



March 18, 2024

**VIA ELECTRONIC SUBMISSION**

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

**RE: Public Comments on Proposed Rule, “National Apprenticeship System Enhancements,” 89 Fed. Reg. 3118 (Jan. 17, 2024)  
RIN 1205-AC13**

Dear Ms. Paczynski:

The Sheet Metal and Air Conditioning Contractors’ National Association (SMACNA) is supported by more than 3,500 construction firms engaged in industrial, commercial, residential, architectural and specialty sheet metal and air conditioning construction throughout the United States and North America.

SMACNA applauds the comprehensive policy review and draft proposal represented by DOL’s long overdue collaborative effort to reform the registered apprenticeship program (RAP). SMACNA has long been an outspoken champion advocating enhanced and vigorously enforced National Apprenticeship standards. In fact, our contractor members have been a leader over decades supporting and investing far above the industry standard in RAPs. We believe that by including the suggested reforms offered in our comments, the final rule will not only help alleviate the shortage of highly skilled workers in the face of an increasing number of multi-year national construction projects but build a far more robust RAP network for the future.

Without the endorsed RAP reforms, the industry’s ability to meet ever changing design complexities, and owner demands for project excellence will continue to be compromised. Simply put, DOL has reviewed this crisis in the skilled labor marketplace and the considered owner-developer concerns and proposed many highly valued and long overdue RAP reforms.

While many necessary improvements are featured in the Proposed Rule, unless DOL includes SMANCA’s suggested reforms in the final rule, we and other leading RAP advocates will be challenged to meet the core function of highly valued RAPs.



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**I. SMACNA AND SMART’S “GOLD STANDARD” RAPs.**

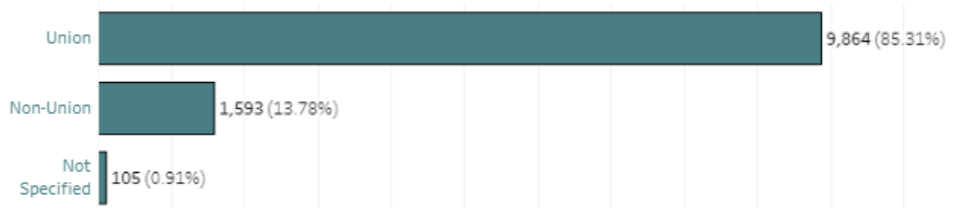
SMACNA and its labor partner, the International Association of Sheet Metal, Air, Rail and Transportation Workers (“SMART”), have jointly established the International Training Institute (“ITI”) which supports apprenticeship and advanced career training for union workers in the sheet metal industry throughout the United States and Canada. The ITI produces a standardized sheet metal curriculum supported by a wide variety of training materials free of charge to sheet metal apprentices and journeymen. Through the ITI, SMACNA and SMART support 148 locally established RAPs, which are administered by privately funded local joint apprenticeship and training committees (“JATCs”). These RAPs tailor their training to the needs of the local markets, apprentices, and contractors.<sup>1</sup>

RAPs – like the JATCs sponsored by SMACNA and SMART – are the “Gold Standard” for developing and training the highly-skilled workforce needed in a modern economy. These programs are a proven solution for businesses to recruit, train, and retain highly skilled workers.

The RAPs sponsored by SMACNA contractors and their SMART labor partners, had a national and local combined training investment of **\$57 million** dollars each year in their training programs, with more than 14,000 pre- and indentured apprentices being trained as of the beginning of 2023.<sup>2</sup> The millions of dollars in annual investments do not even account for the **billions of dollars** in in fixed assets, such as training JATC facilities and equipment, that SMACNA’s members and SMART have built around the nation.

According to the DOL’s own statistics,<sup>3</sup> in FY2024, union affiliated JATCs like those sponsored by SMACNA and SMART are presently training over **85 percent** of the sheet metal workers in the United States:

By Union Status



<sup>1</sup> SMACNA and SMART also jointly sponsor the National Energy Management Institute Committee (“NEMIC”), which affords apprentices and journeypersons the opportunity to obtain third-party certification of their skills through the International Certification Board/Testing, Adjusting and Balancing Bureau (“ICB” and “TABB”).

<sup>2</sup> Available at <https://www.sheetmetal-iti.org/AboutUs>.

<sup>3</sup> Available at <https://www.apprenticeship.gov/data-and-statistics>.

SMACNA is but a small part of the vast network of certified and registered apprenticeship programs already available in the unionized construction industry. Skilled craft apprenticeship programs represent approximately **66 percent** of all RAPs in the United States.<sup>4</sup> Among construction apprentices, **74 percent are** trained in the unionized construction sector. The apprenticeship infrastructure of North America’s Building Trades Unions includes more than 1,900 training centers across the United States and Canada and is privately funded through collectively bargained contributions that exceed \$1.3 billion per year.

In fact, if the unionized construction industry’s JATC system was a public university system, it would be the 4<sup>th</sup> largest public university system in the United States – larger than the University of California and the University of Texas.<sup>5</sup> According to a 2000 study by the University of Texas, the average construction contractor realizes returns as much as \$3 for every \$1 that is invested in RAPs – like the JATCs sponsored by SMACNA and SMART.<sup>6</sup> Those gains arise because craft laborers are more productive, work more safely, and deliver quality craftsmanship that is done right the first time.<sup>7</sup>

As outlined in their joint comments,<sup>8</sup> SMACNA supports the DOL’s attempt to modernize National Apprenticeship standards, including:

- Strengthening of labor standards, quality, and worker protections by making occupational skills and training more portable, enhancing alignment with postsecondary education, and providing better performance data.
- Better defining roles for State Apprenticeship Agencies and other stakeholders within the National Apprenticeship System.
- Codifies the Office of Apprenticeship’s role for national leadership, promotion, and standards.
- Promoting apprenticeship pathways, including pre-apprenticeship and apprenticeship readiness programs, by expanding performance and data requirements to improve accountability, transparency, and program outcomes.

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<sup>4</sup> NABTU, *Construction Apprenticeship: The “Other Four Year Degree”* (2015).

<sup>5</sup> *Id.*

<sup>6</sup> *Id.* (citing Construction Industry Institute, University of Texas, *Construction Industry Craft Training in the United States and Canada* Research Summary 231-1 (Aug. 2000).

<sup>7</sup> *Id.*

<sup>8</sup> See Joint Comments of the International Association of Sheet Metal, Air, Rail and Transportation Workers (SMART) and the Sheet Metal and Air Conditioning Contractors’ National Association (SMACNA) regarding, “*National Apprenticeship System Enhancements*,” 89 Fed. Reg. 3118 (Jan. 17, 2024).

- Creating a student-centric model of Registered Apprenticeship, called Registered Career and Technical Education Apprenticeship designed to make them more seamless for full-time high school and community college students to enroll in a Registered Apprenticeship. This approach is modeled after high-quality youth apprenticeship systems in states across the country.

SMACNA applauds this DOL effort, and the countless hours the department expended for a process ignored for decades until we raised the issue in the White House Task Force hearing testimony and discussions. SMACNA has long been a champion of National Apprenticeship standards over decades of supporting and investing far above the industry standard in RAPs. Along with other quality contractors, this rule will help alleviate the shortage of highly skilled workers in the face of an increasing number of national construction projects.

Decades ago, it was clear that a skilled labor crisis was coming and was caused by an insufficient commitment to registered apprenticeship training investment across too much of the construction industry for far too long. In addition, there has been a persistent aversion to investing in job training in any formal or consistent manner outside the organized construction employer sector. These corner-cutting and improvised sham training efforts by non-union contractors opposing the registered apprenticeship model have noticeably impacted workforce supply and quality. Without question, the industry's ability to meet ever changing design complexities, and owner demands for project excellence have been and continue to be compromised. Simply put, DOL has reviewed this crisis in the skilled labor marketplace and the considered owner-developer concerns and proposed long overdue RAP reforms.

Only by expanding the support for registered apprenticeships can the industry meet the demand for top-flight contractors employing a highly skilled and trained workforce based upon the registered apprenticeship model, considered the 'gold standard' for training across the globe. The Proposed Rule also affirms that RAPs have a proven track record of getting workers into good-paying jobs with a benefit structure befitting skilled long-term careers not just transient or temporary work.

The proposed changes would reinforce the principles of a changing construction workforce. It reflects today's and the future's workforce featuring reforms to worker diversity, equity, inclusion, and accessibility, and extend worker protections for apprentices across the industry sectors now benefiting from Registered Apprenticeships.

While SMACNA members represent but a fraction of the vast network of certified RAPs in the nation, our members do cosponsor and provide a substantial majority of the highly skilled RAPs and journey workers to a highly valued segment of the skilled construction industry.

Nevertheless, some of the reforms in the Proposed Rule could present challenges unique to the JATCs sponsored by SMACNA and SMART if left unaddressed. Thus, as outlined below, SMACNA recommends that certain provisions of the Proposed Rule be revised to lessen any

impact on these “Gold Standard” programs that train more than 85 percent of the nation’s sheet metal workforce.

## **II. THE U.S. IS FACING A SEVERE SKILLED LABOR SHORTAGE.**

The construction industry is currently facing a nationwide skill shortage. A recent report from McKinsey & Company found that, in October 2021, 402,000 construction positions remain unfilled, which is the second-highest level recorded since data collection began in December 2000.<sup>9</sup> Another study found that the construction industry will need to attract nearly 650,000 additional workers on top of the normal pace of hiring in 2022 to meet the demand for labor.<sup>10</sup> The increase in vacancies is coupled with the fact that there is an aging pool of skilled workers. The median age of a sheet metal worker is 44.

RAPs – like the JATCs sponsored by SMACNA and SMART – are the solution to this problem. SMACNA and SMART’s partnership has been providing skilled, trained, and certified workers to respond in a timely manner to meet industry demands for more than a century. SMART, with more than 203,000 members, provides classroom, hands-on, on-the-job and rapid response training to its members through federal and state registered apprenticeships in more than 150 state of the art training centers located throughout the United States and Canada.

Academic research has found that:

Apprenticeships with union participation were found to have much higher enrollments, greater share of women and ethnic/racial minorities. These programs also have a markedly better performance for all groups on rates of attrition and completion.

Joint apprenticeship programs in the building trades remain vital and continue to improve, as demonstrated by recent accomplishments, such as the establishment of national training funds and national instructor preparation, arrangements for college credit for learning in apprenticeship, and expansion of journey-level update training.<sup>11</sup>

Indeed, research has consistently shown that: (1) “union programs enroll the majority of building trade apprentices,” (2) “the apprentice completion rates from union programs is higher than from non-union programs,” (3) “union programs enroll non-traditional populations in higher

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<sup>9</sup> Available at <https://www.mckinsey.com/capabilities/operations/our-insights/bridging-the-labor-mismatch-in-us-construction>.

<sup>10</sup> Available at <https://www.abc.org/News-Media/News-Releases/entryid/19255/abc-construction-industry-faces-workforce-shortage-of-650-000-in-2022>.

<sup>11</sup> Glover & Bilginsoy, Registered Apprenticeship Training in the US Construction Industry, EDUCATION AND TRAINING (May 2005).

numbers and at higher rates than do non-union programs,” and (4) “the apprentice completion rates of non-traditional populations from union programs is higher than from non-union programs.”<sup>12</sup>

Union construction apprenticeship programs regularly invest over \$600 million in state-of-the-art training programs every single year, provide a quality of training that is far superior and maintain programs that cover the wide range of all essential crafts needed for large capital facility projects. *Thus, union construction apprenticeship programs have a greater capacity to recruit, train and deploy the next generation of skilled construction craft personnel, serve the long-term workforce development interests of project owners.*

In contrast, non-union contractors have been unable to develop or maintain an effective system of craft training that ensures open shop workers uniformly meet requisite, minimum skill standards.<sup>13</sup> For these and other reasons, it fails to adequately invest in skill training or produce sufficient numbers of properly trained workers. This, in fact, is one of the primary causes of the industry’s current skill shortages.<sup>14</sup>

### **III. PROPOSED IMPROVEMENTS TO THE FINAL RULE**

#### **A. PROPOSED SECTION 29.9(D) SHOULD BE AMENDED TO EXEMPT RAPs SPONSORED BY JATCS OR, AT A MINIMUM, BE CLARIFIED TO EXPRESSLY EXCLUDE QUALIFIED EDUCATIONAL LOAN AGREEMENTS.**

Proposed Section 29.9(d) would include a prohibition on any provisions restricting the apprentice’s ability to seek or accept employment with another employer prior to the completion of the registered apprenticeship program.<sup>15</sup>

As outlined in their joint comments,<sup>16</sup> SMACNA and its labor partner support Proposed Section 29.9(d) as it applies to single-employer apprenticeship programs. Single-employer apprenticeship programs should be banned from “effectively prevent[ing]” apprentices “from

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<sup>12</sup> Argyres & Moir, Building Trades Apprentice Training in Massachusetts: An Analysis of Union and Non-Union Programs, 1997-2007, LABOR RESOURCE CENTER (Oct. 2008).

<sup>13</sup> Glover & Bilginsoy, Registered Apprenticeship Training in the US Construction Industry, EDUCATION AND TRAINING (May 2005) (“To date, the non-union sector has not established effective mechanisms to address the reluctance of employers to invest in training in the face of transient construction labor markets.”).

<sup>14</sup> Cihan Bilginsoy, Apprenticeship Training in the U.S. Construction Industry, at 9, UNIVERSITY OF UTAH (1998).

<sup>15</sup> Proposed § 29.2 would add the definition of “non-compete clause” to mean “a term in the apprenticeship agreement or other agreement between an employer or sponsor and an apprentice that prohibits the apprentice from seeking or accepting employment with another employer during the registered apprenticeship program or registered CTE apprenticeship program.”

<sup>16</sup> *See supra* n.2.

offering their skills in the labor market because of such restrictive employment contract covenants.”<sup>17</sup>

The ills sought to be cured by Section 29.9(d) do not exist in the context of *multi-employer* RAPs, such as the JATCs sponsored by SMACNA and SMART. Specifically, in the context of a multi-employer JATC, apprentices are free to work for *any* of the signatory employers in the area covered by the collective bargaining agreement.

What is more, apprentices in multi-employer JATC programs are protected by collective bargaining agreements between SMART and signatory contractors. These agreements protect apprentices from termination without just cause, as well as the following benefits and protections:

- Hourly rates of pay, including zone pay and travel pay;
- Contributions to fringe benefit funds, including pension, health & welfare, safety & health, apprenticeship & training;
- Wage and benefit progressions;
- Career-long skill upgrade training and OSHA refresher course;
- Ratios of apprentices to journeypersons that promote safety;
- Call back rights of apprentices who are laid off;
- Anti-discrimination and anti-harassment protection;
- Protocols to protect workers who sustain on-the-job injuries;
- Premium pay for hazardous work
- “Show up pay” provisions;
- Dispute resolution procedures to address alleged violations of the CBA, including grievance and arbitration, and union stewards aid workers in progressing dispute;
- Paid holidays and rates (double the hourly rate) for working on a holiday;
- Work preservation clauses;
- Premiums for night shift work, work after eight hours, and weekend work;

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<sup>17</sup> 89 Fed. Reg. at 3229.

- Personal protective equipment provided and paid for by the employer, including Hard hats, welding hoods, welding gloves, welding sleeves (when necessary), cutting goggles, safety glasses, ear protection, new clean headbands and any other safety related item.

Because apprentices in multi-employer JATC programs are protected by a collective bargaining agreement and they are permitted to work for any sponsoring employer, any restriction on working for a non-signatory employer is not the result of “unequal bargaining power between employers and workers.” Instead, it is an intentional effort to protect the fruits of the jointly-administered and privately-funded JATC program. Thus, exempting multi-employer JATC programs from Section 29.9(d) is consistent with the policy behind the restriction.

SMACNA also urges the Department to make clear that Educational Loan Agreements (“ELAs”) are not “non-compete provisions” as defined by Proposed Section 29.2 or otherwise prohibited by the Proposed Rule. ELAs are private agreements between the apprentice and the JATC whereby the apprentices agree to repay a portion of the cost of training in the event that an apprentice accepts employment with a non-signatory employer (i.e., an employer that does not contribute to the privately-funded JATC). ELAs are designed to prevent a “free rider” problem – that is, non-signatory contractors (i.e., those employers who do not contribute to the cost of training apprentices) from “pirating” highly-skilled apprentices. ELAs generally provide that the loan is forgiven over a certain period of time, provided that the apprentice continues to work for a signatory contractor – that is, a contractor who makes contributions to the JATC.

The DOL has long recognized the validity of ELAs. In 1983, the DOL Office of Solicitor wrote the following as it relates to the “Supplement to Apprenticeship Agreement between Apprentice and Joint Apprenticeship Committee” used by JATCs sponsored by SMACNA and SMART:

Based on our review of the National Apprenticeship Act and the apprenticeship regulations at 29 C.F.R. Part 29, *we see no legal problems under those enactments with the union requiring the worker to repay the cost of the training if he or she enters nonunion employment.*<sup>18</sup>

ELAs are designed to prevent non-contributing contractors from reaping the benefits of a privately-funded JATC. These are not the same as non-compete agreements and the DOL should make clear in any final rule that ELAs remain valid and enforceable.

#### **B. SECTION 29.8 SHOULD BE AMENDED TO REQUIRE ROLLING ADMISSIONS.**

Proposed Section 29.8 outlines the standards of apprenticeship. Many apprenticeship programs only enroll students at one time and this can lead to bottlenecks when a large number of workers are needed, such as a result of the historical investments in infrastructure precipitated by

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<sup>18</sup> DOL Circular 85-11 (March 26, 1985).



the Biden Administration, including the Inflation Reduction Act of 2022 and the CHIPS and Science Act of 2022.

Amending Section 29.8 to require RAPs to use rolling admissions would ensure that there is an adequate pipeline of talent and allows an apprenticeship program to quickly increase enrollment in the event of an acute labor shortage due to a sharp increase in construction activity (e.g., large infrastructure or green energy project). At a minimum, however, RAPs should be required to enroll new apprentices on at least two or more occasions each year.

**C. THE DOL SHOULD MAKE CLEAR THAT APPRENTICES ARE ELIGIBLE FOR FEDERAL GRANTS AND STUDENT AID.**

Traditionally, the federal financial aid system has only been used by students attending accredited post-secondary institutions, such as a trade school, community college, college, or university. What is the result of this unduly narrow use of federal funds? The current shortage of skilled construction workers.

Thus, the DOL should make clear in any final rule that the changes in Registered Apprenticeship Standards allows federal grant funding to be available to apprentices in RAPs, including the Federal Pell Grant, Federal Supplemental Educational Opportunity Grant, TEACH Grant, Iraq-Afghanistan Service Grant, Federal Direct Loan, and Federal Perkins Loan programs.

As the Department of Education explained in a 2014 Dear Colleague Letter:

If all or part of an apprenticeship meets an academic requirement of an eligible educational program, eligible students enrolled in that program may receive Federal student aid for the entire program, including for the apprenticeship portion. Similarly, if an apprenticeship program includes coursework that is part of an eligible program, enrolled students may receive Federal student aid for the entire program. In addition to the FWS Program, the Federal student aid programs include the Federal Pell Grant, Federal Supplemental Educational Opportunity Grant, TEACH Grant, Iraq-Afghanistan Service Grant, Federal Direct Loan, and Federal Perkins Loan programs.<sup>19</sup>

Deploying federal dollars to help apprentices attend RAPs sponsored by local JATCs will unlock a greater supply of skilled labor that our economy desperately needs. Privately funded JATCs have been creating a pool of skilled workers for decades and the addition of public funds will swell the number of apprentices entering these “Gold Standard” programs and provide the highly-skilled workers needed to move our economy forward.

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<sup>19</sup> Dear Colleague Letter, December 18, 2014. (GEN-14-22).

**D. IF THE “CTE APPRENTICESHIP PROGRAM” IS NOT REMOVED FROM THE FINAL RULE, IT SHOULD BE RENAMED “CTE PATHWAYS” FOR THE SKILLED TRADES.**

As outlined in their joint comments,<sup>20</sup> SMACNA and its labor partner are concerned that, while well intentioned, the CTE Apprenticeship Program does not fit within the existing apprenticeship model in the skilled construction trades.

Unlike a RAP, a Registered CTE Apprenticeship would require a minimum of 540 hours of CTE apprenticeship-related instruction, including not less than 12 postsecondary credit hours, and a minimum of 900 hours of on-the-job training. This would compare to 144 hours of classroom instruction per 2,000 hours of on-the-job training for a registered apprentice under the Proposed Rule.

Clearly, a Registered CTE Apprenticeship has less emphasis on on-the-job training. This may make sense for certain apprenticeable professions, such as teachers, information technology (IT) professionals, and healthcare technicians. For the skilled construction trades, on-the-job training is a crucial component of the apprentice’s mastery of the profession. Unlike many jobs in our modern economy, construction work is a job that cannot be done remotely. Individuals who want to develop the skills needed to build the next generation of buildings need to be onsite in order to learn the skills needed to meet the current demand.

What is more, an apprentice who completes a CTE apprenticeship would receive a certificate of completion from either the DOL’s Office of Apprenticeship or a State Apprenticeship Agency. However, CTE apprenticeships would not receive Journeyworker cards or a designation similar to one received by an apprentice in a RAP.

In the skilled construction trade, a Journeyworker certification signals professionalism and mastery in the field. Thus, for the skilled construction trades, a CTE apprenticeship could result in the splintering of occupations in the construction industry.

If the DOL insists on continuing the CTE Apprenticeship Program, then, at least for the skilled trades, the CTE Apprenticeship Program should be re-named “CTE Pathways” and should be a feeder program for RAPs – not an alternative to RAPs. Specifically, for the skilled trades, CTE Apprenticeship Programs (or “CTE Pathways”) should be required to partner with a RAP, such as those sponsored by SMACNA and SMART, so that eligible students can earn college credit, on-the-job training, pay during their training, and receive a journeyworker card at the end of the program.

**IV. SUMMARY AND CONCLUSION.**

The construction industry has achieved tremendous success with RAPs, such as the JATCs sponsored by SMACNA contractors and their labor partners.

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<sup>20</sup> See supra n.2.

Recent legislation – including the Inflation Reduction Act of 2022, the Bipartisan Infrastructure Law, and the CHIPS and Science Acts – has tied tax credits and prioritized bids from contractors using apprentices from RAPs. Thus, it is critical that any changes to the National Apprenticeship System continue to advance the interests of the RAPs sponsored by SMACNA contractors and their SMART union labor partners.

Collectively, the changes would ensure that apprentices receive broad-based, quality training that would provide them with marketable skills for their entire careers and further the DOL’s goal of “rebuilding the middle class” and “connecting a diverse workforce to family-sustaining jobs.” Thus, while the changes in the Proposed Rule are, in large part, beneficial to these programs, some of the proposed reforms in their present form could present challenges unique to the JATCs sponsored by SMACNA and SMART if left unchanged. Accordingly, as outlined above, SMACNA recommends that certain provisions of the Proposed Rule be revised to lessen any impact on these “Gold Standard” programs.

Sincerely,

A handwritten signature in black ink, appearing to read 'A. Hilger', with a long horizontal flourish extending to the right.

Aaron Hilger  
Chief Executive Officer

cc: Julie A. Su, Acting Secretary  
U.S. Department of Labor