 to 29.23 immediately upon the effective date of the final rule for any new programs seeking registration. Existing programs would be required to comply with the updated standards within two years of the effective date.<sup>20</sup> ABC is concerned that these transition periods are also too short. New applicants should receive a grace period of at least 120 days to avoid delaying applications that are already near completion and ensure the

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<sup>16</sup> <https://www.dol.gov/newsroom/releases/eta/eta20240306>.

<sup>17</sup> <https://www.apprenticeship.gov/sites/default/files/Letter%20from%20ABC%20to%20the%20ACA.pdf>.

<sup>18</sup> <https://www.abc.org/News-Media/Newsline/advisory-committee-on-apprenticeship-submits-abc-opposed-recommendations-to-dol>.

<sup>19</sup> <https://www.federalregister.gov/d/2023-27851/p-310>.

<sup>20</sup> <https://www.federalregister.gov/d/2023-27851/p-315>.

timely approval of vital new programs. Additionally, the transition period for existing programs should be extended to at least three years, given the comprehensive nature of the proposed changes.

ABC members and ABC chapters have expressed broad concerns with the proposed rule's sweeping changes to apprenticeship regulations. According to ABC's February 2024 survey of ABC member contractors and chapter GRAP providers,<sup>21</sup> 94% of survey respondents said the NPRM will increase the cost of participating in or starting a GRAP and 96% said the NPRM made them less likely to participate in a GRAP. Likewise, 90% said the NPRM would make them less likely to start their own company-run GRAP. Unfortunately, 95% of respondents said the NPRM will make apprentice participation and completion of GRAPs less likely.

When asked about the cost of the NPRM, 96% of respondents said the NPRM's new recordkeeping and reporting requirements will make them less likely to participate in a GRAP, start their own GRAP, or continue sponsoring a GRAP.

When asked if the NPRM would have a positive or negative affect on CTE providers they partner with, in general, 70% of ABC survey respondents said it would be negative, 29% did not know and 1% said it would be positive.

Following the publication of ABC's survey—and 49 days after the DOL published the NPRM—President Joe Biden issued Executive Order 14119, Executive Order on Scaling and Expanding the Use of Registered Apprenticeships in Industries and the Federal Government and Promoting Labor-Management Forums.<sup>22</sup> EO 14119 directs federal agencies to identify where they can implement new requirements and incentives for federal agencies and recipients of federal financial assistance to require and encourage contractors to employ workers who are active participants or graduates of a GRAP.

Consequently, the issuance of EO 14119 just 12 days before the current NPRM's March 18 deadline entirely invalidates the DOL's existing and inadequate regulatory analysis of the proposed rule. The DOL must pause the current NPRM and reevaluate how it will interact with the new EO and forthcoming rulemaking; recalculate the impact of this NPRM in light of the new EO; make substantial changes to the NPRM and economic analysis of the proposal; and replace the current proposal with a new NPRM. If such steps are not taken, the current NPRM will likely be deemed illegal for these reasons and for other reasons further outlined in ABC's comments.

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<sup>21</sup> [ABC Survey: Biden's Proposed Apprenticeship Rule Will Strongly Discourage Construction Apprenticeship Program Participation](#), Feb. 27, 2024.

<sup>22</sup> See Executive Order 14119, [Scaling and Expanding the Use of Registered Apprenticeships in Industries and the Federal Government and Promoting Labor-Management Forums](#), signed March 6, 2024, and published in the Federal Register March 11, 2024: <https://www.federalregister.gov/documents/2024/03/11/2024-05220/scaling-and-expanding-the-use-of-registered-apprenticeships-in-industries-and-the-federal-government>. See link to White House Fact Sheet on the EO, March 6, 2024: <https://www.whitehouse.gov/briefing-room/statements-releases/2024/03/06/fact-sheet-president-biden-signs-executive-order-scaling-and-expanding-the-use-of-registered-apprenticeships-in-industries-and-the-federal-government-and-promoting-labor-management-forums/>.

## **Summary of ABC's Response to the Proposed Rule**

As described in greater detail in our comments, ABC is concerned about many aspects of the proposed rule's potential changes to the existing workforce development ecosystem. Areas of concern include the preexisting inability of GRAPS to meet the needs of the construction industry, dozens of burdensome new administrative and recordkeeping requirements that will increase costs for existing sponsors and employers while discouraging new entrants to the market and the rule's inaccurate analysis of financial impacts on the small businesses that will be most affected by these changes. In addition, ABC is concerned that the NPRM's provisions related to government-registered CTEs are entirely unnecessary and may harm the CTE system by offering solutions in search of a problem.

In Section I (page 9), the comments provide a detailed description of the role GRAPs currently play in the industry's broader workforce development system and illuminate numerous challenges that the NPRM fails to account for. Subsection A describes how the GRAP system alone is already incapable of meeting the industry's workforce needs, demonstrating an all-of-the-above approach to workforce development that embraces GRAPs as well as other strategies is the best way to meet industry needs. Subsection B explains how union interests have dominated an exclusionary, GRAP-only approach and suppressed the growth of GRAPs with the help of government allies, in contrast to the broader industry's utilization of a wide range of tools to upskill construction workers. Subsection C details how provisions of existing GRAP regulations and policies, including restrictive GRAP approvals and apprenticeship ratios, have been used to limit competition from both qualified contractors and GRAP sponsors, and ultimately contribute to the construction industry's skilled labor shortage.

Section II (page 24) provides ABC's comprehensive response to many specific provisions of the NPRM. The subsections of this section are Subsection A (legal concerns with the NPRM), Subsection B (how the proposed rule's new emphasis on completion rates is misguided), Subsection C (the unnecessarily bureaucratic and restrictive new "suitability" test), Subsection D (restricting SAAs from designating occupations as suitable), Subsection E (the provisions to prevent "splintering") Subsection F (the proposal's restriction of GRAP flexibility by abolishing competency-based and hybrid GRAPs), Subsection G (changes to rules on wage progression), Subsection H (increased requirements for sponsor oversight of labor law violations/diversity outreach), Subsection I (restrictions on noncompete and other agreements), Subsection J (new requirements for financial capacity of GRAP sponsors), Subsection K (new Equal Employment Opportunity plan requirements), Subsection L (burdensome new requirements for verifying journeyworker instructor qualifications), Subsection M (new National Occupational Standards/National Program Standards), Subsection N (revisions to the complaint process), Subsection O (numerous and expensive new recordkeeping requirements), Subsection P (changes to deregistration) and Subsection Q (new state reciprocity requirements). As discussed in detail below, ABC urges the DOL to withdraw provisions that will limit employer flexibility and further impair the ability of GRAPS to meet industry needs.

Section III (page 37) elaborates on the inadequate and incomplete analysis of regulatory burdens that the DOL has estimated under the Paperwork Reduction Act, the Regulatory Flexibility Act and other federal statutes. ABC urges the DOL to reconsider its approach to this analysis and ensure that an accurate accounting of proposed rule's financial impacts is completed before moving forward to a final rule.

Section IV (page 42) highlights the NPRM's failure to correctly estimate the costs of new regulatory burdens and meaningfully explore alternatives to the new burdens imposed by this NPRM.

Section V (page 44) highlights concerns with the NPRM's needless insertion of government regulation into the CTE system, which is likely to create a number of problems for CTE providers and participants without any meaningful and measurable benefits to offset added regulatory burdens, recordkeeping, reporting and other requirements that will increase costs for CTE stakeholders and reduce existing capacity, participation and CTE growth.

Finally, throughout the comments, ABC's February 2024 survey of contractor members and ABC chapters is cited.<sup>23</sup> As outlined in further detail below, survey responses were overwhelmingly negative and make it clear that the proposed rule will ultimately weaken the GRAP system.

## **I. The Construction Industry and ABC's GRAP and Workforce Development Footprint**

It is critical that DOL regulators and GRAP stakeholders understand how the current GRAP system is performing and perceived by apprentices, employers and association GRAP participants in order to create new policy and regulations to improve the system and meet the need of GRAP stakeholders. Judging by the DOL NPRM's new regulatory burdens and failure to make commonsense reforms that would expand GRAP participation, it is clear that DOL regulators do not fully understand the construction industry GRAP ecosystem, as further described in these comments.

According to U.S. Bureau of Labor Statistics data, the construction industry had 8.137 million craft and noncraft employees as of January 2024<sup>24</sup> and experienced an unemployment rate between 3.5% and 4.8% during peak construction months in 2023.<sup>25</sup>

According to DOL apprenticeship data composed of states reporting through RAPIDS,<sup>26</sup> the 211,808 apprentices enrolled in construction industry GRAPs compose 32.7% of the 646,406 apprentices enrolled in GRAPs across all industries in FY 2023. There were a total of 8,216 construction industry GRAPs in FY 2023.<sup>27</sup>

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<sup>23</sup> [ABC Survey: Biden's Proposed Apprenticeship Rule Will Strongly Discourage Construction Apprenticeship Program Participation](#), Feb. 27, 2024.

<sup>24</sup> <https://www.bls.gov/iag/tgs/iag23.htm>.

<sup>25</sup> [https://data.bls.gov/timeseries/LNU04032231?amp%253bdata\\_tool=XGtable&output\\_view=data&include\\_graphs=true](https://data.bls.gov/timeseries/LNU04032231?amp%253bdata_tool=XGtable&output_view=data&include_graphs=true)

<sup>26</sup> <https://www.apprenticeship.gov/data-and-statistics>.

<sup>27</sup> According to DOL data, of these 8,216 construction industry GRAPs, 6,784 were nonunion GRAPs, 1,148 were union GRAPs and 284 GRAPs had an unknown affiliation. See data tables:

ABC and many ABC member contractors champion GRAPs as an important part of an all-of-the-above approach to workforce development within the construction industry.<sup>28</sup> As discussed in the About ABC section of this letter, ABC member contractors and ABC chapters are significant participants in the GRAP system and stand to be harmed by aspects of DOL's NPRM that are likely to discourage participation in existing employer and multiemployer GRAPs; discourage the creation of new GRAPs by employers and multiemployer GRAP providers; make apprenticeships less attractive to existing and potential apprentices; and make it difficult to expand capacity of the GRAP system, overall.

Nationwide, ABC's network of 68 chapters currently provide more than 450 GRAPs in over 20 construction industry trades such as electrical, plumbing, carpentry, HVAC, welding, etc.<sup>29</sup> Typical ABC chapter GRAPs last four or five years—depending on the trade—and use curriculum created by the NCCER.<sup>30</sup> ABC chapter GRAP participants graduate to journeyman status after completing all related technical instruction and on-the-job training hours identified in Appendix A of the approved apprenticeship standards.<sup>31</sup>

Typically, ABC member contractors who participate in ABC chapter apprenticeship programs sponsor individual employee apprentices through their progression in an ABC chapter apprenticeship program. In addition, a small handful of ABC chapters offer GRAPs with a pool of apprentices that are shared across multiple employer GRAP participants.

In addition, many ABC members sponsor their own GRAPs approved by appropriate federal or state agencies in charge of regulating apprenticeship programs. Contractors run these independent of ABC chapters and/or rely on ABC chapters to help address the GRAP registration process and paperwork burdens. Under these arrangements, required classroom hours may or may not be performed in ABC chapter facilities.

Other ABC member contractors sponsor employee apprentices in other programs provided by third parties (schools, other trade associations, community workforce development providers, etc.) not affiliated with ABC.

Finally, ABC's union-signatory ABC members typically participate in one or more joint-apprenticeship training committee programs administered by their signatory union(s) where multiple employers utilize apprentices from a shared pool of apprentices specific to a construction trade.

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<https://www.abc.org/Portals/1/NewsMedia/DOL%20Apprenticeship%20Data%20ABC%20construction%20request%20FY19-FY23%20ABC%20Enhanced%20021524.xlsx?ver=qNhLRqIhUIRdiNddn5IE9A%3d%3d>.

<sup>28</sup> [ABC: Government-Registered Apprenticeship Programs Not Keeping Up With Construction Industry Needs](#), Feb. 22, 2024.

<sup>29</sup> To locate one of more than 450 GRAPs provided by ABC chapters, visit [www.abc.org/grapmap](http://www.abc.org/grapmap).

<sup>30</sup> The National Center for Construction Education and Research, at [www.nccer.org](http://www.nccer.org), was spun off from ABC in 1991, to give the entire construction industry access to workforce development curricula.

<sup>31</sup> Of note, there are ways to accelerate the education and time-based requirements in certain circumstances; for example, the granting of advanced standing or credit for previously acquired experience, training or skills for all applicants equally, with commensurate wages for any progression step so granted.

In all of these various GRAP formats, employers pay for the cost of the GRAP and/or pay tuition to a provider to administer the GRAP. In addition, all employers pay apprentices for on-the-job training hours, which are supervised by journeyworkers. Employers typically cover the cost of classroom instruction (instructors, materials, classroom location and administrative costs) and most, but not all, pay apprentices for time spent in classroom instruction.

In a February 2024 survey<sup>32</sup> of 68 ABC chapters (the vast majority of which provide multiemployer GRAPs) and ABC contractor members on the DOL's NPRM, participants reported many compulsory and voluntary reasons why they participate in the GRAP system.

Employers reported that they participate in GRAPs because of local, state and federal government procurement and tax policies requiring or encouraging GRAPs in order to win and perform work on public and private projects funded by taxpayers. Likewise, employers reported that some state licensing laws require GRAP participation or completion in certain trades. Contractors also said state and federal prevailing wage laws allow apprentices to be paid a reduced wage corresponding with their level of experience, compared to required journeyworker rates, because apprentices are generally less productive, which can help companies offset the cost of rigorous workforce development and invest in its future workforce. Likewise, some employers appreciated that prevailing wage fringe benefit contributions can be used to cover the cost of certain apprenticeship programs and workforce development.

In addition, some contractors reported that they believe the GRAP model is effective and a great tool to supplement specialized in-house training that ensures companies can be competitive in the marketplace and deliver world-class projects with a well-trained, highly skilled and safe workforce. They said the GRAP system is a tested pathway to develop skilled, productive employees. It also provides career pathways for new craft employees and enhances craft labor recruitment efforts with the promise of structured classroom and on-the-job training that allows participants to earn while they learn without incurring college debt.

Many contractors reported that GRAPs are very difficult to set up and the initial and annual compliance efforts, recordkeeping, paperwork and other bureaucratic burdens needlessly add costs and require time, personnel and resources that could otherwise be invested more effectively elsewhere within a company and its workforce development efforts.

Participants said the duration of GRAP programs can be problematic for apprentice recruitment and retention, and the skills required in a GRAP may not match company needs and apprentice development needs. Many reported that GRAPs require mastery of skills that companies may not perform on typical projects, which makes apprentices less productive and useful during on-the-job training because they are not focused on core competencies needed by the company because they are sometimes focused on obscure aspects of their overall workforce development program curricula.<sup>33</sup>

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<sup>32</sup> [ABC Survey: Biden's Proposed Apprenticeship Rule Will Strongly Discourage Construction Apprenticeship Program Participation](#), Feb. 27, 2024.

<sup>33</sup> One survey participant mentioned their company is an industrial painting contractor and their GRAP for painters has unnecessary modules/curricula on painting and gold-leafletting that is typically used for historical renovations and high-end

Some participants said that they often supplement GRAP training with specialty training that focuses on the company's core work, safety practices and value proposition. Others said that their in-house and/or third-party workforce development program not registered with the government provides an excellent and/or superior alternative to GRAPs and are more efficient and cost-effective, as they are free from burdensome government bureaucracy, compliance costs and inefficiencies.

Other contractors report that participating in GRAPs has subjected them to unwanted harassment from unions and government regulators. Likewise, many survey participants complained that the GRAP system has been perverted to cut competition and steer lucrative taxpayer-funded construction contracts and government grants to union-signatory contractors and union-affiliated GRAPs. Likewise, contractors highlighted concerns with unfair and burdensome apprentice-to-journeyman ratio policies pushed by unions and lawmakers, anti-competitive government-mandated project labor agreement requirements forcing contractors to participate in a specific union GRAP<sup>34</sup> and meritless GRAP approval delays/denials by corrupted government regulators.

Finally, small business contractor participants/providers and multiemployer GRAP providers reported that the GRAP system is particularly burdensome to small businesses. This sentiment was shared by larger contractors who rely on quality performance by small businesses in order to deliver construction projects safely, on time and on budget and meet small business contracting goals. Larger contractors expressed frustration with the patchwork of apprenticeship regulations and red tape when performing work across multiple states. They suggested ways to make it easier for GRAPs to be approved and accepted across states to minimize bureaucracy and costs.

ABC's survey of members and chapters supports long-standing efforts by ABC to strengthen and reform the GRAP system to make it more attractive to more GRAP stakeholders and expand capacity to meet industry's skilled labor needs. Likewise, ABC promotes all-of-the-above solutions to workforce development to meet the needs of the construction industry that are inclusive of GRAPs and other quality workforce development pathways into the construction industry.

#### **A. Construction Industry Workforce Development Needs Are Not Being Met By Current GRAP System**

Fundamentally, the current GRAP system cannot survive, thrive and deliver meaningful benefits to employers, apprentices and the public at large without buy-in from the employer community.

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hotels and office work. This is content that is irrelevant to the industrial contractor's typical scope of work and needs. Other commenters described similar scenarios for other trades.

<sup>34</sup> Learn more about how government-mandated project labor agreements exacerbate the construction industry's skilled workforce by forcing employers to hire apprentices exclusively from union JATC apprenticeship programs at the expense of existing GRAPs at [www.BuildAmericaLocal.com](http://www.BuildAmericaLocal.com).

According to NPRM comments filed by the state of Iowa:<sup>35</sup>

“A registered apprenticeship program is by design, self-governing, to the extent that employers can design training programs to meet individual needs while ensuring that the training programs have sufficient rigor to result in nationally recognized credentials. The proposed rules eliminate much of the flexibility provided to employers while adding more training standards and hours that employers may not have a need for or see value in. Reducing the number of registered apprenticeship programs nationwide would unfairly limit accessibility and most adversely impact minority and underrepresented communities by eliminating earn-and-learn models of training that many adults in these communities need to improve their earning capacity and skillset.”

Likewise, ABC is concerned that onerous provisions in the DOL’s NPRM will lead to a further decline in GRAP participation by employers, GRAP providers and apprentices and contribute to the future underperformance of the GRAP system. For decades ABC and its members have broadly expressed well-substantiated concerns that the current GRAP system is failing to meet the construction industry’s workforce development needs.<sup>36</sup> DOL data<sup>37</sup> demonstrates the GRAP system simply cannot accommodate industry demand for participants in GRAPs in general and specifically in many regional marketplaces and trades because of new infrastructure spending and federal, state and local government policies and regulations promoting and requiring GRAPs.

In the next five to 10 years, the construction industry is bracing for hundreds of billions of dollars of additional infrastructure spending and tax incentives above baseline levels of annual spending as a result of the \$270 billion in tax incentives in the Inflation Reduction Act for the construction of clean energy construction projects; \$550 billion in additional infrastructure investments from the Infrastructure Investment and Jobs Act; \$50 billion from the CHIPS and Science Act to rebuild domestic microchip manufacturing; \$330 billion in federal funding from the American Rescue Plan Act of 2021 permitted to address state and local infrastructure needs; and additional government and private investments in infrastructure, public buildings, housing, manufacturing, clean energy, IT, health care, defense and other construction activity across America that will result in trillions of U.S. dollars in new domestic construction put in place.<sup>38</sup>

Of note, the IRA contains policy requiring private developers seeking the full tax credits for clean energy construction projects to mandate that 15% of all construction labor hours on a project are performed by participants in GRAPs.<sup>39</sup> As articulated in ABC’s substantial comments to the U.S. Treasury Department’s Internal Revenue Service in response to its

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<sup>35</sup> See comment from Iowa Workforce Development, submitted Feb. 27, 2024, <https://www.regulations.gov/comment/ETA-2023-0004-0073>.

<sup>36</sup> ABC: [Government-Registered Apprenticeship Programs Not Keeping Up With Construction Industry Needs](#), Feb. 22, 2024.

<sup>37</sup> See data tables provided to ABC by U.S. DOL officials on 2/14/24, available at <https://www.abc.org/Portals/1/NewsMedia/DOL%20Apprenticeship%20Data%20ABC%20construction%20request%20FY19-FY23%20ABC%20Enhanced%20021524.xlsx?ver=qNhLRglhUIRdiNddn5IE9A%3d%3d>.

<sup>38</sup> See historical construction put in place by industry segment, [https://www.census.gov/construction/c30/historical\\_data.html](https://www.census.gov/construction/c30/historical_data.html).

<sup>39</sup> <https://www.federalregister.gov/documents/2023/08/30/2023-18514/increased-credit-or-deduction-amounts-for-satisfying-certain-prevailing-wage-and-registered>.

NPRM on its apprenticeship requirement,<sup>40</sup> in a 2023 survey of ABC members,<sup>41</sup> ABC contractors expressed serious doubts that sufficient GRAPs and apprentices are available to meet IRA requirements. More than 85% of survey respondents stated that the necessary GRAPs have not been established in their area and 90% agreed that not enough apprentices are currently enrolled in GRAPs to provide a workforce capable of meeting the IRA's GRAP labor hour requirements.<sup>42</sup>

In addition, on Feb. 28, 2023, the U.S. Department of Transportation's Federal Highway Administration released its final rule, National Electric Vehicle Infrastructure Standards and Requirements,<sup>43</sup> establishing the National Electric Vehicle Infrastructure Formula Program.<sup>44</sup> The final rule requires<sup>45</sup> that all electricians working on electric vehicle supply equipment either be certified by the International Brotherhood of Electrical Workers' Electric Vehicle Industry Training Program or be a graduate or recipient of a continuing education certificate from a GRAP with a focus on EVSE installation approved by the DOL in consultation with the DOT.<sup>46</sup> Of note, ABC is aware of just one such EVITP alternative program/certificate approved by the DOL or DOT, to date. Remarkably, this means the controversial EVITP program is virtually the only way to satisfy this new requirement more than a year after this NEVI program regulation was finalized.

Additionally, the proposed rule requires all NEVI-funded projects that require more than one electrician to use at least one GRAP-enrolled apprentice. Other on-site, nonelectrical workers directly involved in the installation, operation and maintenance of chargers must have graduated from a GRAP or have appropriate licenses, certifications and training as required by the state. ABC's comments on the DOT's RFI and NPRM expressed concerns that apprenticeship mandate policies will increase costs and delay the construction of EV charging stations due to limited GRAP participation by EV contractors and weak GRAP capacity in many markets.<sup>47</sup> Subsequent and recent media reports have confirmed few NEVI-funded projects have broken ground and just one has been built despite \$7.5 billion in taxpayer investments in DOT NEVI funding.<sup>48</sup>

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<sup>40</sup> <https://www.abc.org/News-Media/News-Releases/abc-irs-must-provide-clarity-withdraw-anti-competitive-labor-policies-from-inflation-reduction-acts-clean-energy-construction-tax-credit-rules>.

<sup>41</sup> [Survey: 98% of ABC Contractors Say Biden's Inflation Reduction Act Labor Mandates Limit Competition on Clean Energy Construction](#), Oct. 24, 2023.

<sup>42</sup> Id.

<sup>43</sup> <https://www.federalregister.gov/documents/2023/02/28/2023-03500/national-electric-vehicle-infrastructure-standards-and-requirements>.

<sup>44</sup> The NEVI Formula Program will implement provisions of the Infrastructure Investment and Jobs Act, signed into law in 2021, that include \$7.5 billion for electric vehicle charging stations (including \$5 billion over five years to install EV chargers mostly along interstate highways). The intent of the program is to support the installation of 500,000 electric vehicle chargers across the country by 2030 as part of a domestic push to shift away from gas-powered vehicles.

<sup>45</sup> <https://www.federalregister.gov/documents/2023/02/28/2023-03500/national-electric-vehicle-infrastructure-standards-and-requirements#p-382>.

<sup>46</sup> <https://www.federalregister.gov/documents/2023/02/28/2023-03500/national-electric-vehicle-infrastructure-standards-and-requirements#p-379>.

<sup>47</sup> <https://www.abc.org/News-Media/Newsline/dot-releases-final-rule-imposing-union-labor-requirements-on-electric-vehicle-charging-station-installation>.

<sup>48</sup> Millard, Taylor, Biden Admin Has Spent Billions on EV Chargers, but Built Just One, DC Journal, Feb. 1, 2024, <https://dcjournal.com/biden-admin-has-spent-billions-on-ev-chargers-but-built-just-one/>.

Likewise, ABC publicly expressed concerns<sup>49</sup> with President Biden's March 6, 2024, Executive Order 14119.<sup>50</sup> ABC is concerned that, once implemented following another rulemaking, any new GRAP mandates or incentives on federal and federally assisted contracts and grants will reduce competition from qualified contractors unable or unwilling to participate in the GRAP system. This executive order further worsens concerns regarding the GRAP system's lack of capacity and how the DOL's NPRM will increase the costs of GRAP participation at the same time as the administration is moving to require it for contractors fulfilling federal and federally assisted contracts. Further, this undermines arguments that the impact and regulatory costs of changes to the GRAP system by this NPRM are limited by the fact that GRAPs are voluntary, as increasing numbers of contractors may be required to participate in GRAPs to compete for federal and federally assisted contracts once the EO is fully implemented.

ABC members have expressed similar concerns about various controversial state and local government policies requiring contractors to participate in GRAPs in order to bid on taxpayer-funded public works projects.<sup>51</sup> Similar state and local government policies have also required contractors to complete a certain percentage of a qualifying project's construction hours with active participants and/or graduates of GRAPs.

Industry and employer concerns about the lack of GRAP participants and programs to satisfy government policies and meet industry demand is consistent with DOL data available to the public upon request and in a limited capacity via the DOL's Data and Statistics website, launched in 2023.<sup>52</sup>

According to an ABC analysis of RAPIDS data provided by DOL personnel,<sup>53</sup> in FY 2023, the construction industry's state and federal government-registered apprenticeship system had an estimated 250,000 apprenticeship program participants and produced roughly 40,000 to 45,000 completers of its apprenticeship programs, which typically last between three and five years for most skilled trades. At FY 2023 rates of GRAP completion, it would take multiple years for all construction industry GRAPS to supply enough skilled craft labor to satisfy the

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<sup>49</sup> ABC: New Biden Executive Order Pushing Apprenticeships Will Disrupt Construction Industry, March 5, 2024, <https://www.abc.org/News-Media/News-Releases/abc-new-biden-executive-order-pushing-apprenticeships-will-disrupt-construction-industry>.

<sup>50</sup> Ibid.

<sup>51</sup> At the state level, New Jersey's P.L.2019, c.21 mandates that all contractors working on projects subject to the New Jersey Prevailing Wage Act participate in a U.S. Department of Labor registered apprenticeship program. An example on the local level is the Northampton County, Pennsylvania, Ordinance No. 648-2018, which requires all contractors on projects over \$100,000 to utilize GRAPs. Some state governments have even required GRAP participation on private projects, with Minnesota's [SF10](#) mandating that all construction contractors working on petroleum refineries in the state offer or participate in a GRAP.

<sup>52</sup> <https://www.apprenticeship.gov/data-and-statistics>.

<sup>53</sup> According to communication and data from the DOL Office of Apprenticeship provided to staff to ABC on Feb. 14, 2024, data from the DOL's Registered Apprenticeship Partners Information Data System indicated that, in FY 2023, the construction industry's 8,216 government-registered apprenticeship programs had 220,900 active apprentices and produced just 31,216 completers. There are five states that do not meaningfully contribute to the RAPIDS program dataset specific to construction industry GRAPs, so an ABC analysis of DOL data estimates there were 250,000 GRAP participants and roughly 40,000 to 45,000 apprentices completed GRAPs in 2023 in the United States. See [data tables](#) linked in "[ABC: Government-Registered Apprenticeship Programs Not Keeping Up with Construction Needs](#)," ABC, Feb. 22, 2024. Of note, in the summer of 2023, the DOL published a beta website containing data and statistics on GRAPs and participants, etc., available at <https://www.apprenticeship.gov/data-and-statistics>.

construction industry’s significant skilled labor shortage in 2024 alone.<sup>54</sup> This workforce shortage estimate does not account for future additional construction spending from the IRA, IJA and other federal, state and local government infrastructure investment programs and the related demand on GRAP programs, instructors and participants.



## GOVERNMENT-REGISTERED APPRENTICESHIP DATA FOR U.S. CONSTRUCTION INDUSTRY



### U.S. DOL Construction Industry Government-Registered Apprenticeship Program (GRAP) Data for FY 2023

	Active Apprentices	Completers	Active Programs
Construction*	211,808	29,584	~8,500

\*Construction data provided by U.S. DOL Employment and Training Administration’s Office of Apprenticeship’s Apprenticeship.gov website, Jan. 22, 2024. Dataset includes all Registered Apprenticeship Partners Information Management Data System (RAPIDS) state and territory participants. Note that five states do not meaningfully provide data to RAPIDS specific to construction.

ABC estimates that in FY2023, the actual total number of construction industry GRAP participants is 250,000 and total construction industry GRAP completers is 45,000.

**Based on GRAPs’ rate of graduation/completion in FY23, it would take years to meet the construction industry’s skilled labor shortage of 500,000 in 2024.**

#### Construction Industry Government-Registered Apprenticeship Program Facts

- Estimated 45,000 completers from all 50 states, U.S. territories and District of Columbia in Fiscal Year 2023.
- ABC chapters have 450 GRAPs, but GRAPs are not widely used in construction industry, especially by small businesses/in certain industrial markets.
- However, GRAPs are a key part of ABC’s all-of-the above workforce development solution.
- Less than 11% of the U.S. construction workforce is unionized, yet 69% of all participants in construction industry GRAPs are enrolled in union-affiliated (JATC) GRAPs.

These data suggest that the vast majority of upskilling and workforce development in the construction industry actually occurs outside of union and nonunion GRAPs.

### **B. The GRAP System Championed by Construction Unions; the Rest of the Industry Promotes an Inclusive, All-of-the-Above Approach to Workforce Development That Includes GRAPs**

Government data suggest that an even greater percentage of construction industry workforce development and upskilling occurs in programs not affiliated with union GRAPs because union-affiliated apprenticeship programs are almost all registered with the DOL and state equivalents and are captured in government data on GRAPs.

For example, according to DOL data,<sup>55</sup> in FY 2023, 69.5% of construction industry GRAP participants were enrolled in union-affiliated JATC GRAPs, 29.2% were enrolled in GRAPs not affiliated with unions and 1.2% of apprentices were enrolled in programs with a nonspecified affiliation. Of the FY 2023 construction industry GRAP completers, 74.22% were

<sup>54</sup> ABC projects the 2024 construction industry workforce shortage to top half a million, however, this estimate includes noncraft construction industry professionals such as project managers and estimators. ABC does not have craft-specific workforce shortage data. See <https://www.abc.org/News-Media/News-Releases/abc-2024-construction-workforce-shortage-tops-half-a-million>.

<sup>55</sup> <https://www.apprenticeship.gov/data-and-statistics>.

from union GRAPs, 24.82% were from nonunion GRAPs and fewer than 1% graduated from GRAPs not specified.

The composition of union and nonunion participants in the construction industry's GRAP system has been relatively steady for almost 10 years, with nonunion programs increasing growth in GRAP participation by total number and percentage of apprentice participants.<sup>56</sup> A 2015 report issued by construction unions<sup>57</sup> claims that, "among [government-registered program] construction apprentices, 74% are trained in the unionized construction sector known as the joint apprenticeship training committee (JATC) system," according to DOL Employment and Training Administration data from 2014 referenced in the report.<sup>58</sup>

In short, this means that, according to government data, roughly 70% to 75% of all GRAP apprentice participants and completers are affiliated with union GRAPs.

Coupled with the fact that, in 2023, just 10.7% of the U.S. construction industry workforce belonged to a union<sup>59</sup>—and in 29 states construction union membership is less than 10% of the construction workforce<sup>60</sup>—this data demonstrates that the GRAP system is used heavily by union stakeholders but not as much by the rest of the industry.

This is consistent with comments filed by union members of North America's Building Trades Unions<sup>61</sup> against a Trump DOL proposal to enact Industry Recognized Apprenticeship Programs, or IRAPs, which NABTU characterized as threat to their workforce development programs rooted in federal GRAP regulations.<sup>62</sup>

In that contentious policy debate, ABC's comments<sup>63</sup> argued that the construction trade union's dependence on protectionist government policies that maintain a static GRAP system status quo—free from true modernization, innovation and competition from potentially disruptive open shop GRAPs and alternative workforce development strategies—is needed

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<sup>56</sup> Of note, U.S. DOL data on GRAPs has been historically unreliable due to a lack of comprehensive data reporting from states via the RAPIDS program. Likewise, it is unclear if the DOL's recent reports of growth in the GRAP system is actually as great as has been reported. It is possible a significant portion of the growth is a product of DOL making improvements to data collection and reporting efforts from state data sources.

<sup>57</sup> See page 6 of Construction Apprenticeship, The "Other Four-Year Degree," by the North American Building Trades Unions, available at [https://partners.aflcio.org/system/files/2\\_bctd-appren-four-yr-degree-2015.pdf](https://partners.aflcio.org/system/files/2_bctd-appren-four-yr-degree-2015.pdf).

<sup>58</sup> Note: At the time this report was published, the DOL did not provide data on union vs. nonunion apprentices enrolled in registered apprenticeship programs to the public in an aggregate version/report. It is unclear if the DOL shared this data directly or if additional assumptions were made by report authors based on DOL data requested and calculated. The report does not show how calculations were achieved.

<sup>59</sup> "Union Members – 2023," Bureau of Labor Statistics, Jan. 23, 2024, and ABC analysis, <https://www.abc.org/News-Media/News-Releases/abc-a-record-893-of-the-us-construction-industry-is-not-part-of-a-union>.

<sup>60</sup> See map: <https://www.abc.org/News-Media/News-Releases/abc-less-than-10-of-the-construction-workforce-belongs-to-a-union-in-29-states>.

<sup>61</sup> <https://nabtu.org/wp-content/uploads/2019/08/NABTU-IRAP-Comments-RIN-1205-AB85.pdf>.

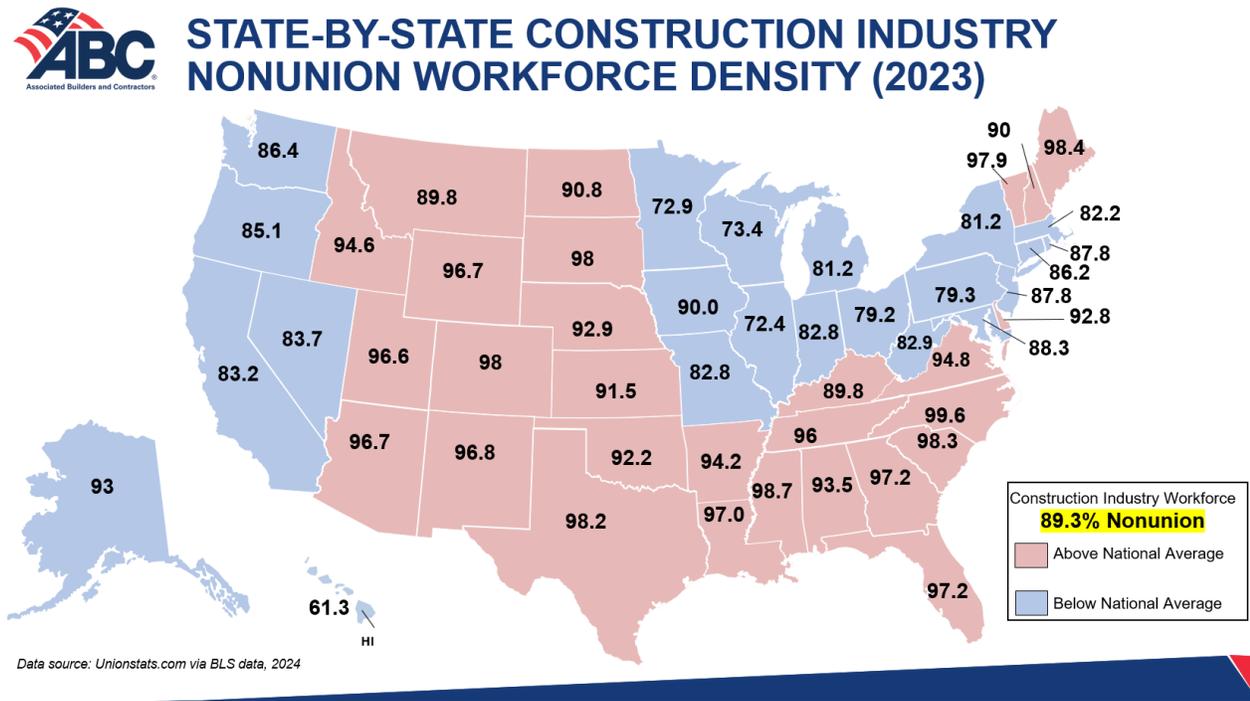
<sup>62</sup> See Ian Kulgren, [Construction Workers Prepare to Battle Former Ally Trump](#), Politico, Aug. 16, 2019.

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[https://www.abc.org/Portals/1/ABC\\_DOL\\_ETA\\_Apprenticeship%20Programs\\_NPRM\\_08.26.2019.pdf?ver=OVhPkH84aHz10ATP5-8i-g%3d%3d](https://www.abc.org/Portals/1/ABC_DOL_ETA_Apprenticeship%20Programs_NPRM_08.26.2019.pdf?ver=OVhPkH84aHz10ATP5-8i-g%3d%3d).

to maintain its marketplace identity and workforce development-focused value proposition to union-signatory contractors and private and public project owners.<sup>64</sup>

In addition, this government data demonstrating an underperforming GRAP system clearly shows that federal IRA and government-mandated project labor agreement policies, private owner apprenticeship mandates driven by government policy and growing federal, state and local government GRAP participation requirements will create a host of problems for private and government project owners and construction industry stakeholders and contractors that will be even more acute in certain regions of the country where construction union membership is weak.



For example, clean energy developers in Southern states that build carbon sequestration, solar, wind, hydrogen and other types of clean energy construction production are especially vulnerable to the IRA’s apprenticeship requirement policy because there are few GRAPs in these markets and a small number of unionized workers, union hiring halls and affiliated apprenticeship programs. These new policies will result in needless cost increases and delays until GRAPs can be registered and approved by federal and state governments and are widely adopted by contractors.

This market reality is exactly why it is extremely problematic that aspects of the DOL’s NPRM require more reporting and recordkeeping requirements than contractors and GRAP providers are already burdened with in the current underperforming GRAP system. The

<sup>64</sup> The Trump IRAP policy eventually exempted the construction industry from the new policy in March 2020. The Biden administration rescinded the entire Trump IRAP rule Feb. 17, 2021. See: <https://www.abc.org/News-Media/Newsline/biden-rescinds-trump-irap-executive-order-and-supports-abc-opposed-apprenticeship-bill>.

DOL's NPRM should be making it easier for employers and providers to grow the GRAP system, but the NPRM does just the opposite.

Feedback from ABC contractors who do not participate in GRAPs indicate they prefer existing, industry-driven workforce development programs that produce a safe, competent and productive workforce through innovative and flexible learning models like just-in-time task training, competency-based progression and work-based learning. In addition, some contractors participate in workforce development programs through vocational and CTE schools and community workforce development program partnerships—which are not registered with the state or federal government—in order to attract minorities, women, veterans and other stakeholders in a specific community into the construction industry. ABC's October 2023 survey confirmed that contractors continue to have these concerns when asked why they do not participate in a GRAP, with 48% citing the paperwork and regulations associated with GRAPs and 32% pointing to the effectiveness of in-house training.<sup>65</sup>

It is a common misperception by construction industry outsiders that nonunion contractors do not develop their workforce. They have been misled by some interest groups that GRAPs—and especially union-affiliated GRAPs—are the only way to attract new workers into the construction industry and upskill and educate a safe, highly skilled, productive and diverse workforce. This myth is undermined by the fact that ABC members invested an estimated \$1.5 billion in construction industry workforce development—including hundreds of GRAPs administered independently by ABC member companies—to upskill 1.3 million course attendees in 2022.<sup>66</sup>

In reality, the majority of construction industry workforce development is done in-house by contractors and developers without the GRAP bureaucracy using in many cases identical or similar curricula as GRAPs. Progression is based on a blend of time, skill, merit, competency and safety, in contrast to progression through GRAPs based only on time, as proposed in this NPRM.

In short, construction industry workforce development is done through an all-of-the-above strategy relying on employers, unions, trade associations, colleges, trade schools and community workforce development partners to provide instruction and programs through GRAPs and programs not registered with the government.

The DOL NPRM fails to recognize that GRAPs have formidable and credible competition in the workforce development marketplace. As discussed further in these comments, the DOL NPRM makes participation in GRAPs more expensive and complicated, which will only lead to the decline in GRAPs and continued poor participation and market penetration of GRAPs, while simultaneously failing to meet industry demands for skilled labor.

### **C. The GRAP System Is Weaponized by Unions and Government To Cut Competition From Qualified Contractors**

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<sup>65</sup> [ABC Survey: 98% of ABC Contractors Say Biden's Inflation Reduction Act Labor Mandates Limit Competition on Clean Energy Construction](#), Oct. 24, 2023.

<sup>66</sup> [ABC: Members Invested \\$1.5 Billion in Construction Workforce Education To Upskill 1.3 Million in 2022](#), July 10, 2023.

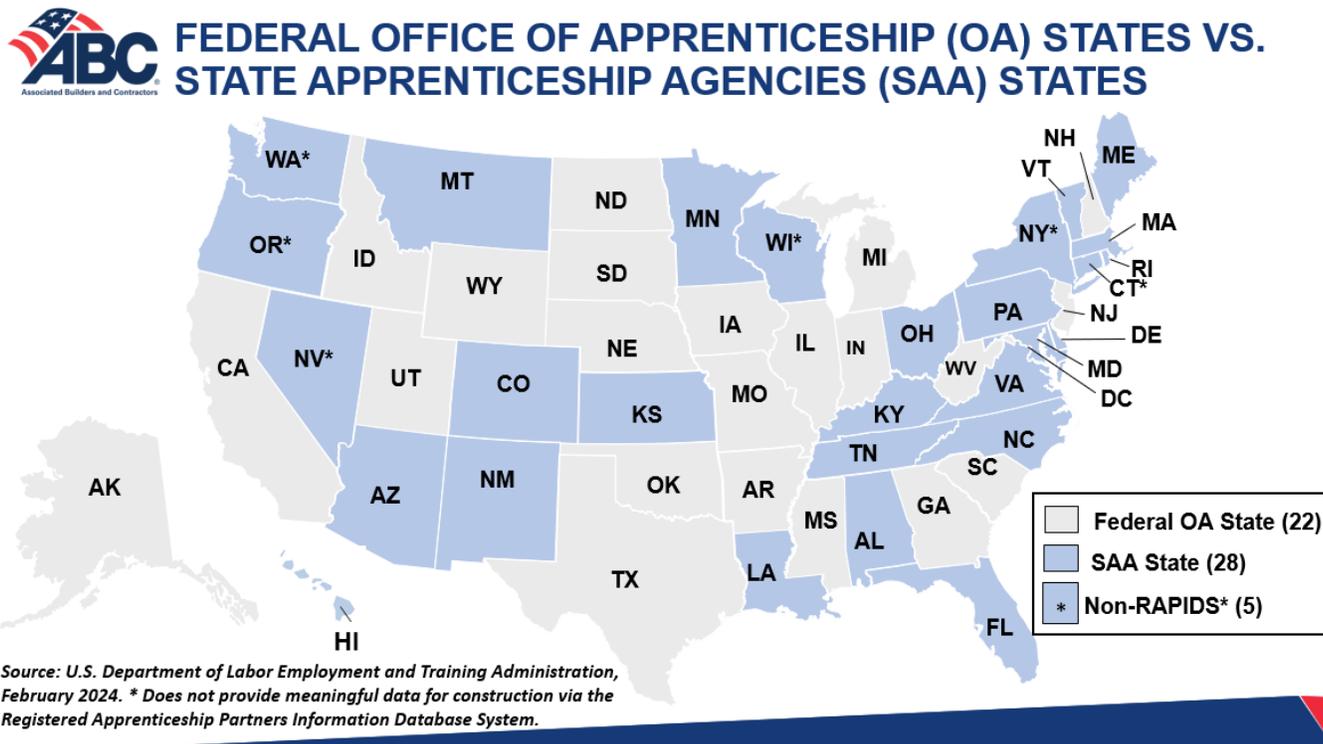
ABC’s February 2024 survey results on this proposal brought to light concerning examples of how unions and government regulators work in tandem to enact policies that needlessly delay or even prohibit nonunion apprenticeship programs from getting approved and prevent contractors from winning contracts to build taxpayer-funded construction projects if they are not participants in certain union-affiliated GRAPs.

More than a fourth of respondents reported to have personally experienced an example of government apprenticeship policies or requirements being weaponized to cut competition from certain contractors and/or discriminate against certain GRAPs not affiliated with unions.

Unfortunately, the DOL NPRM does little to stop this perversion and further politicization of the apprenticeship system and likely sets the table for future misbehavior.

**i. Certain States and Localities Restrict GRAP Approvals Via Union Protectionism**

The DOL’s Office of Apprenticeship approves apprenticeship programs and oversees GRAPs and apprentices in 22 states commonly known as Office of Apprenticeship states. In OA states, the DOL generally promotes a consistent set of GRAP approval and standards, although these may differ from state to state.



The remaining 28 states, known as State Apprenticeship Agency states, run their own state apprenticeship system—which includes approving new GRAPs and establishing related regulations. However, SAA states operate within a broader regulatory framework established

by the DOL's OA in order to be recognized by the DOL Office of Apprenticeship.<sup>67</sup> This semi-autonomy can lead to innovation and stakeholder buy-in when regulators and employers demonstrate complementary win-win relationships. In contrast, semi-autonomy can create problems when government regulators use GRAP approval and other regulations to chill competition in the workforce development marketplace and among employer participants in the GRAP system.

Of note, state government regulators in certain OA states delay or refuse to register new apprenticeship programs offered by providers not affiliated with unions. They weaponize the apprenticeship system to eliminate competition and steer contracts to unionized contractors. For example, California's denials of nonunion GRAPs are based on a so-called "needs" test, meaning these programs already exist in a state or geography, so no additional competing programs are necessary. This action has been disavowed by the DOL, but the DOL has done little to forcibly bring California into compliance. For perspective, compared to less restrictive OA states, DOL data indicates that there were 85 union GRAPs and just 23 nonunion GRAPs for the construction industry in California in 2023. In contrast, New Jersey had 29 union GRAPs and 1,012 nonunion GRAPs and Iowa had 33 union GRAPs and 648 nonunion GRAPs for the construction industry in 2023, respectively.

In addition, in some SAA states like Washington and New York, the entities responsible for approving new GRAPs are notorious for arbitrarily delaying and denying the approval of new GRAPs from applicants not affiliated with unions. Union interests then lobby the legislature and regulators in these bad-actor OA and SAA states to pass policy requiring the use of enrolled and/or graduated apprentices from certain GRAPs on public works projects, which restricts competition from qualified local nonunion contractors and denies jobs to local nonunion construction workers who are boxed out of the state's GRAP system arbitrarily.

## ii. **Apprenticeship Ratio Policies Create a Discriminatory Regulatory Framework**

ABC is concerned about construction industry apprentice-to-journeyworker ratio regulations that will restrict growth in employer-run GRAPs, needlessly reduce overall enrollment of apprentices in GRAPs and discriminate against contractors not participating in union-affiliated JATC GRAPs by putting them at a competitive disadvantage via different apprenticeship ratios when competing for public works projects subject to apprenticeship requirements.

In general, apprenticeship ratios mandate the number of journeyworkers that must be used for each apprentice utilized on a project.

According to 29 C.F.R. 29.(5)(b)(7), the federal code that governs the eligibility and approval requirements of an apprenticeship program, an apprenticeship program sponsor must include as a standard:

"A numeric ratio of apprentices to journeyworkers consistent with proper supervision, training, safety and continuity of employment, and applicable provisions in collective bargaining agreements, except where such ratios are expressly prohibited by the collective bargaining

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<sup>67</sup> [https://www.apprenticeship.gov/sites/default/files/bulletins/circular-2023-02\\_0.pdf](https://www.apprenticeship.gov/sites/default/files/bulletins/circular-2023-02_0.pdf).

agreements. The ratio language must be specific and clearly described as to its application to the job site, workforce, department or plant.”

In OA states, the DOL generally promotes a consistent apprentice-to-journeyworker ratio, but it permits OA states and GRAP sponsors to request a more relaxed or restrictive ratio specific to certain trades.<sup>68</sup> The remaining SAA states run their own state apprenticeship system—but within regulatory frameworks established by the DOL—which includes approving new GRAPs and establishing related regulations, including regulations concerning apprenticeship ratios. A lack of uniform OA and SAA regulation across state lines can lead to differing ratios by trade in each state, creating a complex web of laws and compliance requirements for contractors operating across multiple states.

Just as some SAA regulators block approval of certain nonunion GRAPs unnecessarily, SAA regulators have been known to pervert apprenticeship ratio policies in order to give contractors affiliated with union GRAPs a competitive advantage in public works contracting.<sup>69</sup> Therefore, in an unlevel playing field, unionized contractors benefit from a more relaxed apprenticeship ratio for union-affiliated JATC GRAPs, while contractors participating in non-JATC GRAPs shoulder costs associated with more restrictive ratios.

Apprenticeship providers, contractors, stakeholders and workforce development experts have called for reforms to restrictive and unevenly applied apprenticeship ratios because of the skilled labor shortage facing the construction industry and the need to simplify and modernize apprenticeship laws and regulations. Onerous and outdated apprentice-to-journeyworker hiring requirements—many of which have not been updated in years—only exacerbate this workforce shortage at the expense of new workers seeking to become an apprentice.

Under current laws and regulations in many states, when contractors and employers want to grow their company or replace departed workers by bringing on new apprentices, they are required to utilize multiple journey-level workers per apprentice. In too many trades, there are not enough journey-level workers to meet these requirements, meaning the additional apprentice is never hired and the contractor cannot grow and compete for more work. For example, a 2015 study required by the Connecticut General Assembly and written by the state’s bipartisan Legislative Program Review and Investigations Committee found that “nearly two-thirds of the occupations appear to be under-enrolling apprentices to meet projected demand for journeypersons,” while a quarter of the occupations “appear to have too many.”<sup>70</sup> Put simply, artificially inflated apprenticeship ratios handcuff contractors’ ability to hire and expand their businesses and invest in existing apprenticeship pipelines and tomorrow’s construction workforce. This also prevents existing GRAPs from expanding

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<sup>68</sup> See U.S. DOL Employment and Training Administration, OA, Circular 2021-02 Guidelines for Reviewing Apprentice to Journeyworker Ratio Request, Jan. 12, 2021: <https://www.apprenticeship.gov/sites/default/files/bulletins/Circular%25202021-02%2520FINAL%25201.12.21.doc>.

<sup>69</sup> See state legislative testimony provided by ABC Pennsylvania: [https://www.legis.state.pa.us/WU01/LI/TR/Transcripts/2019\\_0162\\_0007\\_TSTMNY.pdf](https://www.legis.state.pa.us/WU01/LI/TR/Transcripts/2019_0162_0007_TSTMNY.pdf) and ABC Wisconsin: <https://www.abcwi.org/wisconsin-contractor-blog/bill-would-give-businesses-freedom-to-hire-more-apprentices/>.

<sup>70</sup> “Apprenticeship Programs and Workforce Needs,” Legislative Program Review and Investigations Committee, Connecticut General Assembly, December 2015, p. 27.

apprentice participation and makes it more unlikely that new GRAPs will be created to fill industry demand.

Reforming these burdensome regulations is especially beneficial to small contractors, which often do not have the resources to hire large numbers of journeyworkers to comply with exceptionally high ratio requirements.

In addition, some states permit a two-tiered apprenticeship ratio system. Under this nonsensical and discriminatory system, which is used in a handful of states including Pennsylvania and Washington, union contractors and merit shop contractors abide by two different sets of apprenticeship ratios. In Pennsylvania, for example, nonunion programs follow a ratio of 1 apprentice for every 4 journeypersons, while union programs adhere to whatever is specified in their collective bargaining agreement, which is more favorable than the restrictive ratio that applies to nonunion contractors. Reforming these disparate ratios will level the playing field and allow all contractors to expand their companies and compete for more work.

Additionally, contractors that perform work in multiple states are burdened with complying with apprenticeship ratios that can significantly differ from state to state. Reforming apprenticeship-to-journeyworker ratio policy to a standard requiring are at least a 1-to-1 ratio—while still upholding the highest safety standards—will allow contractors to grow their businesses and safely train their workforce by making it easier to comply with regulations across state borders.

It is no surprise that apprenticeship ratio reform has gained momentum in recent years with numerous revisions to state ratio rules as a result of policy passed by state regulators and/or legislatures. For example, in 2016, Michigan reformed its apprenticeship ratio requirements by increasing the required ratio of electrical apprentice-to-journeyworker ratios from 1-to-1 to 3 apprentices to 1 journeyworker. By instituting these reforms, Michigan lawmakers ensured that electrical contractors are able to meet increased hiring demands and employ a steady workforce for the future.

In 2018, Wisconsin reformed an outdated apprenticeship ratio law that said the first apprentice may be hired on a 1-to-1 apprentice-to-journeyworker ratio. However, for each additional apprentice hired, the number of journeyworkers required increased for most trades.

For example, if a contractor employed a second carpentry apprentice, it was then required to hire four journeyworker carpenters. The number of journeyworkers required per apprentice increased all the way up to the 12th apprentice, where thereafter three skilled carpenters were required for each additional apprentice. Reforms to this nonsensical and burdensome regulation were widely celebrated by apprenticeship stakeholders and have led to growth in GRAP enrollment and contractor participation in Wisconsin.

In its October 2023 survey, ABC members cited apprenticeship ratios as a potential barrier to compliance with IRA requirements, with 84% of respondents agreeing that apprenticeship ratios are likely to limit their ability to meet the 15% labor hour requirement.<sup>71</sup>

Restrictive apprenticeship ratios in certain states may make it difficult—if not impossible—for contractors to satisfy the IRA and other government apprenticeship utilization requirements.

ABC was extremely disappointed that the DOL's NPRM failed to enact flexible and less restrictive apprenticeship ratio policies that are sure to attract more apprentices into GRAPs and encourage contractors to start or grow their apprenticeship programs. The DOL's policy continuing to permit restrictive ratios based on safety concerns simply is not backed up by any meaningful safety evidence or data.

ABC recommends enacting additional flexibility that permits a contractor to choose the apprenticeship ratio from either where the GRAP is registered, or the state where the project in question is being performed. This would help multistate contractors navigate complicated regulations and burdensome paperwork that impact labor productivity, crew mix and the hiring of additional apprentices. It would also reduce regulatory burdens for small businesses and encourage GRAP growth among small businesses. This change may also help alleviate discriminatory apprenticeship ratios enacted by bad-actor state GRAP regulators engaged in favoritism who have inappropriately perverted apprenticeship ratio policy to assist special interests.

Likewise, ABC is disappointed that the DOL has not utilized the NPRM as an opportunity to finally address the underhanded practice of certain OA and SAA states' unjustified delay and/or refusal to register apprenticeship programs proposed by nonunion applicants.

However, ABC is somewhat optimistic that proposed changes to national standards, as discussed below in Section II. M., may be able to be utilized—if clarified and implemented effectively—to rein in bad-actor state government regulators. This may help attract more contractors into construction GRAPs and push bad-actor government regulators to enact reforms that develop the overall GRAP ecosystem, instead of the DOL looking the other way and allowing the pervasive culture of favoritism in some states without meaningful consequence.

## **II. ABC's Specific Concerns With the NPRM**

### **A. Legal Concerns: The Extensive NPRM Is Not Authorized by Federal Statute and Violates Numerous Federal Laws**

The sole statutory authorization for the DOL's apprenticeship regulations is contained in a single paragraph of the National Apprenticeship Act, 29 U.S.C. § 50. That section reads in its entirety as follows:

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<sup>71</sup> [ABC Survey: 98% of ABC Contractors Say Biden's Inflation Reduction Act Labor Mandates Limit Competition on Clean Energy Construction](#), Oct. 24, 2023.

“The Secretary of Labor is authorized and directed to formulate and promote the furtherance of labor standards necessary to safeguard the welfare of apprentices, to extend the application of such standards by encouraging the inclusion thereof in contracts of apprenticeship, to bring together employers and labor for the formulation of programs of apprenticeship, to cooperate with State agencies engaged in the formulation and promotion of standards of apprenticeship, and to cooperate with the Secretary of Education in accordance with section 17 of title 20. For the purposes of this chapter the term "State" shall include the District of Columbia.”

As further discussed below, most if not all of the proposed rule exceeds the DOL’s statutory authorization, because the NPRM does not establish that each (or for that matter, any) of the proposed new labor standards is “necessary to safeguard the welfare of apprentices.”

Indeed, much of the NPRM consists of imposing new requirements for apprenticeship training which are not “labor standards” at all, but paperwork burdens, data collection requirements and punitive sanctions that are not authorized by the NAA.

Even those aspects of the proposed rule that claim authorization as labor standards necessary to safeguard the welfare of apprentices appear to exceed the DOL’s statutory authority, because the proposed rule does not confine itself to “encouraging” the inclusion of such standards in apprenticeship agreements, which is all the DOL is authorized by Congress to do. Instead, the DOL’s proposed rule adds a series of mandates that impose new and unjustified burdens on apprenticeship programs without statutory authority.

Finally, even if the proposed rule were authorized by the NAA, the rule should be withdrawn because it constitutes arbitrary and capricious rulemaking under the Administrative Procedure Act, 5 U.S.C. § 706. Agency action is deemed to be arbitrary and capricious, *inter alia*, when it fails to provide “good reasons” for changing policy positions, including rescissions or rewrites of longstanding agency rules. *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009); *see also Motor Vehicle Mfrs. Ass’n of United States, Inc. v. State Farm Mut. Auto Ins. Co.*, 463 U.S. 29, 44 (1983); *Dep’t of Homeland Sec. v. Regents of the Univ. of Cal.*, 140 S. Ct. 1891, 1910–11 (2020). The agency “must provide ... a ‘detailed justification’ to explain why it is changing course” and may not “casually ignor[e]” its previous findings and “arbitrarily chang[e] course.” *California v. BLM*, 286 F. Supp. 3d 1054, 1068 (N.D. Cal. 2018). Indeed, when an agency changes existing policy, it “must” “provide a more detailed justification than what would suffice for a new policy ... when its prior policy has engendered serious reliance interests.” *Fox TV*, 556 U.S. at 515; *see also Encino Motorcars, LLC, v. Navarro*, 579 U.S. 211, 222 (2016) (“*Encino I*”) (in changing existing policies, agencies must be cognizant of “serious reliance interests”).

An agency’s action is also arbitrary and capricious where it relies on inconsistent reasoning, fails to consider important aspects of the problem, offers explanations for its rule that run counter to the evidence, fails to consider alternatives within the ambit of the existing policy, relies on factors that it should not have considered or fails to adequately consider important issues raised by commenters. *See Motor Vehicle Mfrs. Ass’n*, 463 U.S. at 41-43; *Chamber of Commerce of the U.S.A. v. U.S. Dep’t of Labor*, 885 F.3d 360, 382 (5th Cir. 2018).

The NPRM violates all of the above APA standards and should be found to be arbitrary and capricious or in violation of law if it is finalized in its present form without substantial revisions. The rule provides no meaningful justification for changing course in the manner chosen by the DOL. The proposed rule increases the burdens on apprenticeship programs and at every turn restricts the ability to expand such programs to meet the 21st century needs of the construction industry as a whole (not just the small percentage of the industry that is unionized).

The NPRM further ignores the serious reliance interests of nonunion employers and sponsors of apprenticeship programs, who need greater access and flexibility to achieve their training objectives, not a more rigid, bureaucratic and punitive regime. The NPRM also fails to consider the severity of the shortage of skilled workers in the construction industry and the need to provide greater access to apprenticeship training that will benefit the overwhelming majority of the industry workers who are not represented by labor unions.

The NPRM also relies on inconsistent reasoning and offers explanations for the proposed rule that run counter to the evidence, or else relies on factors that the DOL should not consider. Finally, the NPRM fails to consider reasonable alternatives to the draconian restrictions the DOL seeks to impose on apprenticeship training programs.

#### **B. Section 29.2 - Improper Emphasis on “Completion Rates”**

The NPRM establishes “annual completion rate” as a new metric the DOL or SAAs can use to assess program quality, calculated by identifying all the apprentices who leave a program during a fiscal year as the denominator and the number of those who complete the program as the numerator. The NPRM claims that this metric would allow the agencies to provide technical assistance to GRAPs that are exiting significant numbers of apprentices prior to graduation.<sup>72</sup> Also, whereas the existing regulations make clear that apprentices who leave a program during their probationary period, typically their first year in the program, should not be counted against the completion rate for their “cohort” of apprentices, the NPRM is unclear in its treatment of probationary apprentices but appears to improperly seek new data regarding departures by first-year apprentices.

The annual completion rate is not a “labor standard” within the meaning of the NAA, and the NPRM correctly does not purport to establish specific minimums or requirements regarding annual completion rate. Indeed, there is no settled standard for an appropriate completion percentage. Nevertheless, ABC is seriously concerned that NPRM’s new emphasis on this faulty metric<sup>73</sup> could be used against GRAP sponsors in the future by the DOL or SAAs as the basis for deregistration of programs or other gatekeeping tactics denying GRAPs government funding or participating employers access to government contracts. Because

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<sup>72</sup> <https://www.federalregister.gov/d/2023-27851/p-197>.

<sup>73</sup> GRAP advocates have long held that apprenticeship program completion rates compared between union and nonunion programs are not an apples-to-apples comparison. For example, apprentices enrolled in nonunion GRAPs who change employers in the middle of their program are counted as drops. In contrast, apprentices in union GRAPs are not counted as drops when they are dispatched to multiple employers during their apprenticeship. In addition, if an apprentice pauses his/her enrollment for a semester and reenrolls, that is considered a drop.

participation by apprentices in GRAPs is entirely voluntary (by statute), GRAP sponsors should not be blamed or penalized for apprentices who voluntarily choose not to complete a program. Such decisions are largely directed by career circumstances, such as layoffs, promotions or other changes in employment, as well as learning difficulties, inability to pass an employer drug test, inability to secure childcare or transportation to jobsites and classrooms due to changed personal circumstances and outreach to “hard to employ” apprentices. Given the unique nature of the construction workforce, maintaining high completion rates is not consistently feasible for all GRAPs.<sup>74</sup> ABC urges the DOL to avoid emphasizing annual completion rate as a key metric for GRAP quality.

### **C. Section 29.7 - The New “Suitability” Standard, Which Requires Showing That the Apprenticeship Will Lead to a “Sustainable Career”**

The words “suitability” and “sustainable career” do not appear in the NAA, and they are not labor standards that should play any role in the regulation of apprenticeships. Yet, the NPRM proposes to dramatically overhaul the existing process for determining apprenticeable occupations with a new and vaguely defined “suitability” test.<sup>75</sup> This test removes the ability of SAAs to designate occupations as apprenticeable. It introduces new requirements for applicants to demonstrate that occupations lead to “sustainable careers”<sup>76</sup> and requires the submission to the DOL of extensive information including work process schedules, training hours, instruction outlines and information on interim credentials/license requirements.<sup>77</sup> After the application is submitted, the DOL will solicit public comment for 30 days and issue a determination with 90 days of receiving the application, although this period may be extended seemingly indefinitely at the DOL’s discretion.<sup>78</sup>

As proposed, these requirements will increase the difficulty of expanding GRAPs to critical new occupations in the construction industry as technology and work processes continue to evolve. ABC recommends that the DOL reduce paperwork burdens for the suitability process (particularly by removing the work process schedule and related instruction outline requirements), shorten the timeline for approval, enforce decision deadlines and eliminate the requirement for applicants to demonstrate that occupations lead to sustainable careers.

According to ABC’s February 2024 survey of ABC members, 92% of respondents said the NPRM’s new suitability test will make getting new occupations designated as apprenticeable harder. Respondents said that this new approach would “choke innovation” and “create more work and headaches for companies looking to expand apprenticeship opportunities in their field.”

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<sup>74</sup> See “[Construction Apprenticeships as a Career Development Alternative in Indiana.](#)” an August 2023 study by the Midwest Economic Policy Institute which found both union and nonunion construction GRAPs in Indiana had completion rates under 50% (43% and 37%, respectively). It is unclear if the study counts first year apprentices, but we presume it did not as the data collection was performed under the current standard and not the NPRM’s proposed inclusion of data on probationary apprentices.

<sup>75</sup> <https://www.federalregister.gov/d/2023-27851/p-1548>.

<sup>76</sup> <https://www.federalregister.gov/d/2023-27851/p-1551>.

<sup>77</sup> <https://www.federalregister.gov/d/2023-27851/p-1554>.

<sup>78</sup> <https://www.federalregister.gov/d/2023-27851/p-1560>.

#### **D. Section 29.7(a) - Restricting SAAs From Determining Which Programs Are Suitable and Other Aspects Of Performance**

As part of its overhaul of suitability determinations, the NPRM entirely removes the authority of SAAs to determine apprenticeable occupations. Instead, the DOL must issue all suitability decisions as described above. SAAs would be eligible to submit suitability applications to the DOL.<sup>79</sup>

While ABC appreciates the DOL's efforts to maintain consistency of apprenticeable occupations across states, there are concerns that this approach overly restricts the flexibility of SAAs and negates the value of having an SAA that is responsive to local employer and apprentice needs. States would best know if an in-demand occupation is apprenticeable without needing permission and lengthy reviews from the DOL.

As a middle ground, SAAs should be permitted to find programs to be apprenticeable so long as they do not institute requirements that are more restrictive than the federal standard. This would allow SAAs that in good faith seek to expand apprenticeship opportunities to continue their efforts to do so. They could maintain their ability to determine suitable occupations within their states but be required to recognize occupations that have been determined as suitable by the DOL or other SAAs. This would maximize flexibility for states to approve GRAPs in new occupations while still encouraging reciprocity nationally.

According to ABC's survey, 90% of respondents said that government officials in states where they work will find this NPRM not helpful to expanding GRAPs and retaining and enrolling new apprentices.

#### **E. Section 29.7(e)(3) - The Increased Focus on Preventing "Splintering," Which Will Prevent Recognition of New Technology and Nonunion Occupations**

The NPRM states that apprenticeships that are confined to a "narrowly specialized subset of skills and competencies within an existing occupation" or "[replicate] a significant proportion of the work processes that are covered by another occupation" will not be deemed apprenticeable.<sup>80</sup>

According to ABC's February 2024 member survey, 92% of respondents said the NPRM's proposed restrictions to prevent splintering were unnecessary and harmful. Respondents said that this change is short-sighted and recommended that the DOL let individual companies/industry programs decide if a GRAP is needed to meet the demands of industry.

For example, on Aug. 25, 2023, the DOL's Office of Apprenticeship issued a bulletin addressing whether a solar panel installer is an "apprenticeable" occupation for which a registered apprenticeship program can be approved by OA or state apprenticeship agencies delegated authority by the DOL to approve apprenticeship programs for federal purposes, including prevailing wage.

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<sup>79</sup> <https://www.federalregister.gov/d/2023-27851/p-358>.

<sup>80</sup> <https://www.federalregister.gov/d/2023-27851/p-1564>.

The bulletin states that, “Based on the current information available, [the OA] is not able to conclude that solar panel installation occupations are clearly identified and commonly recognized as distinctive occupations because the work processes and job activities involved in these occupations significantly replicate those of other existing apprenticeable occupations, such as electricians, iron workers, operating engineers, carpenters, and laborers.”<sup>81</sup> The DOL issued this ruling in direct contradiction of its own O\*NET dictionary of occupational definitions, which recognizes solar photovoltaic installers and related occupations as an established trade.<sup>82</sup>

Presumably, the NPRM’s proposal to prevent “splintering” will lead to more determinations that discourage innovation and 21st century technologies, simply because some “established” union offers a program that includes some elements of the new technology, along with obsolete work methods that offer little or no value to the apprentices in more specialized trades. The DOL has failed to consider that, rather than enrolling apprentices in uniform, broader training programs in the so-called “established” trades, the proposed rule will cause more specialized workers like solar installers to receive no apprenticeship training at all.

As discussed above, ABC recommends that the DOL should not adopt such a narrow definition of apprenticeable occupations and in light of the current shortage of GRAP programs and apprentices generally. The NPRM should instead create the conditions for GRAP regulators to approve more programs to meet the needs of industry and not impose arbitrary restrictions such as those evidenced by the recent DOL bulletin.

#### **F. Section 29.8(a)(4) - Disallowing Flexible, Competency-Based or Hybrid Programs, Mandating Rigid Multiyear Standards**

Currently, GRAPs may use one of three approaches: time-based GRAPs that require 2,000 hours of on-the-job training, competency-based GRAPs that do not require any specific amount of hours as long as the apprentice can demonstrate the necessary skills to perform their trade and hybrid GRAPs that require a combination of hours and competency.

The NPRM reduces flexibility by eliminating competency and hybrid options,<sup>83</sup> instead requiring all GRAPs to provide at least 2,000 hours of on-the-job training and 144 hours of related instruction.<sup>84</sup> Competency-based models allow the GRAP sponsor to have more control over a program by allowing them to determine whether the individual has mastered the competencies within a reasonable amount of time. The NPRM would eliminate GRAPs

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<sup>81</sup> U.S. DOL Office of Apprenticeship [Bulletin No. 2023-124](#), Aug. 25, 2023. Accessed Oct. 29, 2023.

<sup>82</sup> See [O\\*NET 47-2231.00](#).

<sup>83</sup> Of note, these two programs have experienced the greatest growth across all industries, primarily because employers know that apprentices are evaluated based on their skills and competency to perform the occupation instead of hours they spent in a GRAP. The NPRM’s own data demonstrates that competency-based GRAPs increased by 197% between 2017 and 2022, and hybrid apprenticeship programs increased by 116%. Meanwhile, non-competency and non-hybrid GRAPs increased only 11%. Competency-based and hybrid GRAPs expanded from accounting for 9.6% of all apprenticeship programs in 2017 to 19.4% of all apprenticeship programs in 2022. Note, data is not available in the NPRM or other DOL sources specific to the construction industry.

<sup>84</sup> <https://www.federalregister.gov/d/2023-27851/p-1574>.

geared towards meeting employers' needs and make changes that instead focus on USDOL's desire to restrict and control GRAPs via a "one size fits all" approach. Ultimately, this change will have the impact of discouraging new employers and sponsors from participating in GRAPs, and potentially cause existing GRAPs to be discontinued if sponsors or employers determine transitioning to a less flexible, strictly time-based model is not feasible.<sup>85</sup>

The NPRM's analysis estimates at least 4,588 competency or hybrid GRAPs were active in 2022 across all industries that would be disrupted by this change.<sup>86</sup>

According to ABC's February 2024 survey of ABC members who currently participate in GRAPs, 27% of respondents participate in a competency-based GRAP, 45% of respondents participate in a hybrid GRAP and 35% participate in a time-based GRAP.

In addition, 75% of all survey respondents said eliminating competency-based and hybrid GRAPs, as the NPRM proposes, would make them less likely to participate in a GRAP or start a new GRAP.

Likewise, ABC chapter and member apprentices have said they would be less likely to enroll or complete an apprenticeship program that was based only on rigid time standards as opposed to competency or hybrid GRAPs.

The DOL's proposal to eliminate competency-based and hybrid models is particularly strange in light of the proposed rule's provision that would grant credit for activity performed outside of the GRAP (such as activity performed during military service) that is applicable to the occupation.<sup>87</sup> ABC applauds the continuation of this more flexible approach based on apprentice competency, but it is inconsistent for the DOL to allow this flexibility while at the same time eliminating competency-based GRAPs.

ABC recommends that the NPRM be amended to maintain competency-based and hybrid models. There is no compelling reason for or evidence that eliminating these tested alternatives is beneficial or needed, and doing so appears to be a disincentive to apprentice participation in GRAPs. At a minimum, existing GRAPs utilizing these models should be grandfathered in to minimize disruptions of students currently enrolled in a program.

### **G. Section 29.8(a)(17) – Regulations on Wage Progression**

As part of its changes to standards for apprenticeships, the NPRM mandates a new wage progression schedule for apprentices, including at least one incremental wage step and a final wage of at least 75% of the journeyworker rate.<sup>88</sup>

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<sup>85</sup> Even the Northern California District Council of Laborers opposes this restrictive change. See pages 5 and 6 of their comments, Recommendation #4, March 11, 2024: <https://www.regulations.gov/comment/ETA-2023-0004-0697>.

<sup>86</sup> <https://www.federalregister.gov/d/2023-27851/p-1055>.

<sup>87</sup> <https://www.federalregister.gov/d/2023-27851/p-1606>.

<sup>88</sup> <https://www.federalregister.gov/d/2023-27851/p-1591>.

Although many ABC chapters and members may already follow similar or identical wage progression schedules, these restrictive requirements increase the cost of GRAPs, possibly deterring employer participation. In addition, unnecessarily prescriptive rules on wage progression limit flexibility regarding how GRAPs may operate in different labor markets and among different employers. ABC recommends that the DOL withdraw this provision and maintain the current rules regarding wage progression.

#### **H. Section 29.8(b)(2) - Increased Information Required To Approve Program Registration, Including Past Labor Violations and Diversity Outreach, With More Opportunities for Interference and Complaints by Outsiders**

The NPRM introduces a new requirement that GRAP sponsors obtain attestations from participating employers regarding any past labor law violations and actions taken to remedy these violations. Employers that fail to disclose any violations would be subject to criminal penalties.<sup>89</sup>

ABC is concerned that this new requirement represents an increased burden on GRAP sponsors. It may also discourage employers concerned about potential legal liabilities from participating in GRAPs. These disclosures could involve events from decades in the past, at worksites the employer no longer operates or in entirely different divisions or subsidiaries.

In any event, the proposed new requirement is also unlawful, violating the First Amendment to the U.S. Constitution and numerous labor laws. A very similar requirement proposed by the Obama administration on federal contracts was enjoined and vacated thanks to a successful lawsuit brought by ABC.<sup>90</sup>

ABC chapters that provide GRAPs have also stated that this new requirement is virtually unworkable from a practical and compliance perspective and would require excessive new paperwork burdens and costly legal analysis.

In addition, some ABC chapter GRAPs have commented that this additional paperwork burden might chill employer participation in existing GRAPs and may further reduce the GRAP system's capacity.

ABC recommends abandoning the DOL's controversial offloading of data collection and enforcement onto GRAP providers and using existing methods to collect this data.

#### **I. Section 29.9(e) - Prohibiting NDAs, Noncompetes and Other Agreements**

According to ABC's February 2024 survey of ABC members,<sup>91</sup> 82% of respondents said the NPRM's proposed prohibitions on apprenticeship plan sponsors/employer participants

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<sup>89</sup> <https://www.federalregister.gov/d/2023-27851/p-476>.

<sup>90</sup> See Associated Builders and Contractors of Southeast Texas v. Rung, 2016 U.S. Dist. LEXIS 155232 (E.D. Tex. 2016) (enjoining the so-called "blacklisting" regulation known as "Fair Pay and Safe Workplaces)."

<sup>91</sup> [ABC Survey: Biden's Proposed Apprenticeship Rule Will Strongly Discourage Construction Apprenticeship Program Participation](#), Feb. 27, 2024.

requiring apprentices to sign nondisclosure agreements, noncompete agreements and similar agreements would make them less likely to participate in a GRAP or start a new GRAP.

Individual responses maintained that noncompete agreements are a tool to promote longevity and tenure with companies, especially when participating employers are paying an apprentice employee (often at an hourly government-determined wage and benefits rate via prevailing wage laws) and investing in that employee's education and upskilling that is of mutual benefit to both parties and delivered through an employment agreement freely entered into by two parties.

Other commenters mentioned that private clients and government agencies require all employees and apprentices on a sensitive jobsite to sign an NDA due to site security needs related to military, manufacturing, energy and IT projects in the face of an increase in intellectual property theft from China and other hostile adversaries as well as overall national security concerns and trade secrets.

Noncompete agreements and NDAs are not "labor standards," and they are largely regulated by state law. Indeed, many respondents said that certain state laws restrict NDAs and noncompete agreements already. Likewise, a majority of survey participants said that they do not require such agreements, but question how a new DOL policy banning NDAs and noncompete agreements would make the GRAP system more attractive for companies interested in running their own GRAP or investing in apprentices participating in a GRAP run by another provider.

There is certainly no federal statutory authorization in the NAA (or anywhere else) for the DOL to impose restrictions on the use of NDAs or noncompete agreements in connection with GRAPs. It is especially inappropriate to include this provision in a rulemaking that is supposed to help modernize and grow the GRAP system and encourage more employers to participate in the system to supply more apprentices.

Of note, the issue of prohibitions on noncompete agreements is being evaluated by the Federal Trade Commission's rulemaking.<sup>92</sup> That rule has yet to be finalized, therefore the NPRM's inclusion of this provision is premature as the public has not had adequate opportunity for notice and comment on the FTC's final rule in relation to this NPRM. Furthermore, the outcome of that rulemaking may be in direct conflict with this NPRM or otherwise create unnecessary confusion for the regulated community.

The DOL has not considered the unintended consequences of such new policies on existing and future contracting requirements that rely on such agreements.

#### **J. Section 29.10(a)(5) – Unnecessary GRAP Sponsor Financial Capacity Narrative Requirement May Chill Participation**

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<sup>92</sup> On April 19, 2023, ABC submitted [comments](#) urging the Federal Trade Commission to withdraw its unprecedented [proposal](#) to ban all noncompete agreements nationwide.

The NPRM proposes a new provision<sup>93</sup> that would require that a prospective GRAP sponsor submit information showing that it possesses and can maintain the financial capacity and other resources necessary to operate the proposed program on a sustained basis.

While this already may be a requirement in some state regulations or via government grant programs, ABC is concerned that requiring all sponsors to provide a financial capacity narrative with a GRAP application will be a huge disincentive to employers and new providers to participate in the GRAP system and will likely decrease GRAP accessibility and participation. Providers might be forced to reveal private financial data and will shoulder additional administrative burdens well beyond the DOL NPRM's inadequate low-ball regulatory cost analysis specific to program registrations.<sup>94</sup>

#### **K. Section 29.10(a)(8) – Equal Employment Opportunity Plans**

The NPRM describes new processes and expectations for GRAP sponsors and participating employers regarding Equal Employment Opportunity implementation.

While ABC shares the values of creating an inclusive GRAP system, the complex new requirements imposed by the proposed rule represent a new burden on GRAP sponsors and could cause difficulty for participating employers who have already established their own EEO plans.

ABC recommends fewer directive regulations for EEO plans, maintaining a requirement for the discussion of EEO plans and an EEO complaint process for apprentices, but allowing employers to utilize existing EEO efforts without requiring a duplicative process for apprentices.

Further, in light of the U.S. Supreme Court's recent holding in *Students for Fair Admission v. Harvard*,<sup>95</sup> ABC is concerned that aspects of the NPRM seeking to promote EEO and diversity, equity and inclusion may violate the court's holding that race-based favoritism in education is unconstitutional.

#### **L. Section 29.12 - Increased Qualification Requirements Imposed on Instructors and Journeyworker Co-Workers (for Apprentice Ratios) That Present a Serious Paperwork Burden for Employers and GRAP Providers**

According to ABC's February 2024 survey of ABC members,<sup>96</sup> 92% of respondents said the NPRM's proposal requiring employer apprenticeship participants to verify and track

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<sup>93</sup> <https://www.federalregister.gov/d/2023-27851/p-52>.

<sup>94</sup> <https://www.federalregister.gov/d/2023-27851/p-1099>.

<sup>95</sup> [https://www.supremecourt.gov/opinions/22pdf/20-1199\\_hgdi.pdf](https://www.supremecourt.gov/opinions/22pdf/20-1199_hgdi.pdf).

<sup>96</sup> [ABC Survey: Biden's Proposed Apprenticeship Rule Will Strongly Discourage Construction Apprenticeship Program Participation](#), Feb. 27, 2024.

qualifications for all journeyworkers' training apprentices will make GRAP implementation more difficult.<sup>97</sup>

Some survey respondents suggested that the NPRM fails to provide clarity about what would qualify as sufficient evidence to support this requirement. Others argued that the regulatory costs and paperwork burdens caused by this change would force them to hire additional compliance personnel, which is obviously not adequately captured in the NPRM's regulatory cost analysis. Finally, others worried that this would unwittingly restrict the use of apprentices in order to comply with apprentice-to-journeyperson ratios required by law if journeypersons did not possess the appropriate credentials, which are not clearly defined.

ABC recommends abandoning this requirement. At the very least, the DOL needs to provide additional clarity, perhaps in another rulemaking, about what satisfies such a requirement and articulate the benefits of such a requirement and how they might outweigh negative impacts of GRAP stakeholders.

#### **M. Section 29.13 and 29.14 - Development of National Occupational Standards for Apprenticeship and National Program Standards for Apprenticeship**

The NPRM would establish new National Occupational Standards for Apprenticeship<sup>98</sup> and National Program Standards for Apprenticeship,<sup>99</sup> which would involve collaboration by the DOL with industry to develop national standards for occupations that can be used to speed up apprenticeship program approvals.

ABC appreciates the DOL's apparent goals with these provisions and generally supports efforts to increase industry input and expedite national apprenticeship program approvals, which will be particularly beneficial for contractors that operate nationally or across multiple states. It does appear that these programs are currently underutilized in the construction industry, based on DOL data and ABC member and chapter feedback.

However, these standards must be executed carefully and fairly to avoid undue influence or control by any particular segment of the industry. ABC urges the DOL to ensure that all relevant stakeholders are included in the development of national standards should this proposed provision move forward. In addition, the NPRM fails to provide clarity about how this might work and could benefit from providing examples to stakeholders within this NPRM in order to solicit adequate comments.

#### **N. Section 29.17 – Revisions to the Complaint Process**

The proposed rule describes an overly complicated new complaint process, with new requirements that will increase costs and discourage employer participation.<sup>100</sup> This complaint process for "the protection of apprentices' welfare and well-being" also presents

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<sup>97</sup> <https://www.federalregister.gov/d/2023-27851/p-1705>.

<sup>98</sup> <https://www.federalregister.gov/d/2023-27851/p-1715>.

<sup>99</sup> <https://www.federalregister.gov/d/2023-27851/p-1722>.

<sup>100</sup> <https://www.federalregister.gov/d/2023-27851/p-1743>.

new opportunities for third parties to undermine GRAPs and participating employers in order to limit certain GRAP market share and cut competition for government grants and contracts of affiliate employers.

Even construction trade union stakeholders have expressed concerns with this new complaint process, because it “is unnecessary and creates opportunities for malicious actors to abuse the complaint process.”<sup>101</sup>

ABC recommends that the DOL preserve the existing complaint provisions in the current rule or propose an alternative that cannot be abused by bad actors.

### **O. Section 29.18 - New Burdensome Recordkeeping Requirements**

The NPRM requires extensive new recordkeeping requirements for participating employers and GRAP sponsors.<sup>102</sup> These new requirements include, but are not limited to, employment decisions, apprenticeship program standards, apprenticeship agreements, completion records, cancellation and suspension records, compliance review files, records pertaining to each apprentice's performance and progress and interim credentials received by apprentices. Further, the NPRM would require recordkeeping for all apprentices of the total number of hours of on-the-job training, related instruction, hours worked and wage and fringe benefits paid for all hours.<sup>103</sup>

According to ABC's February 2024 survey of ABC members,<sup>104</sup> 96% of respondents said the NPRM's new recordkeeping and reporting requirements will make them less likely to participate in a GRAP, start their own GRAP or continue sponsoring a GRAP.

Overall, 94% of survey respondents said the NPRM will increase the cost of participating in or starting a GRAP and 96% said the NPRM made them less likely to participate in a GRAP. Likewise, 90% said the NPRM would make them less likely to start their own company-run GRAP. Finally, 95% of respondents said the NPRM will make apprentice participation and completion of GRAPs less likely.

Further, this section's provisions overreach in their requirements placed on participating employers. Compliance with record-keeping provisions should be the responsibility of the sponsors, and access to any relevant employer records should be through requests to the GRAP sponsor. The rule should not imply that the DOL can request direct access to employer records.

Finally, it should also be clarified that any expanded recordkeeping requirements must be directly related to the GRAP. Legal compliance, employment activities and other operational

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<sup>101</sup> See Northern California District Council of Laborers, page 6, Recommendation #5, March 11, 2024: <https://www.regulations.gov/comment/ETA-2023-0004-0697>.

<sup>102</sup> See [Apprenticeships For America's eBurden Analysis](#), for a comprehensive list of the new regulatory burdens on GRAP intermediaries, sponsors, employers, apprentices and educators. Accessed Feb. 27, 2024.

<sup>103</sup> <https://www.federalregister.gov/d/2023-27851/p-1766>.

<sup>104</sup> [ABC Survey: Biden's Proposed Apprenticeship Rule Will Strongly Discourage Construction Apprenticeship Program Participation](#), Feb. 27, 2024.

aspects outside of those related to the GRAP should not be part of these requirements, and the DOL should clarify or revise to clearly establish this.

**P. Section 29.20(b) - New “Streamlined” Deregistration of Programs, Making It Easier for Union-Dominated Agencies to Deregister Nonunion Programs**

The NPRM also significantly overhauls the existing process for the deregistration of GRAPs. Among other changes, the proposal would allegedly “streamline” the deregistration process by removing the requirement for the DOL or SAAs to demonstrate persistent and significant failure to perform successfully over several years prior to deregistration.<sup>105</sup> Instead, the DOL or SAAs may initiate deregistration proceedings either immediately upon identifying that the GRAP has failed to correct violations identified by the agency, or after the agency deems the sponsor has failed to submit or implement an approved compliance action plan.<sup>106</sup>

ABC is concerned that this streamlined process would be ripe for abuse by SAAs in certain states that may inappropriately seek to eliminate GRAPs not affiliated with unions. Given that the new process allows SAAs to deregister GRAPs far more swiftly, some regulators may use this capability to deregister GRAPs over relatively minor and correctable violations. While compliance action plans may be a helpful tool to ensuring that GRAP sponsors have an opportunity to correct violations, as currently written it does not appear that the DOL or SAAs are necessarily required to utilize a compliance action plan prior to deregistration.

ABC urges the DOL to implement additional safeguards into the deregistration process by restoring the requirement for the DOL and SAAs to demonstrate persistent failures by GRAP sponsors prior to deregistration and clarifying that compliance action plans are a required step of the deregistration process.

Unfortunately, ABC is familiar with the politically motivated weaponization of GRAP approvals and deregistrations and is concerned this provision will permit additional bad behavior to the detriment of GRAP stakeholders.

**Q. Section 29.26(d) - Enforcing Reciprocity Requirements From State to State**

The NPRM establishes new requirements for SAAs to establish a process for approving GRAPs and program standards registered in other states. SAAs would be required to provide a timely response to requests for reciprocity within 45 days after receiving a GRAP sponsor’s application for reciprocity.<sup>107</sup>

ABC is encouraged by the DOL’s possible effort to ensure that SAAs do not unfairly block GRAPs that have already been approved in other states, which would greatly improve the ability of multistate and national contractors to easily participate in GRAPs. The DOL should consider additional language specifying that SAAs are required to approve reciprocity applications if there is no reasonable basis for denial based on state law or state/local

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<sup>105</sup> <https://www.federalregister.gov/d/2023-27851/p-713>.

<sup>106</sup> <https://www.federalregister.gov/d/2023-27851/p-1805>.

<sup>107</sup> <https://www.federalregister.gov/d/2023-27851/p-2096>.

licensure requirements, to ensure that SAAs do not unnecessarily deny applications due to outside influence.

### **III. ABC Comments on DOL’s Inadequate Compliance With the Paperwork Reduction Act and Regulatory Flexibility Act To Quantify Burdens on Small Businesses**

The DOL estimates the added regulatory burdens<sup>108</sup> of the NPRM on GRAP and CTE stakeholders will be \$147.9 million in the first year and a staggering \$1.3 billion over the next 10 years.<sup>109</sup> Nevertheless, the DOL has performed inadequate and incomplete estimation and analysis of the actual regulatory costs of this NPRM, as is required by the Paperwork Reduction Act, the Regulatory Flexibility Act and other federal statutes.

First, the DOL fails to effectively quantify and justify how the proposal’s significant (and underestimated) additional costs and burdens on GRAP stakeholders will result in the expansion and growth of the GRAP system as a whole, on balance, other than to point to success of GRAPs in Germany. The analysis fails to provide any measurable evidence or U.S.-specific research demonstrating better GRAP system outcomes and growth as a result of the new regulation will offset the DOL’s underestimated costs of the new regulatory burdens and loss of small and large business participation in GRAPs in markets where participation in GRAPs is indeed required by government policy.

Likewise, ABC asserts that the DOL’s analysis grossly underestimates the regulatory burdens and cost estimates on contractor and association GRAP providers/sponsors<sup>110</sup> (\$3,659 per sponsor in the first year) and CTE apprenticeship program sponsors<sup>111</sup> (\$3,516 per sponsor in the first year):<sup>112</sup>

“The E.O. 12866 analysis above quantifies several types of labor costs that would be borne by registered apprenticeship program sponsors: (1) rule familiarization; (2) on-the-job training documentation; (3) wage analysis and career development; (4) data collection and reporting; (5) program registration; (6) program standards and adoption agreement; (7) end-point assessments; and (8) program reviews. Since some sponsors can also be participating employers, the Department adds costs of recordkeeping that are imposed on participating employers to all sponsors.

As explained in the E.O. 12866 section above, the DOL estimates the following first-year costs to sponsors; each sponsor would incur a subset of these nine costs:

- Rule familiarization: \$412 per sponsor

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<sup>108</sup> See NPRM’s subject-by-subject analysis of the estimated costs and cost savings of the rule: <https://www.federalregister.gov/d/2023-27851/p-1080>. and NPRM’s Exhibit 12—Summary Table of Costs by Provision: <https://www.federalregister.gov/d/2023-27851/p-1174>.

<sup>109</sup> See <https://www.federalregister.gov/d/2023-27851/p-1176> and <https://www.federalregister.gov/d/2023-27851/p-1018>.

<sup>110</sup> See NPRM’s Exhibit 18—Estimated Cost to Registered Apprenticeship Program Sponsors: <https://www.federalregister.gov/d/2023-27851/p-1251>.

<sup>111</sup> See NPRM’s Exhibit 19—Estimated Cost to Registered CTE Apprenticeship Program Sponsors: <https://www.federalregister.gov/d/2023-27851/p-1252>.

<sup>112</sup> <https://www.federalregister.gov/documents/2024/01/17/2023-27851/national-apprenticeship-system-enhancements#p-1221>.

- On-the-job training documentation: \$1,031 per sponsor with program with less than 2,000 hours on-the-job training
- Wage analysis and career development profile: \$206 per sponsor submitting a new or revised occupation determination
- Data collection and reporting: \$111 per sponsor
- Program registration: \$103 per sponsor with a new program
- Program standards adoption agreement: \$103 per sponsor with new non-collectively bargained program standards
- End-point assessments: \$103 per sponsor per apprentice
- Program reviews: \$842 per noncompliant sponsor
- Recordkeeping: \$138 per employer”

For example, the DOL’s estimated year 1 regulatory familiarization costs for GRAP sponsors, meaning a contractor or association running a GRAP, is stunningly inaccurate. The DOL maintains the cost is just \$412 per sponsor, which is the cost of a training and development manager (private sector) spending four hours reading and reviewing the new rule (at \$103.10 per hour).<sup>113</sup>

However, at 180,000 plus words, it would take the average adult reader—at an average silent reading rate of 238 words per minute—more than 12 uninterrupted hours to read the NPRM from start to finish. Therefore, the costs for a sponsor’s employee to read the rule is actually a minimum of \$1,237.2 (12 x \$103.10) or triple the DOL’s inaccurate estimate. Of note, this does not consider the cost of additional “reviewing of the rule” activity, which is necessary as the NPRM creates dozens of new changes, reporting and recordkeeping requirements that confuse stakeholders, change existing processes and would necessitate deep analysis.

Then the sponsor would have to hire attorneys at hundreds of dollars per hour with an understanding of apprenticeship regulations and government policies specializing in labor and employment law and the construction industry to synthesize the rule and help socialize and operationalize it across the program’s key employees (HR specialist, accountant, instructor, marketer, administrator, etc.) at an additional exponential staff cost.

In response to ABC’s recent survey of ABC chapters and member contractors,<sup>114</sup> one small business ABC chapter GRAP provider estimated it would cost \$20,000 to \$25,000 in the first year just to familiarize itself with the rule across key GRAP personnel and attorneys.

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<sup>113</sup> “To estimate the cost of rule familiarization to sponsors, the Department estimates that each sponsor would have a Training and Development Manager (private sector) spend 4 hours reading and reviewing the new rule. The estimate is based on the length and complexity of this rule, and the Department’s program experience with previous apprenticeship regulations. This estimate aligns with the time estimate made in the 2016 DOL Apprenticeship Equal Employment Opportunity (EEO) RIA for the time required to read and review the rule. The Department seeks public comment on this estimate. In subsequent years, this cost is only applied to new sponsors. The estimated cost in year 1 is \$10,924,835 (= 26,492 sponsors in year 1 x 4 hours x \$103.10 per hour).” - <https://www.federalregister.gov/d/2023-27851/p-1081>.

<sup>114</sup> [ABC Survey: Biden’s Proposed Apprenticeship Rule Will Strongly Discourage Construction Apprenticeship Program Participation](#), Feb. 27, 2024.

This estimate does not account for the costs of complying with dozens of new excessive recordkeeping and reporting requirements in the rule,<sup>115</sup> which one ABC chapter GRAP provider said requires at least one new full-time employee at roughly \$100,000 in compensation (including full benefits) to ensure compliance.

Likewise, ABC challenges the DOL's regulatory familiarization cost estimate for employers participating in a GRAP. The NPRM estimates it would cost an employer participating in a GRAP just \$206.20 (2 hours at \$103.10) to become familiar with the rule.<sup>116</sup> As stated above, it would take employer participants at least 12 hours to read then rule and dozens of additional hours at thousands of more dollars to understand and socialize it within a company. For example, an ABC member contractor estimated it would take more than \$10,000 in familiarization costs to have key company personnel assess the latest changes and their impact on contracting arrangements with general contractors and subcontractors and applicable laws and evaluate if participation in a GRAP continued to make sense.

Contractor GRAP participants have reported to ABC that it is difficult to quantify the cost of complying with new recordkeeping and reporting requirements in the proposal with the limited amount of time to provide comments and the lack of clarity in the proposal. Some have said it would likely result in hiring an additional administrator at \$80,000 to \$100,000 per year or outsourcing it to ABC chapters or other providers or consultants at considerable undetermined costs, which would ultimately mean more expense for the contractor.

Other ABC contractors mentioned that the regulatory burdens would make their field employees less productive due to the time devoted to compliance efforts, which would take them away from building and other nonadministrative duties. Likewise, other contractors reported concerns that the proposal could interfere with apprenticeship and journeyworker crew mixes and labor output and productivity to comply with apprentice-to-journeyworker ratios and perhaps additional, more restrictive ratios. Both of these examples would reduce productivity and ultimately raise regulatory costs, resulting in increases to the cost of construction for government and private sector owners.

### **Small Business Concerns**

ABC appreciates that the DOL acknowledges "that this proposed rule would have a significant economic impact on a substantial number of small entities and is therefore publishing this IRFA as required." The DOL's NPRM imposes on GRAP providers, GRAP

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<sup>115</sup> See [Apprenticeships For America's eBurden Analysis](#), for a comprehensive list of the new regulatory burdens on GRAP intermediaries, sponsors, employers, apprentices and educators. Accessed Feb. 27, 2024.

<sup>116</sup> "To estimate the cost of rule familiarization to participating employers, the Department estimates that each participating employer would have a Training and Development Manager (private sector) spend 2 hours reading and reviewing the new rule. This estimate was made by dividing the time estimate of 4 hours to read and review the rule from the 2016 DOL Apprenticeship EEO RIA in half. The Department anticipates it will take participating employers less time to read and review the rule since only certain provisions will be relevant to them. The Department seeks public comment on this estimate with the goal of providing refined estimates in the final rule. In subsequent years, this cost is only applied to new participating employers. The estimated cost in year 1 is \$8,357,498 (= 40,533 participating employers in year 1 x 2 hours x \$103.10 per hour). In years 2–10, only new participating employers would incur this cost. In year 2, for example, new employers would face a cost of \$297,175 (= 1,441 new participating employers x 2 hours x \$103.10 per hour)." <https://www.federalregister.gov/d/2023-27851/p-1082>.

participants and government apprenticeship regulators in certain states novel and considerable regulatory familiarization costs, annual recordkeeping requirements and paperwork burdens, new annual reporting submissions and increased regulatory compliance costs that are much greater than the NPRM's estimates of \$3,420 per small business GRAP provider/sponsor in the first year.<sup>117</sup>

Small businesses generally have a much harder time absorbing additional regulatory costs—and their costs are proportionately greater compared to larger firms<sup>118</sup>—which will discourage small business participation in GRAPs and harm all stakeholders and taxpayers that benefit from a diverse construction industry contracting ecosystem in numerous ways. In fact, 98% of respondents to ABC's survey said that the NPRM would make it less likely to keep and/or attract small businesses to GRAPs.

In addition, ABC disagrees with the DOL's assessment that "participation in registered apprenticeship programs and registered CTE apprenticeship program is voluntary; therefore, only small entities that choose to continue [sic] participate would experience an economic impact—significant or otherwise. The Department anticipates that small businesses would continue to participate only if they believe the benefits will outweigh the costs. Because participation is voluntary, the increased burdens associated with this proposed rule may result in certain entities choosing to discontinue participation in the National Apprenticeship System. On the whole, however, the Department expects this rulemaking to facilitate the expansion and growth of registered apprenticeship."<sup>119</sup>

The DOL's approach to assessing the tradeoff costs of new regulation is concerning. It ignores the reality of federal, state and local government policies that have recently either required—or strongly encouraged and incentivized—contractor participation in GRAPs as a condition of winning taxpayer-funded government and private contracts as well as private projects receiving enhanced tax incentives. If added regulation decreases small business participation in GRAPs due to increased costs and regulatory burdens as a result of this proposal, this means small businesses will win fewer government and private construction contracts. While still technically voluntary, the DOL's blase assessment does not make sense in the real world with real jobs and businesses at stake.

Likewise, ABC maintains that the DOL NPRM will have a significant economic impact on a substantial number of small business GRAP sponsors and participating contractor employers, and looks forward to reviewing comments from the chief counsel of advocacy of the Small Business Administration on the NPRM's impact on small business.<sup>120</sup>

The numerous concerns raised by stakeholders at an SBA virtual roundtable with the DOL on the NPRM<sup>121</sup>—and echoed in ABC's comments—demonstrate that the DOL NPRM is particularly burdensome to small businesses, which make up the vast majority of construction

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<sup>117</sup> Construction-specific data is available in Exhibit 23 of the NPRM: <https://www.federalregister.gov/d/2023-27851/p-1268>.

<sup>118</sup> See Mercatus Center, George Mason University, [Regulatory Accumulation and Its Costs](#), May 4, 2016.

<sup>119</sup> <https://www.federalregister.gov/documents/2024/01/17/2023-27851/national-apprenticeship-system-enhancements#p-1214>.

<sup>120</sup> <https://www.federalregister.gov/d/2023-18514/p-201>.

<sup>121</sup> <https://advocacy.sba.gov/2024/02/06/small-business-roundtable-february-16-2024/>.

contractors, as discussed previously. Of all construction firms, 82% have less than 10 employees<sup>122</sup> and construction companies that employ fewer than 100 construction professionals comprise 99% of construction firms in the United States.<sup>123</sup> Without the financial and legal resources likely available to larger contractors, these businesses may struggle to implement the new onerous and complex GRAP regulations. In turn, this will discourage large general contractors and subcontractors from partnering with small business contractors to minimize their own risk in complying with apprenticeship requirements attached to taxpayer-funded construction projects.

In ABC's February 2024 survey on the DOL NPRM, respondents who self-identified as owning small businesses—according to the SBA's size standards—expressed the following concerns:<sup>124</sup>

- 90% stated they would be less likely to start their own company-run GRAP.
- 98% stated that the NPRM is less likely to keep/attract small businesses to GRAPs.
- 95% expressed concerns that the NPRM will increase the cost of GRAP participation.
- 84% agreed that increased paperwork burdens for tracking journeyworker instructor qualifications would make GRAP implementation more difficult.

As referenced in these comments, the majority of the construction industry and ABC's contractor members are classified as small businesses. The companies represent the backbone of the construction industry. Unfortunately, the NPRM would likely exacerbate a trend of federal regulations and policies that have reduced small business participation in government contracting and specifically federal contracting. Small businesses have suffered a 60% decline in the number of firms awarded federal contracts from 2010-2020, according to SBA data.<sup>125</sup>

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<sup>122</sup> U.S. Census Bureau 2021 County Business Patterns:

<https://data.census.gov/table?q=CBP2021.CB2100CBP&tid=CBP2021.CB2100CBP&hidePreview=true> and <https://www.census.gov/programs-surveys/cbp/data/tables.html>.

<sup>123</sup> U.S. Census County Business Patterns by Legal Form of Organization and Employment Size Class for the U.S., States and Selected Geographies: 2021, available at

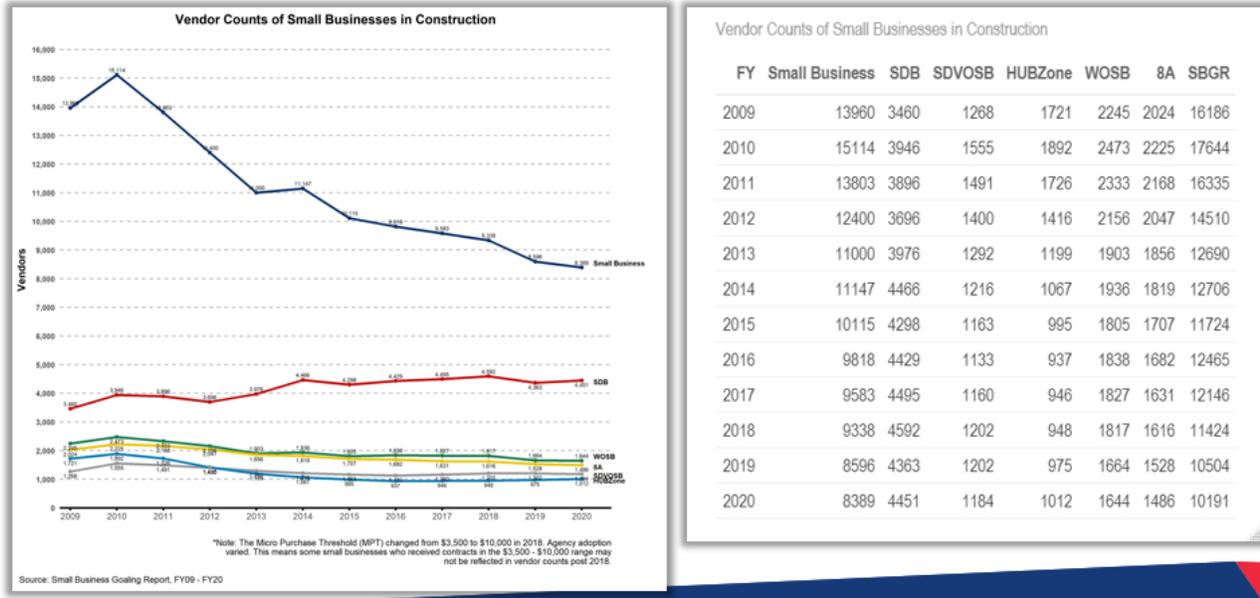
<https://data.census.gov/table/CBP2021.CB2100CBP?q=CBP2021.CB2100CBP&hidePreview=true>.

<sup>124</sup> Ibid.

<sup>125</sup> Chart available at: <https://thetruthaboutplas.com/wp-content/uploads/2022/09/60-percent-decline-of-small-businesses-awarded-federal-construction-contracts-2010-to-2020.png>. The data was prepared by an SBA economist who said, "The charts represent data on vendors who have received obligations. The definition of 'small' comes from the contracting officer's determination when the contract was awarded. The COs follow the NAICS size standards." Data is from FPDS that can be publicly accessed through SAM.gov: <https://sam.gov/reports/awards/standard>.



## Number of Construction Industry Small Businesses Awarded Federal Contracts Declined 60% From 2010-2020



The decline in small business participation in federal contracts directly correlates with increasing federal regulatory burdens. Surveys of ABC membership have found that small business contractors often choose to bid on private sector and state or local government contracts with increased regulatory clarity and lower regulatory burdens, which reduce costs related to the need for expertise from attorneys and compliance professionals.<sup>126</sup>

Finally, the NPRM’s recordkeeping and small business impact assessment is completely invalidated and inaccurate thanks to President Biden’s March 6, 2024, EO 14119. As mentioned previously, the EO’s forthcoming imposition of apprenticeship requirements on federal and federally assisted contracts and grants is likely to increase the regulatory burden of the DOL’s NPRM on new GRAP providers, GRAP participants and regulators exponentially. We recommend the DOL pause this rulemaking and reissue this NPRM’s regulatory impact estimates once EO 14119 is implemented.

### IV. Inadequate Regulatory Alternatives Considered

Executive Order 13563 requires agencies to propose or adopt a regulation “that it is tailored to impose the least burden on society, consistent with obtaining the regulatory objectives; and that, in choosing among alternative regulatory approaches, the agency has selected those approaches that maximize net benefits.”<sup>127</sup>

<sup>126</sup> [Survey: 97% of ABC Contractors Say Biden’s Government-Mandated Project Labor Agreement Policies Would Make Federal Construction More Expensive](#), ABC Newsline, Sept. 28, 2022.  
<sup>127</sup> *Ibid.*

The DOL failed to meaningfully consider alternatives that would reduce the many significant costs and burdens that the rule would impose on GRAP providers, employer and apprentice participants, and regulators.<sup>128</sup>

Instead, the DOL considered just two regulatory alternatives to reduce costs, which they did not adopt. According to the NPRM, “Under the first alternative, end-point assessments (proposed § 29.16) would not be required under the proposed rule. Under the second alternative, program reviews (proposed § 29.19) would only be conducted for cause.”<sup>129</sup>

Of note, the cost of the NPRM’s required end-point assessments<sup>130</sup> is much greater than the NPRM’s estimated \$898.5 million over the 10-year analysis period and estimated annual cost of \$2,628 per GRAP provider.<sup>131</sup> For example, some ABC chapter GRAP providers voluntarily perform end-point assessments and commented that developing, proctoring, grading and recordkeeping related to an end-point assessment costs thousands of dollars in materials and staff time and apprentice time and is much more than estimated in the NPRM’s inadequate cost analysis, but varies depending on numerous factors and government requirements.<sup>132</sup>

Likewise, the NPRM’s estimated cost to conduct program reviews every five years<sup>133</sup> was not replaced by the alternative discussed in the NPRM to conduct program reviews for cause.<sup>134</sup> ABC asserts that the NPRM’s estimate of the cost of program reviews every five years will be a much greater regulatory cost burden than estimated by the DOL. In addition, ABC member contractors have expressed concerns that this might be abused by bad-actor regulators and stakeholders at the end of the five year review period. Likewise, they are concerned about an exponential regulatory cost increase resulting from GRAP approval delays and related litigation and dispute resolution. Finally, ABC agrees with stakeholder comments that a lack of DOL personnel to review programs every five years, given the DOL’s well-documented shortage of staff, will also be problematic. For these reasons, ABC opposes the mandatory five-year program review as proposed in the NPRM and suggests adopting the alternative.

Finally, ABC was hoping the NPRM would provide additional guidance and clarity on the emerging practice of using virtual reality and other technologies for classroom and on-the-job

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<sup>128</sup> See [Apprenticeships For America’s eBurden Analysis](#), for a comprehensive list of the new regulatory burdens on GRAP intermediaries, sponsors, employers, apprentices and educators. Accessed Feb. 27, 2024.

<sup>129</sup> <https://www.federalregister.gov/d/2023-27851/p-1288>.

<sup>130</sup> <https://www.federalregister.gov/d/2023-27851/p-1109>.

<sup>131</sup> See Exhibit 18’s End-Point Assessments costs of \$69,647,000 in year 1 divided by 26,492 GRAP sponsors equals \$2,628 per GRAP sponsor: <https://www.federalregister.gov/d/2023-27851/p-1251>.

<sup>132</sup> Other ABC members and chapter providers reported that they participate in an end-point assessment via licensing exams and other industry requirements and they were generally concerned the NPRM’s new end-point assessment may be duplicative. Others administer their own end-point assessments but are concerned these may not be in alignment with potentially nebulous and overly-prescriptive government standards. However, others said the NPRM’s end-point assessment is too prescriptive and may be problematic for providers and apprentices where it is not already required.

<sup>133</sup> See NPRM’s estimated cost of program reviews every five years: <https://www.federalregister.gov/d/2023-27851/p-1159> and Exhibit 41—Alternative 2—Estimated Cost per Registered Apprenticeship Program Sponsors: <https://www.federalregister.gov/d/2023-27851/p-1292>.

<sup>134</sup> The NPRM estimates program reviews every five years will cost \$890,000 in total in the first year and then 20% more per year thereafter. The alternative would result in a total cost of just \$50,000 annually. However, this alternative was abandoned.

instruction. Permissive clarity for this exciting and efficient way to provide instruction might foster further investment into such technologies and into the GRAP system.

## **V. Career and Technical Education Regulations Not Needed**

As discussed previously in these comments, ABC members and chapters partner with local CTE providers for workforce development purposes in a variety of capacities. Many ABC members sponsor CTE programs, recruit their workforce directly from CTE providers and provide curriculum, instructors and tools for CTE providers. Likewise, ABC chapters may have similar arrangements with CTE providers.

Some CTE providers may offer GRAPs, but most predominantly offer workforce development programs that are not GRAPs. CTE programs are designed to teach career skills to middle school, high school and college students, as well as adults pursuing work-based learning.

The NAA does not grant the DOL the ability to extend regulations to CTE providers and especially those who do not provide GRAPs. Such CTE programs are “pre-apprenticeship” and as such they are beyond the DOL’s statutory authorization.

In addition, while ABC appreciates the desire of the DOL to create stronger mechanisms for engaging the CTE ecosystem and create a pipeline from CTE stakeholders into the GRAP system, we do not feel the proposed CTE regulation by this NPRM offers a compelling option for CTE providers and employers and stakeholders.

The NPRM’s needless insertion of government regulation into the CTE system is likely to create a number of problems for CTE providers and participants<sup>135</sup> without any meaningful and measurable benefits to offset added regulatory burdens, recordkeeping, reporting and other requirements that will increase costs for CTE stakeholders and reduce existing capacity, participation and CTE growth.

Likewise, when asked if the NPRM would have a positive or negative effect on CTE providers they partner with, 70% of ABC survey respondents said it would be negative, 29% did not know and 1% said it would be positive.

ABC is also concerned that the NPRM’s proposed government regulation of CTE programs will expose these programs to anti-competitive and discriminatory policies that have plagued the GRAP system in some markets, as described above. For example, California construction unions successfully lobby state and local governments to require Apprenticeship Readiness Programs and enact pre-apprenticeship requirements on certain projects or as a condition of receiving workforce development grants. These policies typically restrict programs that meet this requirement to programs that have adopted NABTU’s Multi-Craft Core Curriculum, which limits other curriculum providers and alternative learning programs and pathways.

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<sup>135</sup> See examples on pages 3 and 4 in comment from Iowa Workforce Development, submitted Feb. 27, 2024, <https://www.regulations.gov/comment/ETA-2023-0004-0073>.

While more can be done to prepare CTE participants for GRAPs, there are many pathways for a young learner to progress through numerous workforce development pathways in the skilled trades. Narrowing choice and opportunity through government regulation infiltrated by protectionist policies would not achieve the objectives of the NPRM or industry workforce development needs.

## **Conclusion**

ABC appreciates the opportunity to comment on this NPRM on behalf of ABC chapter GRAP providers, ABC contractor members, GRAP participants and GRAP providers and apprentices enrolled in ABC member and ABC chapter GRAPs. ABC remains seriously concerned that the DOL's NPRM will exacerbate the construction industry's short- and long-term skilled labor shortage.

As written, the NPRM will create billions of dollars of cost increases, additional regulatory burdens and overall confusion for the regulated community and must be abandoned entirely for practical and legal reasons. ABC urges the DOL to pause this rushed and inadequate rulemaking and further engage with stakeholders to ensure these sweeping regulatory changes can be implemented in a manner that minimizes disruption and harm to existing GRAP providers, employers and apprentice participants. ABC encourages DOL to do a better job with outreach and engagement of the employer community to see how they can tailor a GRAP system to meet their workforce development needs.

ABC would welcome the chance to facilitate additional industry outreach, collaboration and discussions on these issues. Please do not hesitate to contact us with any questions.

Respectfully submitted,



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