



August 26, 2019

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

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

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

Dear Ms. Gagliardi,

The International Brotherhood of Electrical Workers (“IBEW”) and the National Electrical Contractors Association (“NECA”) are submitting these comments in response to the Department of Labor’s (the “Department”) notice of proposed rulemaking, which seeks to create a new apprenticeship model. 84 Fed. Reg. 29970 (June 25, 2019). The IBEW represents approximately 775,000 active members and retirees who work in the public utility, telecommunications, manufacturing, broadcast, and electrical construction industries, with nearly 400,000 of the IBEW’s members employed in the construction industry. NECA is the voice of the \$171 billion electrical construction industry that brings power, light and communication technology to buildings and communities across the U.S. Its nearly 4,000 member companies and 118 local chapters advance the industry through advocacy, education, research and standards development.

Together, the IBEW and NECA have developed the preeminent Registered Apprenticeship Programs in the United States. Our programs prepare apprentices to work in the dangerous and demanding electrical construction industry, and we are committed to maintaining their high standards. Accordingly, the IBEW and NECA have a vested interest in ensuring that the Department's proposal does not put at risk our Registered Programs or the quality of our apprentices in the electrical construction industry.

Under the Department's proposal, it would recognize Standards Recognition Entities ("SREs"), which would have exclusive authority to approve Industry-Recognized Apprenticeship Programs ("Industry Programs"). These Industry Programs would "operate in parallel with the existing registered apprenticeship system." 84 Fed. Reg. at 29970, 29980. But as the proposal acknowledges, "apprenticeship expansion should not come at the cost of existing registered apprenticeship programs." *Id.* at 29980. To avoid undercutting existing Registered Programs, the vast majority of which are in the construction industry, the Department has wisely stated that it will "not, at least initially, accept applications from SREs seeking to recognize apprenticeship programs. . . in construction." 84 Fed. Reg. at 299981.

We applaud the Department's decision to exclude Industry Programs from the construction industry and for recognizing the unique nature of our apprenticeship model and its proven success. That said, we believe the Department's proposal does not go far enough to protect existing construction apprenticeship programs and apprentices within the industry. We urge the Department to permanently refuse to accept applications from SREs seeking to recognize Industry Programs in the construction industry. In addition, we urge the Department to clarify the scope of the exemption for the construction industry to ensure that all building and construction activities are covered by the exemption.

**I. The IBEW and NECA have Developed an Extensive, High-Quality Apprenticeship Training System.**

For almost 80 years, the IBEW and NECA have been leading the establishment of training and safety standards in the electrical industry. In September of 1941, following a cooperative effort by the IBEW, NECA, and the Federal Committee on Apprenticeship, the National Apprenticeship Standards for the Electrical Construction Industry were established (as amended, the “Standards”).

In 1947, the predecessor to the current Electrical Training Alliance (the “Alliance”) was established by the IBEW and NECA. The Alliance continues to work, in cooperation with the Employee Training Administration (the “ETA”), to maintain those Standards today. Naturally, the Standards have evolved over the last 72 years alongside technology. They now incorporate both classroom and on the job training and provide for a blended learning program that allows apprentices to complete aspects of the training remotely. In addition to maintaining the national Standards, the Alliance continues to educate training plan fiduciaries, develop curriculum, and promote excellence in training plan instruction and practices.

Jointly administered trusts, composed of equal numbers of trustees from IBEW Local Unions and NECA Chapters, independently adopt their individualized Standards. The more than 300 IBEW-NECA joint apprenticeship training trusts (“JATCs”) across the country provide the training to apprentices and journeyworkers in the electrical industry pursuant to those Standards. Those JATCs provide training without any cost to taxpayers and in most instances without cost to apprentices. The apprentices earn while they learn. Each year, JATC apprentices pay in excess of 600 million dollars in taxes.

IBEW-NECA JATCs provide a path to steady middle-class employment for countless workers. Many IBEW/NECA apprentices came into the JATC programs from dead-end, unsafe jobs. In addition to meaningful employment, these workers now have employer-sponsored health

care coverage for not only themselves, but for their entire families. They also have retirement plans and benefits to look forward to when the time comes. Over 350,000 electrical apprentices have been trained to become journeyworkers by these NECA/IBEW affiliated registered apprenticeship programs. These 350,000 success stories are a direct result of the gold standard of registered apprenticeship plans utilizing the highest national standards developed by the Alliance.

## **II. The Department Should Permanently Exclude the Construction Industry.**

The IBEW/NECA Registered Programs discussed above have developed alongside the Department's continued implementation of the National Apprenticeship Act ("NAA"), which Congress enacted in 1937. 29 U.S.C. § 50. In the NAA, Congress directed the Department "to formulate and promote the furtherance of labor standards necessary to safeguard the welfare of apprentices." The IBEW/NECA partnership has worked closely with the Department since the enactment of the NAA to develop these standards, and to ensure our programs maintain their high quality by, among other things, complying with the Department's standards. 29 CFR, Parts 29 and 30. In fact, in 1941, the IBEW and NECA were among the first to create a national committee devoted to developing model guideline standards for use by local apprenticeship programs.

The IBEW and NECA, through the ALLIANCE, continue to develop state-of-the-art guideline standards, which are adopted by each of our programs. These model guideline standards (1) clearly set forth the on-the-job training and related instruction requirements for apprentices; (2) standardize the wage progression applicable to apprentices; (3) ensure that apprentices' performance is regularly reviewed; (4) set appropriate journeyworker to apprentice ratios; (5) require mandatory training for apprentices; and (6) promote continuing education for apprentice instructors. *See, e.g.*, ETA Bulletins FY 2011-25 (Inside Wireman); FY 2012-16 (Outside Journeyworker Lineman (Line Maintainer)); FY 2012-21 (Residential Wireman); and FY 2012-23

(Telecommunications Technician).

Under the revised CFR Part 30 requirements, our programs also take further steps to protect apprentices. Our programs have procedures in place to ensure that apprentices and applicants are not discriminated against because of their race, color, religion, national origin, sex, sexual orientation, age, genetic information, or disability. Our programs also publish an equal employment opportunity pledge and provide anti-harassment training to apprentices and others who regularly work with apprentices.

In addition, our Registered Programs make every effort to ensure that apprentices are trained in a safe environment. Construction as a whole is a dangerous industry, with recent data showing that 19% of private-sector workplace fatalities occurred in construction, even though construction represents only 7% of the overall workforce.<sup>1</sup> The electrical construction industry is no different. Between 2003 and 2017, there were approximately 2,788 workplace electrical fatalities in the United States; of those, 54% occurred in the construction industry.<sup>2</sup> Younger, less experienced workers are far more likely to die from electrical injuries than older, more experienced workers. In fact, workers ages 18 to 19 experienced fatalities at 2.4 times the average, and workers between ages 20 and 24 experienced fatalities at 1.8 times the average.<sup>3</sup>

Given these dangers, our Registered Programs take a number of steps to reduce the risks to our apprentices. Our standards, for example, require that employers train apprentices to work safely and further require that employers ensure that apprentices receive on-the-job training in

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<sup>1</sup> Bureau of Labor Statistics, Number of fatal work injuries, by industry sector, 2017, available at [www.bls.gov/charts/census-of-fatal-occupational-injuries/number-and-rate-of-fatal-work-injuries-by-industry.htm](http://www.bls.gov/charts/census-of-fatal-occupational-injuries/number-and-rate-of-fatal-work-injuries-by-industry.htm).

<sup>2</sup> ESFI, Occupational Injury and Fatality Statistics, available at [www.esfi.org/workplace-injury-and-fatality-statistics](http://www.esfi.org/workplace-injury-and-fatality-statistics).

<sup>3</sup> *Id.*

facilities and environments that are in compliance with Occupational Safety and Health Act standards. Our Registered Programs also include extensive safety training in their required in-class training, and under our standards, employers providing on-the-job training are responsible for ensuring that apprentices receive work assignments they can safely perform. *See, e.g.*, ETA Bulletin FY 2011-25.

While we acknowledge the construction industry exemption from these Industry Programs, we hold concerns that these Industry Programs are not subject to the same requirements the Department imposes on Registered Programs. Unlike Registered Programs, which are approved and monitored by the Department and/or State Apprenticeship Agencies (“SAA”), Industry Programs will be exclusively monitored by SREs. The proposed regulation, however, requires very little from SREs, imposes almost no standards on Industry Programs, and essentially removes the Department from the process of evaluating either the SRE or Industry Programs’ standards. Nothing in the proposed regulation ensures that apprentices in Industry Programs will receive sufficient classroom or on-the-job training, or that they will be supervised in a way to ensure their safety. The requirement that Industry Program apprentices be paid only the minimum wage, with no guaranteed increases during the term of their apprenticeship, coupled with the lack of restrictions on apprentice/journeyperson ratios, will undercut Registered Programs by flooding the labor market with low-wage, undertrained workers.

As the Proposed Rule currently states and due to the proven success of our Registered Programs, it is clear that Industry Programs have no place in the construction industry. Unlike the untested Industry Programs our Registered Programs have decades of experience training apprentices not only to meet the significant demands of the industry, but also to perform their jobs safely. We therefore urge the Department to advance their exclusion further by permanently

exempting the construction industry.

### **III. The Department Should Clarify the Description of the Construction Industry for the Purpose of the Exemption.**

Under the proposed regulation, the Department will “only recognize SREs that seek to recognize Industry Programs in sectors without significant registered apprenticeship opportunities.” 84 Fed. Reg. at 29980. As stated previously, the Department has recognized the construction industry is one sector in which there are significant registered apprenticeship opportunities. 84 Fed. Reg. at 30015. To effectuate the exclusion for the construction sector, the proposal defines a program in the construction sector as one that “equips apprentices to provide labor whereby materials and constituent parts may be combined on a building site to form, make, or build a structure.” 84 Fed. Reg. at 29981. The description is too narrow to adequately ensure that the Department does not recognize SREs in the construction industry.

To better accomplish the Department’s goal to “avoid undercutting the current Registered Apprenticeship system where it is widespread,” the Department should clarify that the exemption for the construction industry applies to the construction sector as defined by the North American Industry Classification System (“NAICS”). NAICS defines construction sector activities as, “erecting buildings and other structures (including additions); heavy construction other than buildings; and alterations, reconstruction, installation, and maintenance and repairs.”<sup>4</sup> This definition more accurately encompasses the full scope of the construction industry, and it is a definition with which the Department is already familiar, having used it in the proposal to determine the significant number of apprenticeship opportunities already available in the construction industry. 84 Fed. Reg. at 29980. Moreover, it is the definition used by the National

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<sup>4</sup> North American Industry Classification System, Executive Office of the President, Office of Management and Budget (1987) at 16.

Labor Relations Board in a current rulemaking. 84 Fed. Reg. 39930, 39954-55 (August 12, 2019).

Clarifying the sector as one where the apprentices are involved with “erecting buildings and other structures (including additions); heavy construction other than buildings; and alterations, reconstruction, installation, and maintenance and repairs” better matches what apprentices in the construction industry Registered Programs do on a daily basis. For example, it is common in the electric generation industry for IBEW/NECA apprentices not only to build powerhouses, but also to maintain and repair them. Similarly, IBEW/NECA apprentices not only install residential and commercial wiring and equipment, but also service that wiring and equipment.

Additionally, the IBEW and NECA recommend the Department require each SRE applicant and each Industry Program to disclose the O\*NET Code for all occupations for which they intend to provide training. By requiring the O\*NET Codes, which the Bureau of Labor Statistics has matched to NAICS Codes, the Department will have the information it needs to ensure that each SRE applicant and Industry Program does not provide training within the construction industry. Describing construction in a comprehensive fashion and requiring O\*NET Codes will ensure the construction industry can continue to excel in the execution of its apprenticeship programs without the presence of Industry Programs and will allow the Department and stakeholders to easily determine whether a proposed Industry Program is within the construction industry.

### **Conclusion**

We at the IBEW and NECA support the Department of Labor’s goal to expand apprenticeship opportunities. In doing so, we believe that as the Department moves forward with its proposal to implement Industry Programs, it can mitigate the risk of substantially harming Registered Programs by permanently excluding the construction industry and by clarifying the



description of construction to ensure that SRE's will not recognize Industry Programs within the construction industry. These revisions will allow for construction industry apprenticeships to continue to function as the gold standard for apprenticeship programs across the country and allow the Administration to reach its goal of expanding apprenticeships to other industries.

Sincerely,



Lonnie R. Stephenson  
International President  
International Brotherhood of Electrical Workers



T. David Long  
Chief Executive Officer  
National Electrical Contractors Association

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