



VIA ELECTRONIC SUBMISSION: <http://www.regulations.gov>

August 26, 2019

Ms. Adele Gagliardi  
Administrator  
Office of Policy Development and Research  
U.S. Department of Labor  
200 Constitution Avenue, NW  
Room N-5641  
Washington, D.C. 20210

RE: Apprenticeship Programs, Labor Standards for Registration, Amendment of Regulations; RIN 1205-AB85

Dear Ms. Gagliardi,

I am writing on behalf of the National Electrical Contractors Association (“NECA”) to provide comments on the rule proposed by the Employment and Training Administration of the Department of Labor (“ETA” of the “DOL” or the “Department”) that would establish a process for recognizing Standards Recognition Entities (“SREs”), which will in turn recognize Industry-Recognized Apprenticeship Programs (“Industry Programs” or “IPs”) (the “Proposed Rule”). 84 Fed. Reg. 29970 (June 25, 2019). Although the Proposed Rule amends the existing regulations currently governing the apprenticeship system in the United States, the preamble to the Proposed Rule states that the new IRAP system is intended to run “parallel” to the existing Registered Apprenticeship Programs governed by 29 CFR 29 (“RAPs”), rather than replace it.

NECA is a construction trade association composed of more than 4,000 electrical contractor members served by 118 Chapters in the United States chartered by and affiliated with NECA. NECA employers, both small businesses and major corporations, contributed approximately \$300 million last year to apprenticeship and training funds across the country that its chapters jointly sponsor with the International Brotherhood of Electrical Workers (“IBEW”). NECA is proud of its commitment to training its members’ employees and to building the most successful and well-regarded training programs in the world. Over the last 70 plus years, NECA employers contributed many billions of dollars to apprenticeship funds in the electrical industry. That commitment is done at great sacrifice to our employer members and our members’ employees. Commensurate with our experience and long-standing financial commitment, we are hopeful that our views on the future of the apprenticeship system as modified by the Proposed Rule will bring insight and balance to the Department’s thoughtful reconsideration. While we applaud the Trump Administration’s desire to increase employee training in our great country, we are concerned that the Proposed Regulation could weaken the existing apprenticeship model without some recommended changes being made to the final rule.

NATIONAL ELECTRICAL CONTRACTORS ASSOCIATION

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I. The Proposed Rule Should Be Limited to Occupations in Industries that Give Rise to the “Skills Gap”

Until the IRAP model has demonstrated success and given the concern that the Proposed Rule will cause harm to RAPs, NECA believes strongly that SREs and IPs should be limited to occupations in industries identified by objective data as representing the “Skills Gap” that prevent an open job from being filled because there is no qualified American to perform the work. As the Department is aware, DOL’s Task Force on Apprenticeship Expansion’s Final May 10, 2018 Report to President Trump (The “DOL Task Force Report”) recommended that the IRAP model be used on a pilot project in an industry where RAPs do not generally provide training opportunities before it is expanded - an idea, which was echoed in the DOL’s proposed rule by the exclusion of the construction industry. (Executive Summary, pg. 11 and Recommendation 14: Pilot Project, pg.34)

Naturally, a determination of which occupations should be included in the pilot project depends on an analysis of objective data indicating which occupations are not being filled because of the “Skills Gap.” However, the existence of the Skills Gap in any given occupation or industry that does not already have training opportunities through RAPs is not easily determined. The Department of Labor Bureau of National Statistics notes that its data can be used by the government to inform the types of jobs for which it should encourage training but only designates the information, health care and social assistance, and finance and insurance industries as those with “low hires and high job openings”.

The Workforce Information Advisory Council recommended in its January 2018 report to DOL Secretary Acosta that DOL develop better data regarding credentialing and state apprenticeship data so that it could accurately determine apprenticeship policy. (See Recommendations 2 and 5 of the WIAC Report, pgs. 6-8 & 12). It is of particular concern that apprenticeship enrollment data is not available for 27 of 53 states and territories (AZ, CT DE, DC, FL, Guam, HI, KS LA, K Y, ME, MD, MA, MN, MT, NC, NM, NY, NC, OH, OR, PA, RI, VT, VA, WA, and WI omit apprentice enrollment data). In addition to the importance of using the data to determine which, if any, occupations or industries should be included in a pilot project, any assessment of the success of SREs and IPs relative to RAPS must include this State data.

A decision to further solidify the construction industry exemption defined in the Proposed Rule is also supported by the dramatic increase in RAPs. The DOL Task Force Report noted that there has been a dramatic 40% growth in RAPs since 2013 and that the current number of apprentices is 125% higher than the 20-year national average. (See DOL Task Force Report, pgs. 15 & 16). Those numbers strongly suggest that efforts to address concerns regarding any “Skill Gaps” issues could be done through the existing RAP model. While there have been general criticisms of the “cumbersome” registration process and the “uneven interpretations” of rules, specific modifications could be proposed to the existing system.

Based on the above and in response to the Department’s request (84 Fed. Reg. 29972), we believe that it can best support the adoption of apprenticeship opportunities in industries lacking such opportunities rather than sectors that have effective and substantially widespread registered

apprenticeship programs by limiting the Proposed Rule to IRAPs in the industries identified in Bureau of Labor Statistics report, information technology (including cyber security), health care and social assistance, and finance and insurance. This position is also supported by the industries permitted to apply for AAI Grants authorized under the American Competitiveness and Workforce Improvement Act of 1998 (“ACWIA”). (The ACWIA was originally codified at 29 USC 2916a and transferred to 29 USC 3224a). AAI Grants only permit grant applicants for the following occupations: 1) Information Technology; 2) Cyber Security; 3) Advanced Manufacturing; and 4) Health Care. (FOA-ETA-19-09, CFDA# 17,268). While we understand and appreciate the Trump Administration’s desire to expand training opportunities, we strongly urge the Department to, in conjunction with objective data, further solidify the construction industry exception, and follow the DOL Task Force’s pilot project recommendation by limiting the industries to which the Proposed Rule would apply to those referenced in the Bureau of Labor Statistics report or to those permitted to apply for AAI Grants.

## II. The Construction Exception Should be Made Permanent

The construction exception contained in the Proposed Rule should be made permanent and expanded to include all training provided by existing RAPs for work in the construction classifications under the NAIC. The definition in the Proposed Rule attempts to use the definition of a “construction plan” for the sake of multiemployer withdrawal liability as a proxy for the exception from the Proposed Rule for RAPs that already provide apprenticeship opportunities in the construction field. That definition must take into consideration the full scope of apprenticeship and training provided by RAPs in the electrical industry.

The NAIC Code for “construction” better catches the scope of apprenticeship and training afforded by NECA-sponsored RAPs. In order to enforce the restriction, the Proposed Rule should require that SREs and IPs publicly provide the NAIC and cross referenced ONET codes on their applications and quarterly disclosures. Given the estimated \$300 million financial commitment to apprenticeship training that NECA employers make every year, it is imperative that the Proposed Rule be amended to provide a permanent exemption for all occupations associated with our “gold-standard” apprenticeship.

The exemption for the construction industry should be made permanent because any ongoing calculation of percentages is limited by a lack of state apprenticeship data discussed above. In the absence of such data, it would be impossible to fairly calculate the 25% threshold. Moreover, the historic financial commitment made by NECA and other building trades’ employers merits a permanent exclusion from the IRAP structure.

NECA is grateful for the proposed rules inclusion of a construction industry exception and it is not lost on our contractors that permitting IRAPs in the construction industry would be damaging to the gains that NECA’s affiliated joint apprenticeship committees have earned since the passage of the Fitzgerald Act. The decisions to require set hours of mandatory OJT, related instruction, specific apprentice-journeymen work ratios, safety training, community outreach, and other hallmarks of registered apprenticeship programs were born of calculated decisions to build an apprenticeship “brand” in the electrical industry. Again, that brand is now the “gold standard.”

NECA recommends that the exclusion of the Construction Industry be included in the final rule but that the scope of the Construction Industry definition be broadened to include the NAIC construction codes and to permanently bar the Department from recognizing any SRE that seeks to or actually establishes any standards or sets or prepares to set any competencies for the construction industry or from recognizing or continuing to recognize any IP that provides any training with respect to any construction industry training or skills. In doing so the Department will ensure that the “gold standard” brand will be able to continue to thrive and prosper.

### III. The Proposed Rule Must Adequately Protect Apprentices

#### a. Conflicts of Interest

The integrity of the IPs is compromised by conflicts of interests, and the Proposed Rule’s suggested solution of requiring different employees of an employer to administer the IP and SRE is insufficient to adequately protect IP trainees and the market. A number of steps outlined below should be implemented to provide protections to trainees and employers adopting or considering adopting IPs and to address the inherent conflicts:

- i. SREs and their affiliates should not be permitted to be IPs, provide Services to IPs, provide services to employers or their affiliates considering IPs, or provide services to any entity or person that would tend to effect its ability to exercise impartial and prudent judgment in the exercise of its recognition or oversight of IPs;
- ii. SREs applications should only be accepted from non-profits;
- iii. SREs should be required to provide evidence of sufficient non-grant funds committed to the SRE and available to the SRE on an ongoing basis in order to prove it is capable of providing standards and oversight of IPs compliance with those standards;
- iv. ETA should have direct oversight of SREs and IPs and should conduct periodic compliance reviews of them no less than every two years irrespective of whether it receives information that the entity is not in compliance;
- v. SREs and IPs must produce any information or documents requested by ETA in connection with the SRE’s or IP’s compliance or activities;
- vi. SREs must be in compliance with the requirements of the regulations and applicable law, substantial compliance is not sufficient [29.27(a)(1)];
- vii. SRE’s oversight of IPs must in fact result in quality control resulting in the IP’s compliance with the standards and other requirements of the regulation, mere “reasonable” and “effective” quality control is not sufficient [29.22(h)];
- viii. Amounts spent on setting standards, training and OJT (other than salary) should be paid by a trust that receives all government grants, amounts paid by trainees, and employer contributions to the IP or the SRE and payments to the SREs for “applications” and “administrative fees” should be considered employer contributions to the trust;
- ix. SRE’s should be recertified every two years using a newly completed application, especially in the beginning of the unproven IRAP program;

- x. The specific policies and procedures required of SREs and IPs should be included in the final regulation and should at least address anti-harassment training in compliance with 29 CFR 30, HIPAA compliance, whistle blower, conflicts of interest, intellectual property, complaints, lobbying, expenses, investments, and gifts and entertainment, model policies for which should be prepared by the ETA;
- xi. SREs and IPs should be required to obtain Fidelity bonds and insurance for errors and omissions, directors and officers, negligent training, property, fiduciary acts, and general liability;
- xii. SRE expertise must be proven before subjecting trainee to standards not properly formed by qualified individuals using standards similar to those used to apply for the AAI Grants under the AICWA;
- xiii. As a standard setting entity, SRE expertise requirements should be express, clear, and more demanding;
- xiv. A written agreement between the IP and the trainee should be prepared by the ETA based upon the SRE's application, the standards set by the SRE, and the benefits to be provided to the trainee by the IP;
- xv. IP trainees' OJT should be based on employment by an employer, not an unpaid internship or contractor work;
- xvi. The complaint process outlined in the Proposed Rule should not be the exclusive means of resolving a complaint, the timing limitations should be based on the complainant's knowledge, and the recognized complainants should include third parties including other industry employers or unions;
- xvii. An IP should lose its status when an SRE that recognized it is no longer recognized by the ETA. Waiting a year after the SRE is derecognized to derecognize the IP would leave the IP without any oversight and would encourage a race to the bottom for lowered training standards by allowing the IP to shop for a replacement SRE; and
- xviii. ETA decisions to find non-compliance issues and derecognize an SRE should be subject to internal review at ETA before it is referred to an ALJ and time limits for such appeals should match those of the 29 CFR 29a.

b. SRE and IP Disclosure

The Proposed Rule should require SREs and IPs to publicly disclose additional information on a quarterly basis in order to allow trainees to determine whether it is worthwhile for the trainee to enter the IP, to allow IPs to determine whether they would like to seek recognition from an SRE, and to allow the market to determine the relative worth of the credential. In particular, the IPs and SREs should be required to publicly disclose at least the information required of AAI Grant recipients. The ETA should assemble that information for each SRE and IP and those relative figures should be published in a comparative format, including similar information obtained by the ETA and the State Registration Agencies for RAPs. That information should include, at least, the completion rates of interim credentials and completion of the entire program, the 6 month and 12 month employment results of trainees with both salary and benefits noted and whether the employment was with the employer that adopted the IP, and a description of any complaints lodged and the results. The cost of the reporting should be minimal since the AAI

Grants process already has a centralized electronic system designed for reporting on a quarterly basis.

#### **IV. There Should Be No Expedited Pathway Available for Registered Apprenticeship Funds**

Existing Apprenticeship Plans that have not sought to be RPs will likely try to become IRAPs and the expediting of IRAPs to RAPs will have the practical effect of lessening the scrutiny of such programs because of demands on Department Staff and the limitations of time. Since there is no difference in the RAP standard, there should be no difference in the amount of time the Department is required to ascertain whether those standards are met. The requirements of the IRAPs is so much less than that of a RAP that there would be no decrease in time in order to determine whether the RAP standards are met.

#### **V. Estimated Costs of the Proposed Regulation Are Understated**

The Proposed Regulation will have a significant economic effect as defined by the Congressional Review Act because the quantitative and qualitative costs of IRAPS are underestimated and IRAPs will result in greater costs to employers and society than set forth in the Proposed Rule. First, the Proposed Rule fails to take into account the devaluing effect the Proposed Rule will have on the RAP apprentices' credentials because of the lowered standards associated with the IRAPs versus the RAPs. In addition, the AAI Grant Program is not the best guidepost for estimating SRE applications because the standard for IRAPs is lower than those for RAPs and AAI Grants are limited to H1-B occupations, give preference for inclusion of under-represented populations, require a 45% applicant match, require more fulsome reporting, require detailed information on curriculum and training, require documentation of instructor qualifications, and are limited to non-profit organization applicants. Moreover, additional entities will be required to familiarize themselves because they will need to decide whether they apply to become SREs which means that the total number of SRE applications is not the proper measure of the time and cost required for familiarization with the Proposed Rule. And, too, the summary of costs is understated because it does not reasonably estimate the cost of running an apprenticeship program and understates the amount of time required for familiarization and setting up an SRE and IP. Similarly, IP costs are understated because SREs will require a higher annual fee employer contribution to adequately monitor and enforce quality, performance, and compliance of IPs.

#### **VI. IRAP Grant Eligibility**

Finally, IRAPs should not be permitted to obtain grants on the same basis as RAPs because they do not provide the same protections to apprentices with respect to standards of instruction, quality of instructors, progressive wage increases, or promotion of under-represented populations through compliance with 29 CFR 30.

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We appreciate the opportunity to provide these comments to ETA. We welcome the opportunity to further explain or answer any questions about our comments.

Sincerely,

A handwritten signature in black ink, appearing to read "T. David Long". The signature is fluid and cursive, with the first name "T. David" and the last name "Long" clearly distinguishable.

T. David Long  
Chief Executive Officer, NECA