



March 15, 2023

Josh Orton  
Lynn Rhinehart  
White House Task Force on Worker Organizing and Empowerment  
200 Constitution Ave., NW  
Washington, DC 20210

Re: Upgrading Standards for Registered Apprenticeship Programs

Dear Mr. Orton and Ms. Rhinehart:

On behalf of our thousands of union members and signatory contractors, the International Association of Sheet Metal, Air, Rail and Transportation Workers (SMART) and Sheet Metal and Air Conditioning Contractors' National Association (SMACNA) would like to reiterate our appreciation for the opportunity to share our recommendations with the White House Task Force on Worker Organizing and Empowerment. The recommendations below address upgrading the standards for registered apprenticeship programs (RAPs) in 29 C.F.R. part 29 and supplement the recommendations in our December 6, 2022 letter to the Task Force, which focused primarily on requiring proof by an applicant for sponsorship of a RAP that the proposed program has “future sustainability,”<sup>1</sup> i.e., it has the present and future financial and training capacity to provide broad-based, quality training to apprentices.

The changes proposed below build upon those recommendations and would further protect apprentices by withholding approval of new RAPs until applicants correct deficiencies (including inadequate funding) that have resulted in poor performance, involuntary deregistration of one or more RAP before apprentices completed their programs, extension(s) of probationary periods, failure to register apprentices, and/or renegeing on commitments to apprentices.

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<sup>1</sup> See RCW § 49.04.050(2), *Apprenticeship Program Standards*, “The apprenticeship counsel must require new apprenticeship programs seeking approval to provide an assessment for **future sustainability** of the program.” Emphasis added. See also, 8 Cal. Code Regs., Tit. 8, §212.2, *Eligibility and Procedure for DAS Approval of an Apprenticeship Program*, which is discussed on page 2 to 4 of our December 6, 2022 letter to the Task Force (hereafter “Joint Letter”).

## OVERVIEW

The National Apprenticeship Act of 1937 (NAA), 29 U.S.C. § 50, was enacted for the sole purpose of protecting apprentices. The statutory language is simple and unambiguous:<sup>2</sup>

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 . . . .

The NAA authorizes the Secretary of Labor to establish labor standards safeguarding the welfare of apprentices, including prescribing policies and procedures concerning registration, cancellation, and deregistration of apprenticeship programs.<sup>3</sup> Part 29, which effectuates this statutory authority, was initially promulgated in 1977 and updated in 2008 to, among other things, “enhance program quality and accountability.”<sup>4</sup>

Despite the best intentions of the U.S. Department of Labor, sponsors of non-joint<sup>5</sup> and single-employer RAPs disproportionately engage in practices inimical to the interests of apprentices, particularly when there are no employee representatives on the governing boards to advocate for protection of workers. Those practices include labeling workers as “apprentices” for financial gain while providing inferior training (or no training at all); enrolling apprentices in RAPs before sponsors have obtained enforceable written agreements for adequate funding from reliable sources; and training “apprentices” in repetitive tasks rather than providing on-the-job learning and related instruction designed to produce highly skilled, marketable journeypersons in an apprenticeable occupation.<sup>6</sup>

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<sup>2</sup> The NAA was introduced by Representative William Fitzgerald as H.R. 6205 and labeled “[a] Bill to enable the Department of Labor to formulate and promote the furtherance of labor standards necessary to safeguard the welfare of apprentices and to cooperate with the States in the promotion of such standards.” *To Safeguard the Welfare of Apprentices: Hearing on H.R. 6205 Before the Subcomm. Of the H. Comm. Of Labor, 75th Cong. 1* (1937). The legislative history underscores what the language of the NAA clearly states: that Congress intended the federal government to take responsibility for ensuring the welfare of the country’s apprentices.

<sup>3</sup> Final Rule, *Apprenticeship Programs, Labor Standards for Registration*, 87 *Fed.Reg.* 58269 (Sept. 22, 2022).

<sup>4</sup> Final Rule, *Apprenticeship Programs, Labor Standards for Registration*, 73 *Fed.Reg.* 64402 (Oct. 29, 2008).

<sup>5</sup> See 29 C.F.R. § 29.2, which states that a “non-joint committee, which may also be known as a unilateral or group non-joint (which may include employees) committee, has employer representatives but does not have a bona fide collective bargaining agent as a participant.”

<sup>6</sup> See pages 5 to 10 of SMART and SMACNA’s Joint Letter for a full explanation of the current practices that adversely impact workers labeled as apprentices.

SMART and SMACNA urge the Office of Apprenticeship (OA) to modify part 29 to better protect apprentices by undertaking more stringent scrutiny of applications for new RAPs and by requiring correction of program deficiencies under the new standard of review before approval of proposed RAPs. By supplementing the existing investigative tools in part 29 with more probative criteria (e.g., written proof of adequate funding),<sup>7</sup> the OA would better fulfill its obligation to improve “accountability” on the part of RAPs, and to “exercise its enforcement authority to intervene and ensure employers provide industry-established prevailing wages, ensure stringent safety standards are in place, and monitor program quality to protect workers.”<sup>8</sup> As recognized by the OA, increased mechanisms for “accountability” are essential for the protection of apprentices.<sup>9</sup>

SMART and SMACNA urge the OA to adopt regulatory changes to part 29 that fall into two broad categories. Part I of this letter discusses the first broad category, which pertains to strengthening and expanding the criteria that a sponsor must meet to register a new RAP and includes:

- 1) expand upon the criteria that a sponsor must satisfy to register a RAP, including providing documentary proof of financial sustainability for a minimum of five years;<sup>10</sup>
- 2) improve the process used by the OA and state registration agencies to review applications for registration of RAPs, including withholding approval of new RAPs until deficiencies in the operation and funding of prior and current RAPs by sponsors and interested parties are corrected; and
- 3) require proof of compliance with upgraded safety and health standards in industries with high injury rates.

Part II of this letter addresses upgraded monitoring of compliance with part 29 standards during and after registration and imposition of a continuing duty to self-report deficiencies to the OA or state apprenticeship agency and includes:

- 1) foster coordination with the Wage and Hour (WHD) to monitor future compliance of sponsors and interested parties with a track record of more than one prevailing wage violation impacting apprentices in the preceding five years;

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<sup>7</sup> See Joint Letter (pages 2 to 4) for a detailed discussion of SMART and SMACNA’s recommendation that the OA require written documentation by prospective sponsors of sufficient financial and training resource to maintain a quality program for a minimum of five years.

<sup>8</sup> Notice of Proposed Rulemaking, *Apprenticeship Programs, Labor Standards for Registration*, 86 *Fed.Reg.* 62966, 62968 (Nov. 15, 2021).

<sup>9</sup> Final Rule, *Apprenticeship Programs, Labor Standards for Registration*, 87 *Fed.Reg.* at 58275 (Sept. 26, 2022).

<sup>10</sup> See pages 2 to 4 of Joint Letter.

- 2) prevent sponsors from evading responsibility for poor performance by seeking approval of a new RAP under the name of another entity in which it has an interest;
- 3) require post-approval disclosure of impediments to operating quality program(s), such as inability to retain qualified instructors to provide related instruction or a participating employer's breach of its written agreement to provide funding; and
- 4) disallow sponsors and interested parties debarred or suspended from government contracts from registering new RAPs during the term of the debarment or suspension.

## **PART I**

### **RECOMMENDATIONS TO STRENGTHEN AND EXPAND THE CRITERIA THAT A SPONSOR MUST MEET TO REGISTER A RAP**

#### **I. DURING THE REGISTRATION PHASE, APPLY THE EXISTING DEREGISTRATION AND "QUALITY ASSURANCE ASSESSMENT" CRITERIA IN PART 29 TO EVALUATE CURRENT AND FUTURE CAPACITY TO MAINTAIN THE NEW RAP FOR A MINIMUM OF FIVE YEARS**

##### **A. Application of Part 29 Criteria to the Application Process Will Enable the OA to Better Safeguard the Interests of Apprentices**

SMART and SMACNA encourage the OA to evaluate objective data concerning a prospective sponsor's prior and current sponsorship of RAPs and current capacity to administer, operate, and fund a quality RAP and to withhold approval of applications until corrections are completed. A logical starting point for developing criteria, which would merit, either individually or collectively, withholding approval of new applications are the factors included in part 29's "quality assurance assessment"<sup>11</sup> and "deregistration by the registration agency upon reasonable cause,"<sup>12</sup> since the OA has identified such criteria as evidence of a poor-quality program. In the next section of this letter (pages 6 to 11), we address supplementing current criteria with more stringent ones to better ensure that the sponsor has the capacity to maintain a quality program for a minimum of five years.

Appendix A (attached) includes suggested questions that are designed to elicit information about whether applicants for sponsorship of a new RAP have the capacity to offer high quality training through on-the-job learning and related instruction. Many of the questions seek information about registration and assessment criteria currently in part 29, such as a disregard of

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<sup>11</sup> 29 C.F.R. § 29.2.

<sup>12</sup> 29 C.F.R. § 29.8(b)(1)(i).

obligations to apprentices to provide related instruction (and qualifications of the instructors providing related instruction), a progressively increasing schedule of wages, a “persistent and significant failure to perform successfully,” and other indicia of poor-quality training and/or renegeing on commitments to apprentices. The sponsor’s prior record in administering, operating, and funding RAPs is a strong indicator of current capacity.

### **B. Criteria Listed in Deregistration for “Reasonable Cause”**

The current deregistration for “reasonable cause” regulation provides that deregistration may be undertaken “when the apprenticeship program is not conducted, operated, or administered in accordance with the program’s registered provisions or with the requirements of this part, including but not limited to” the following deficiencies:

- failure to provide on-the-job learning;
- failure to provide related instruction;
- failure to pay the apprentice a progressively increasing schedule of wages consistent with the apprentice’s skills acquired; and/or
- persistent and significant failure to perform successfully.

A RAP demonstrates a “persistent and significant failure to perform successfully” when, among other things, it “shows a pattern of poor quality assessment results over a period of several years.”<sup>13</sup>

### **C. Criteria Listed in the Definition of Quality Assurance Assessment**

The illustrative (not exhaustive) deficiencies itemized in the definition of “quality assurance assessment” in part 29 include a failure to provide:

- on-the-job training in all phases of the apprenticeable occupation;
- scheduled wage increases consistent with the registered standards;
- related instruction through appropriate curriculum and delivery systems; and
- notification to the registration agency of “all new registrations, cancellations, and completions as required” in part 29.

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<sup>13</sup> The regulations further state that “persistent and significant failure to perform successfully occurs when a program sponsor consistently fails to register at least one apprentice, shows a pattern of poor quality assessment results over a period of several years, demonstrates an ongoing pattern of very low completion rates over a period of several years, or shows no indication of improvement in the areas identified by the Registration Agency during a review process as requiring corrective action.” 29 C.F.R. § 29.8(b)(1)(ii).

## II. SUPPLEMENT PART 29 CRITERIA WITH MORE PROBATIVE INDICIA OF POOR-QUALITY TRAINING AS GROUNDS FOR WITHHOLDING APPROVAL OF NEW RAPS UNTIL DEFICIENCIES ARE CORRECTED

SMART and SMACNA recommend that the OA upgrade its registration standards<sup>14</sup> by including more probative criteria for identifying poor performance and lack of current capacity. In developing upgraded criteria in part 29, the OA has excellent state models from which to choose, including apprentice law, regulations, and administrative practices in Oregon, California, Washington, New York, Connecticut, Pennsylvania, Maine, Massachusetts, Delaware, Maryland, Nevada, and many other states with state apprenticeship agencies.<sup>15</sup>

It is important that the OA consider legislation and the regulatory framework in operation at the state level since the NAA mandates that the DOL cooperate with state agencies engaged in the formulation and promotion of standards of apprenticeship. There are many state models addressing submission of a “corrective action plan addressing” deficiencies in apprenticeship programs post-registration, which the OA could adapt to the pre-approval of process.<sup>16</sup> In New York, for example, a “Sponsor whose Program has been placed on an extended Probation shall be required to submit a proposed corrective action plan addressing the deficiencies identified in the notice and a proposed time frame for its implementation.”<sup>17</sup> SMART and SMACNA further recommend adoption of the Nevada standard, which requires rejection of new programs with lower quality standards than existing RAPs in the same apprenticeable occupations in the same geographic area(s) in which the sponsor seeks to operate the new RAP.

The recommended indicia, based, in part, on these and other state standards, focus upon withholding approval of new programs until the applicant meet the criteria described in II.A. through II.F. below.

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<sup>14</sup> As discussed in our Joint Letter (page 5), there is an urgent need to upgrade apprenticeship standards to root out RAPs that lack the necessary funding to provide quality training. The Inflation Reduction Act (IRA) of 2022, which provides an unprecedented level of financial support from the federal government for expansion of registered apprenticeship, promises to greatly increase opportunities for the continuity and diversity of employment necessary to provide broad-based training to entry-level workers. New applications for sponsorship of RAPs will undoubtedly increase as prospective sponsors seek to reap the financial benefits afforded to those taxpayers who meet the prevailing wage and apprenticeship utilization standards in the IRA.

<sup>15</sup> The District of Columbia and 27 states register apprentices at the state level. These states are among the 27 that do so.

<sup>16</sup> Under Pennsylvania law regarding deregistration of programs, RAPs with “shortcomings” are provided with notice of the “corrective action” required and the time frame within which such action must be taken. *See* 34 Pa.Code § 83.7. *Deregistration of Council-registered programs.*

<sup>17</sup> N.Y. Comp. Codes R. & Regs. tit. 12 § 601.8 (b)(3)(iv). Under New York regulations, sponsors of programs whose registrations are “cancelled during Probation, deemed Deregistered, or fail Probation shall not reapply, seek Reinstatement, or apply for a new Program for a period of one (1) year following notification by the Department.” *Id.* at § 601.8(b)(4).

## **A. Condition Approval of Applications Upon Submission of a Detailed Budget and Written Proof of Adequate Funding to Sustain the New RAP for a Minimum of Five Years**

The OA should withhold approval of an application for a RAP until, at a minimum, the sponsor is able to prove, with documentary evidence, that the new program is financially “sustainable” for the duration of the term of apprenticeship based on an enforceable written agreement to fund the program by participating employers or for at least five years, whichever is longer. Where the applicant for sponsorship is a single employer, the OA should require written proof that the sponsor has the financial and training resources to sustain the new RAP for a minimum of five years.

Appendix A includes questions that elicit financial and budgetary information about past, current, and future sponsorship of programs. Registration should be conditioned upon submission of documentary evidence that the new RAP has developed a detailed budget and has adequate financing from participating employers or sufficient resources to finance a self-funded program in the case of a single-employer program. In situations where a sponsor of a single-employer RAP or a non-joint RAP failed in the past or is currently failing to invest sufficient resources in a self-funded program, thorough investigation is warranted to ascertain the reasons for these deficiencies, such as administrative incompetence, poor management of funds, and failure to pursue legal action to secure funds from participating employers that did not pay the amounts owed to the RAP.

SMART and SMACNA discussed in our Joint Letter California regulations that require proof of the “program sponsor's ability, including financial ability, and commitment” to meet and carry out its responsibilities under federal and state law. As noted above, Washington law also requires proof of “future sustainability.” Oregon regulations governing RAPs require that applicants for sponsorship require similar proof. Under Oregon regulations, applicants must submit an administration plan which includes, among other things, documented assurances that the committee will be adequately funded to support its “administration and the presentation of related instruction”; and a “written statement that details all costs to apprentices (including instruction, books, tuition).”<sup>18</sup> Maryland regulations<sup>19</sup> require that Apprenticeship Council have “reasonable proof and assurance that the program sponsor has adequate financial means to ensure the successful completion of the apprenticeship.”<sup>20</sup>

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<sup>18</sup> Or. Admin. R. 839-011-0084(3)(c)(A)-(D), *Apprenticeship and Training Committees — Approval of New Programs and Standards*.

<sup>19</sup> Md. Rules § 09.12.43.12. *Financial Aspects of the Program Sponsor*.

<sup>20</sup> See Maryland Department of Labor, Employer Acceptance Agreement under Group Non-Joint Apprenticeship Standards, requirement that participating employers in non-joint programs to agree to “Meet all financial obligations to THE APPRENTICESHIP COMMITTEE, for each apprentice registered.”  
<https://www.dllr.state.md.us/forms/apprempacceptagreement.pdf>

## **B. Reject Applications for New RAPs that Fail to Provide the Same Quality of Training as Existing RAPs that are in the Same Apprenticeable Occupations in the Same Geographic Areas**

SMART and SMACNA encourage the OA to upgrade part 29 to require rejection of applications for new RAPs that fail to offer the same quality of training as existing RAPs that are in the same apprenticeable occupations in the same geographic areas in which the sponsor of the new RAP seeks to operate. Nevada law, which provides as follows, conditions approval of new RAPs upon, among other things:

The “program requires the completion of at least as many hours of on-the-job learning or the demonstration of at least the same number and quality of skills, or both, as applicable” as existing RAPs in the same apprenticeable occupation in the jurisdiction in which the proposed RAP seeks to operate.<sup>21</sup>

This modification will further a fundamental goal of the NAA, which is to promote uniformity, by having the federal government step in to standardize and upgrade apprenticeship standards.<sup>22</sup>

## **C. Condition Approval of New Applications Upon Proof of the Capacity to Provide for Quality Mentorship and Related Instruction**

SMART and SMACNA encourage the OA to condition approval of new applications upon proof of the capacity to provide quality mentorship and related instruction. Appendix A seeks information about: 1) the means through which related instruction is provided (in-person, synchronous on-line, pre-recorded audio or video lessons, self-study, etc.); 2) whether safety and health training is offered before dispatch to on-the-job learning; 3) the ratio of instructors to apprentices and the qualifications of instructors; 4) the availability of mentorship and assistance programs for apprentices struggling with mental health problems and/or addiction; 5) the costs of

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<sup>21</sup> See NRS § 610.144(2), *Requirements for program to be eligible for registration and approval by State Apprenticeship Council*: “The Council shall not approve a proposed program pursuant to this subsection unless the program requires the completion of at least as many hours of on-the-job learning or the demonstration of at least the same number and quality of skills, or both, as applicable, as all existing approved and registered programs in the relevant skilled trade.”

<sup>22</sup> The federal government first became involved in apprenticeships when Executive Order No. 6750-C (June 27, 1934) created the Federal Committee on Apprentice Training (Federal Committee) “for the purpose of permitting genuine apprentice training under the National Recovery Administration codes and, at the same time, prevent the exploitation of apprentices and the break-down of labor standards.” 81 *Cong. Rec.* 2600 (1937) (Memorandum on the Work of the Federal Committee on Apprentice Training). Prior to “the time that the Federal Committee became active there had been no adequate Federal or State machinery developed to promote **uniformity** and give protection to employment standards of apprenticeships.” *Id.* The Committee’s work underscored the need for the government to step in and **standardize and upgrade** what the private sector had been calling apprenticeships, and it led Representative Fitzgerald to introduce a bill to make the Federal Committee’s work a permanent function of DOL. In introducing H.R. 6205, Representative Fitzgerald made clear to Congress that the bill’s purpose was to protect apprentices through standards “set up by the Department of Labor in cooperation with the States.” See 81 *Cong. Rec.* 6632 (1937) (Representative Fitzgerald described the bill as “throwing a cloak of protection around the boys and girls and setting up standards and protecting them.”). In testimony supporting the bill, members of the Federal Committee described the kind of exploitation they had found rampant in so-called apprenticeship programs, in the absence of any sort of **uniform standards**. Employers would classify all beginners and helpers as “apprentices,” exploit their labor, and undercut the wages of the other workers. *Hearing* at 42 (emphasis added).



related instruction absorbed by apprentices; and 6) the means through which the RAP tracks related instruction, including tracking that may take place when related instruction is contracted to a third-party.<sup>23</sup>

#### **D. Condition Approval of New Applications Upon Proof of Current Capacity to Provide Apprentices with the Work Opportunities Required to Complete the New RAP**

SMART and SMACNA encourage the OA to condition approval of new applications upon proof of current capacity to provide apprentices with the opportunity to complete the new RAP. While proof of sustainability for a minimum of five years would further the goal of ensuring that sponsors do not renege on commitments to apprentices, it is important that the OA also ensure that the RAP does not enroll apprentices until it has conducted sufficient analysis of available work to develop a good faith belief that apprentices will have the opportunity to complete the new RAP. Appendix A includes questions that seek to elicit information about: 1) a sponsor's self-assessment of its capacity, based on projected hours of work for journeypersons and apprentices, to provide an adequate number of hours of on-the-job learning; 2) capacity to provide broad-based training<sup>24</sup> in an apprenticeable occupation rather than repetitive tasks in only a portion of the skills required to master the occupations and to track on-the-job learning experience; 3) a history of failing to accurately project available hours of work opportunities and reasons for errors in projections of available hours of work; 4) failure to enroll any apprentices for an extended period of time;<sup>25</sup> and 5) the reasons for cancellations (e.g., lack of work, poor performance, etc.) of apprenticeships. The purpose of these questions is to ascertain the reasons for renegeing on commitments to apprentices, such as bad faith, incompetence, or poor planning and/or administration, so that the deficiencies can be corrected in current and future programs.

The OA's investigation of past deficiencies would yield evidence that is probative of future success. If, for example, a sponsor of a new RAP has a history of enrolling apprentices without regard to its capacity to provide diverse on-the-job learning to each registered apprentice, the OA could require, in a "corrective action plan," submission of the information used to calculate the

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<sup>23</sup> See Or. Admin. R. 839-011-0084(3)(d), *Apprenticeship and Training Committees — Approval of New Programs and Standards*, which states: "The applicant must demonstrate the ability to track required on-the-job training, related and supplemental training and affirmative action information (i.e., work progress reports, apprentice/trainee rotation system, employer's apprentice/trainee evaluation forms, grading sheets, applicant logs) and provide the Council with copies of the forms and documents that will be used to track such information."

<sup>24</sup> Under WAC 296-05-015(e), *Apprenticeship program standards*, a RAP must "Rotate apprentices in the various processes of the skilled occupation to assure a well-rounded, competent worker." See also, NMAC 11.2.3.24(A): "General policy: An apprenticeship program should contain a sufficiently broad schedule of work processes for the acquirement of reasonable competency in the trade." See also Pennsylvania's *Criteria for apprenticeable occupations*. "(5) It involves the development of skill which is not restricted in application to products of any one company, but which is broad enough to be applied in like occupations throughout an industry." 34 Pa.Code § 83.4.

<sup>25</sup> See Or. Admin. R. 839-011-0082, *Apprenticeship and Training Committees — Deregistration*, which states "A committee shall be subject to deregistration if it has had no apprentices registered for two years or more, has not had at least two quorum meetings in a twelve-month period, has failed to administer to the needs of the apprentices or the industry concerned or if so otherwise deemed appropriate by the Council."

number of hours of available work during the term of apprenticeship. Relevant information would include journeyman and apprentice hours in the recent past for each participating employer; the number and types of projects (e.g., school construction) and projected hours anticipated on each project that the participating employers already have “on the books”, along with bid documents; the same information on projects on which participating employers plan to submit bids; and the “need of journeyworkers in the community and reasonable assurance of employment in the occupation establishment upon completion of training.”<sup>26</sup>

A high rate of involuntary cancellations for lack of work combined with other factors, such as program closures, low completion rates,<sup>27</sup> an inadequate process for screening apprentices before registration, a failure to obtain an adequate funding, and limited or no face-to-face instruction, should be red flags that the OA should withhold approval of applications for sponsorship of new RAPs until the sponsors takes the necessary steps to correct the deficiencies. These red flags also indicate the need for the OA to closely monitor the RAP during the probationary period and thereafter to ensure that apprentices are safeguarded from the impact of poor planning and administration and inadequate funding. The RAPIDS database includes a dropdown menu with the following reasons for cancellations.<sup>28</sup> Three of the 11 items – lack of work, program canceled by sponsor, and program sponsored by registration agency – involve a failure to meet commitments to apprentices. While two items – unsatisfactory performance and discharged/released – are legitimate in some circumstances, an excessive number of cancellations for these grounds relative to other involuntary or voluntary reasons could indicate either poor screening of candidates, failure to mentor apprentices through face-to-face training and other meetings, or inaccurate characterizations of the reasons for cancellations.<sup>29</sup>

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<sup>26</sup> See “Number of Apprentices to be Trained in the Program,” *Minimum Standards for Apprenticeship*, which states that “The number of apprentices to be trained in the program shall be determined by the need of journeyworkers in the community and reasonable assurance of employment in the occupation establishment upon completion of training.” [https://townhall.virginia.gov/L/GetFile.cfm?File=GuidanceDocs%5C181%5CGDoc\\_DOLI\\_5841\\_v7.pdf](https://townhall.virginia.gov/L/GetFile.cfm?File=GuidanceDocs%5C181%5CGDoc_DOLI_5841_v7.pdf)

The State of Louisiana recognizes the importance of marketability in requiring “the employer to provide evidence” of market factors within the state “when an employer proposes the development of an apprenticeship program for an occupation that is not found on the federal apprenticeable occupations list.” La. Admin. Code tit. 40 § IX-317. Those factors include evidence that the “occupation is considered ‘high demand’ according to Louisiana labor market information” and the “occupation represents an emerging demand industry-wide.” *Id.* at § IX-317(A)(6)(a) and (b).

<sup>27</sup> In assessing performance, New York regulations do not limit the scope of inquiry to the “cohort method of calculating Completion Rates but may take into account additional factors such as period of time over which rate is calculated, seasonality, regional differences, Program size, and general economic conditions affecting employee retention.” N.Y. Comp. Codes R. & Regs. tit. 12 § 601.8(c)(iv)(b).

<sup>28</sup> State apprenticeship agencies also use a checklist for reporting cancellations. Nevada’s “Notice of Apprenticeship Cancellation” form tracks the reasons for cancellation on the RAPID’s dropdown menu and also includes an “unknown.” <https://laborcommissioner.com/forms/Apprenticeship-cancelnotice1.pdf> The Connecticut DOL’s “Apprenticeship Termination Data” form divides the reasons for terminations into “administrative” and “voluntary” and includes a space to record “other” reasons that are not included on the list for either category. The voluntary reasons are largely based on an apprentice’s lack of interest or other career plans: 1) left for other job, same trade; 2) left for other work; 3) went to school full-time; 4) entered the armed forces; 5) did not like the work; and 6) left the area. Most of the administrative reasons are based on an apprentice’s failure to perform satisfactorily, such as: 1) unsatisfactory job performance; 2) did not attend related instruction; 3) excessive absenteeism; 4) excessive tardiness; and 5) misuse of company equipment. “Lack of work” is the only reason on the Connecticut DOL’s form places responsibility on the sponsor for a cancellation or termination. <https://www.ctdol.state.ct.us/progsupt/appren/forms/AT9.pdf>

<sup>29</sup> The “voluntary” reasons on the RAPIDS form for terminations may include: left to accept related employment, left to accept other employment, entered military service, illness/death, voluntary, and transferred to another program.

## **E. Condition Approval of New Applications Upon Proof of the Administrative Capacity to Notify the Registration Agency of New Registrations, Cancellations, and Completions**

The OA should require applicants for registration of RAPs to submit proof that the program has the administrative capacity to timely notify the registration agency of all new registrations, cancellations, and completions. Appendix A seeks information about whether the sponsor has timely registered each enrollee in the RAP(s), which it currently or previously sponsored, with the OA or state registration agency; reported on completion rates; and reported all cancellations in the RAPIDS database or the database of the state apprenticeship agency and provided an explanation for each cancellation. A sponsor's failure to self-report diminishes the ability of the OA or a state apprenticeship agency to undertake a meaningful review of the quality of operations.

## **F. Condition Approval of New Applications Upon Proof of Compliance with State Apprenticeship Requirements**

SMART and SMACNA recommend that the OA condition approval of new application upon proof that other RAPs administered by the sponsor and interested parties are in compliance with state apprenticeship requirements, such as a minimum number of hours of safety training,<sup>30</sup> equal representation of management and employees on non-joint committees,<sup>31</sup> or minimum number of committee meetings per year.

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<sup>30</sup> See Minn. Stat. §178.036(3), *Standards of Apprenticeship*. (“At least 50 hours of related safety instruction is required during the term of apprenticeship.”)

<sup>31</sup> See e.g., WAC-296-05-009, *Apprenticeship committees—Composition, duties, responsibilities, and standards*, which states:

- (2) An apprenticeship committee consists of at least four but not more than twelve members of an equal number of management and worker representatives, and may be either:
  - (a) Joint: Composed of an equal number of representatives of the employer(s) and of the employees represented by a bona fide collective bargaining agent(s); or
  - (b) Nonjoint: Composed of an equal number of employer and employee representatives but does not have a bona fide collective bargaining agent as a participant.

See also, the California model, Cal. §212(b)(17), which, empowers non-union workers who would otherwise lack a collective voice, by requiring apprentice representation on advisory panel established by the apprenticeship committee responsible for the operation of the program:

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(B) In a program sponsored by more than one employer or an association of employers, the apprentices participating in that program are at least equally represented on an advisory panel established by the apprenticeship committee responsible for the operation of the program. The apprentices shall be represented on the advisory panel by at least three representatives of the apprentices' choice who shall have full voice and vote on the panel except as to financial matters or matters that relate to the administration or structure of an employee benefit plan or the administration or operation of a trust fund. The representatives of the apprentices shall be selected by way of a secret ballot election among the apprentices conducted by the apprenticeship program not less than once every two (2) years. This advisory panel shall meet not less than once every quarter to address issues and concerns raised by and affecting the apprentices in the program.

### III. USE EXISTING SAFETY CRITERIA IN PART 29 AS A STARTING POINT IN DEVELOPING UPGRADED SAFETY STANDARDS FOR APPROVAL OF APPRENTICESHIP PROGRAMS

#### A. Part 29 Mandates Compliance with Provisions Designed to Protect the Safety and Health of Apprentices

To effectuate the statutory obligation to “safeguard the welfare of apprentices,” the DOL mandates in part 29 compliance with safety and health training and other requirements for their protection. Part 29 requires that RAPs provide apprentices with a numeric ratio of apprentices to journeypersons consistent with “proper supervision, training, safety, and continuity of employment”;<sup>32</sup> and adequate and safe equipment and facilities for training and supervision, and “safety training for apprentices” on the job. As stated in the preamble to the OA’s 2008 Final Rule, apprentices are “required to have on-the-job learning and related instruction that enable the apprentices to recognize and protect themselves from safety and health hazards.”<sup>33</sup> It further states that CPR/first-aid training and both health **and** safety have been “long-standing facets” of the term “related instruction”<sup>34</sup> and that related instruction requirements will “ensure that all apprentices are exposed to workplace conditions and properly trained in the safety requirements essential to the industry.”<sup>35</sup>

#### B. Upgrade the Safety and Health Regulations in Part 29 by Requiring that Prospective Sponsors Meet Specific Criteria, Including a Mandatory Minimum Number of Hours of Safety and Health Training Before Dispatch in Industries with High Rates of Injury and Industry-Specific Training on Substance Abuse, Suicide Prevention, and Mental Health

SMART and SMACNA recommend that the OA enhance protections in part 29 for inexperienced workers, who may lack the judgement and knowledge to recognize potential risks on job sites, by mandating a minimum number of hours of safety training prior to dispatch in industries with high rates of injuries and other related instruction on safety and health topics that are industry-specific. Research demonstrates the value of training inexperienced workers in hazard identification and behavior modification in the construction industry.<sup>36</sup> In recognition of the value of safety training, many states, such as Massachusetts, New York, Connecticut, Rhode Island, New

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<sup>32</sup> 29 C.F.R. §29.5(b)(7).

<sup>33</sup> 73 *Fed.Reg.* 64402, 64410 (October 29, 2008).

<sup>34</sup> *Id.* at 64406.

<sup>35</sup> *Id.* at 64409. *See also*, “The provisions for granting an apprentice advanced standing or credit would not negatively impact **safety and health** because, as discussed above, apprentices are still required to have on-the-job learning and related instruction that enable the apprentices to recognize and protect themselves from safety and health hazards.” *Id.* at 64410; emphasis added.

<sup>36</sup> See Ruth Rutenberg, “The Economic and Social Benefits of OSHA-10 Training in the Building and Construction Trades,” May 2013, at 1. [https://www.cpwr.com/wp-content/uploads/publications/rutenbergecosocialbenefits\\_0.pdf](https://www.cpwr.com/wp-content/uploads/publications/rutenbergecosocialbenefits_0.pdf)

Hampshire, Nevada and Missouri have adopted laws that mandate OSHA 10 and/or 30-hour training for employees.<sup>37</sup> Massachusetts, for example, has required since 2008 that all workers on publicly-funded construction projects complete OSHA-10 training. Those states with mandatory training have served as laboratories for the investigation of the impact of safety training for new construction workers. One such study published in 2012 demonstrated the qualitative benefits of mandatory training within Massachusetts. The results also demonstrated that union workers were far more likely to have an OSHA-10 card (97%) than nonunion workers (17%).<sup>38</sup> OSHA-10 training has become a “baseline” for worker safety training in large commercial construction in Massachusetts, regardless of the funding source of a project.<sup>39</sup>

We further recommend that, in upgrading apprenticeship standards, the OA base required subject matter and the number of hours of mandatory training upon on-the-job hazards and associated risks in specific industries. In the construction industry, for example, “unintentional overdose fatalities” on “jobsites have increased dramatically in recent years.”<sup>40</sup> About 15% of all construction workers in the United States have a substance abuse disorder compared to 8.6% of the general population of adults, according to data from the National Survey on Drug Use conducted by the Substance Abuse and Mental Health Administration.<sup>41</sup> Sheet metal JATCs collaborate with the Sheet Metal Occupational Health Institute Trust (SMOHIT)<sup>42</sup> and the International Training Institute for the Sheet Metal and Air Conditioning Industry (ITI) to promote all aspects of safety and health and to provide training on diverse topics, such as opiate and other addictions, suicide prevention, mental health, exposure to silica and fumes, ergonomics, hearing loss, and fall protection, to minimize occupational illnesses and injuries and to protect sheet metal workers experiencing suicidal ideation, serious mental health problems, and addiction.

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<sup>37</sup> Connecticut- Sec. 31-53b; Missouri- Sec/n 292.675; Massachusetts—Chapter 30: Section 39S; New Hampshire; New York State-A02721; Nevada-Bill No. 148; and Rhode Island-04-593 (2004). <https://www.safetyservicescompany.com/industry-category/construction/states-requiring-osh-1030-hour-training/>

<sup>38</sup> Cara Roelofs, “Evaluation of the Implementation and Impact of a Massachusetts Construction OHS Training Rule,” The Center for Construction Research and Training, Silver Spring, Maryland, June 2012, at 10. [https://www.cpwr.com/wp-content/uploads/publications/RoelofsReportOHSTrainingweb\\_0.pdf](https://www.cpwr.com/wp-content/uploads/publications/RoelofsReportOHSTrainingweb_0.pdf)

<sup>39</sup> *Id.* at 12.

<sup>40</sup> Xiuwen Sue Dong, Raina D. Brooks, Chris Trahan Cain (2019). Overdose Fatalities at Worksites and Opioid Use in the Construction Industry. (“In 2018, 65 construction workers died at work due to unintentional overdose, about 9 times such deaths in 2011 (7 deaths), and more than double the growth change in all industries.”) <https://www.cpwr.com/wp-content/uploads/2020/06/Quarter4-QDR-2019.pdf>

<sup>41</sup> Michael Kaliszewski, Ph.D. (2022). *Construction Workers & Addiction: Statistics, Recovery & Treatment*. American Addictions Centers, citing Bush, D.M., & Lipari, R.N. (2015). *Substance Use and Substance Use Disorder by Industry*, and National Safety Council. (2017). *A Substance Use Cost Calculator for Employer*. <https://americanaddictioncenters.org/rehab-guide/workforce/blue-collar-workers/construction-workers>

<sup>42</sup> See SMOHIT’s upcoming classes on addiction, suicide prevention, and mental health: <https://www.smohit.org/smart-map/upcoming-classes/>

Additionally, the OA can better protect apprentices by developing a checklist of safety and health criteria, with identified “lagging” and “leading” indicators of whether participating employers in a RAP (or the sponsor in a single employer RAP) have the capacity to provide a safe and healthy work environment. Lagging indicators focus on an entity’s past performance, such as prior OSHA violations, particularly serious, willful and/or repeat and/or failure to abate; total number of injuries and illnesses or lost time injuries;<sup>43</sup> and Experience Modification Rate or (EMR) (used to calculate workers’ compensation rates).<sup>44</sup> Leading indicators demonstrate current capacity and compliance with industry best practices. The leading indicators in the City of Austin’s safety and health questionnaire include questions about whether the submitter has written construction safety program, conducts regular construction site safety inspections, and has an active construction safety training program.<sup>45</sup> The safety index ratings of the Virginia DOT<sup>46</sup> and the North Carolina DOT<sup>47</sup> provide excellent models for evaluating safety. The leading factors included in NCDOT’s safety index rating are: 1) drug/alcohol screening; 2) a written safety program in full force and effect; 3) a designated safety officer; 4) regular on-site safety meetings; 5) required personal safety equipment; and 6) frequency of safety training on trench safety, fall protection, and other workplace hazards.

### **C. Inexperienced Workers Have Higher Rates of Serious Injuries in the Construction Industry**

Young, inexperienced workers have higher rates of serious injuries in the construction industry than older, more experienced workers.<sup>48</sup> Judgment and the ability to recognize and avert hazards develops through experience. There is a substantial body of research that focuses on how to reduce injury rates in apprentices in many different trades.<sup>49</sup> Competent safety and health

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<sup>43</sup> See e.g., City of Austin’s Safety Record Questionnaire & Statement of Bidder’s Safety Experience: “Does the company have a lost time injury rate and a total recordable injury rate of less than or equal to the national average for North American Industrial Classification System (NAICS) Category 23 for each of the past five (5) years? (Attach the bidder’s OSHA 300/300A logs for the past five (5) years)?” <https://www.austintexas.gov/edims/document.cfm?id=114010>

<sup>44</sup> See e.g., Los Angeles United School District, Facilities Construction Contracts, Contractor Safety Prequalification Questionnaire, which requires: 1) a written description of abatement activities for each citation received in the five-year period; 2) Injury and Illness Prevent Program and Code of Safe Practices; and OSHA 300 Logs (Injury & Illness Recordkeeping Forms) and/or Workers’ Compensation Loss Runs for the past three years.  
[http://www.laschools.org/documents/download/prequalification/prequalification\\_forms/safety\\_prequalification/Safety\\_Prequalification\\_Questionnaire\\_-\\_092013\\_Form.pdf](http://www.laschools.org/documents/download/prequalification/prequalification_forms/safety_prequalification/Safety_Prequalification_Questionnaire_-_092013_Form.pdf)

<sup>45</sup> City of Austin’s Safety Record Questionnaire

<sup>46</sup> Virginia DOT, Contractor Prequalification Program  
<http://www.virginiadot.org/business/const/prequal.asp>  
[http://www.virginiadot.org/business/resources/FirstCities/VDOT\\_Prequalification.pdf](http://www.virginiadot.org/business/resources/FirstCities/VDOT_Prequalification.pdf)

<sup>47</sup> North Carolina DOT, North Carolina Department of Transportation Safety Index Rating Form  
<https://connect.ncdot.gov/business/Prequal/Documents/Subcontractor%20Prequalification%20Form.pdf>

<sup>48</sup> Kari Anne Holte & Kari Kjestveit, “Young Workers in the Construction Industry and Initial OSH-Training When Entering Work Life.” *Work*, 41 (2012) 4137-4141, at 4137.

<sup>49</sup> See Laurel D. Kincl, Dan Anton, Jennifer A. Hess, & Douglas L. Week, “Safety Voice for Ergonomics (SAVE) Project: Protocol for a Workplace Cluster Randomized Controlled Trial to Reduce Musculoskeletal Disorders in Masonry Apprentice.” *BMC Public Health* (2016),16:362; Hester J. Lipscomb, James Nolan & Dennis Patterson, “Continued Progress in the Prevention of Nail Gun Injuries among Apprentice Carpenters: What will it Take to See Wider Spread Injury Reductions?” *Journal of Safety Research* (2010), 41, 241–245 (Between 2005 and 2008, reduction in injuries occurred as carpenter apprentices had “early instruction in tool

professionals recognize that, to ensure that young workers are able to meet hazards and risks in the work environment, safety training given at the start of employment is critical. Studies have found higher risk for work-related injuries in the first months of a new job.<sup>50</sup>

Experienced workers serve as role models to apprentices for use of PPE at jobsites that prevent falls from scaffolds and ladders, exposure to respiratory contaminants, hearing loss, and other hazards and for safe execution of assigned tasks.<sup>51</sup> Research shows that workers must “perceive that their co-workers are committed to safety in order for management to positively influence safety behaviors on the job.”<sup>52</sup> In practice, a “co-worker’s response to safety should be seen as just as important in generating a safe work environment as management’s response to safety. Building a commitment to safety among co-workers should be emphasized in educational programs such as toolbox talks.”<sup>53</sup>

## **PART II**

### **RECOMMENDATIONS FOR MONITORING COMPLIANCE WITH PART 29 AND IMPOSITION OF CONTINUING SELF-REPORTING DUTIES ON SPONSORS REGARDING DEFICIENCIES**

#### **I. COORDINATE WITH THE WHD TO MONITOR FUTURE COMPLIANCE OF SPONSORS WITH A TRACK RECORD OF MORE THAN ONE PREVAILING WAGE VIOLATION IMPACTING APPRENTICES IN THE PRECEDING FIVE YEARS**

SMART and SMACNA recommend that the OA coordinate with the Wage and Hour Division to monitor prevailing wage compliance of sponsors with a track record of more than one prevailing wage violation impacting apprentices in the preceding five years. On Davis-Bacon

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use”); Vicki Kaskutas, Ann Marie Dale, Hester Lipscomb, John Gaal, Mark Fuchs, & Bradley Evanoff, “Changes in Fall Prevention Training for Apprentice Carpenters Based on a Comprehensive Needs Assessment.” *Journal of Safety Research* (2010), 221-7 (By seeking input from learners, a research team developed a fall prevention curriculum that provides new apprentices with basic information needed to protect themselves from fall from heights “early” in their training and additional training later in their apprenticeship); Marcelo M. Soares, Karen Jacobs, & Bradley Evanoff, “Outcomes of a Revised Apprentice Carpenter Fall Prevention Training Curriculum.” *Work* (2012) 41, 3806-3808.

<sup>50</sup> Vicki Kaskutas, Anne Marie Dale, Hester Lipscomb, John Gaal, Mark Fuchs, and Bradley Evanoff, “Fall Prevention Among Apprentice Carpenters.” *Scandinavian Journal of Work, Environment & Health* (2010), 36(3): 258-265. (In residential carpentry, “the strongest single risk factor predicting falls was having less than one year of experience,” which means an apprentice worker.)

<sup>51</sup> *Id.* (The data from research is clear: “for every 10 percent increase in the percentage of apprentices to journeypersons on the jobsite [in carpentry] there was a 27 percent increase in ladder falls.”)

<sup>52</sup> Natalie V Schwatka, & John C. Rosecrance, “Safety Climate and Safety Behaviors in the Construction Industry: The Importance of Co-workers Commitment to Safety,” Center for Health, Work and Environment, Department of Environmental and Occupational Health, Colorado School of Public Health, University of Colorado Denver, Aurora, *Work* 54 (2016) 401–413.

<sup>53</sup> *Id.*

projects, the failure to pay a progressively increasing schedule of wages is both a violation of apprenticeship standards and federal prevailing wage law.<sup>54</sup> Part 29 states that a failure to pay the apprentice a progressively increasing schedule of wages consistent with the apprentices skills acquired is grounds for deregistration of a RAP.<sup>55</sup>

Prevailing wage violators often take advantage of Davis-Bacon regulations that allow the payment of a percentage of the journeyman rates to apprentices. Davis-Bacon violations often involve misclassification of workers as apprentices even though they are not individually registered in a bona fide apprenticeship program registered with the OA or State Apprenticeship Agency recognized by the OA<sup>56</sup> or the contractor does not have an approved apprenticeship program.<sup>57</sup> In other cases, violations involve a failure to pay the proper percentage of the journeyman wage rate<sup>58</sup> or a failure to honor required ratios of journeymen to apprentices.<sup>59</sup> Misclassification of journeymen to lower paying journeyman classifications is also a common problem.<sup>60</sup>

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<sup>54</sup> 29 C.F.R. § 5.5.

<sup>55</sup> To further protect apprentices, SMART and SMACNA encourage the OA to require that all single employer and non-joint RAPs provide written notice to apprentices of the current federal and state prevailing wage in the locality in which the apprentice is employed. *See e.g.*, New York Labor Law, § 195(3). These sponsors should also be required to provide written notice to apprentices, at least annually, of the amount of the hourly fringe benefit credit taken for each type of benefit (pension, health, training, etc.) during the preceding year, and the name, address, account number of each benefit plan or fund, as well as the name of the administrator and/or a trustee and his or her contact information, and the costs that may reasonably be incurred in providing such benefits. All such notices should be signed by the apprentices and submitted to the OA or state apprenticeship agency no later than January 31 each year.

<sup>56</sup> *Tollefson Plumbing and Heating*, WAB 78-17 (Sept. 24, 1979) (Four workers who were classified and paid as apprentice plumbers were not properly registered in an approved apprenticeship program.); *Clevenger Roofing and Sheet Metal Co.*, WAB 79-14 (Aug. 20, 1983) (None of the employees in question were apprentices individually registered in a bona fide apprenticeship program or were in any formal approved trainee programs).

<sup>57</sup> *Jos. J. Brunetti Construction Co. & Dorson Electric & Supply Co., Inc.*, WAB Case No. 80-9 (Nov. 18, 1982) (The contractor did not have an approved apprenticeship or training program registered with either the Bureau of Apprenticeship and Training, or a recognized State Apprenticeship agency.); *Spartan Mechanical Corp.*, WAB Case No. 80-6 (April 16, 1984) (not enrolled in a bona fide apprenticeship program); *In re North Country Constructors of Watertown*, WAB No. 92-22 (Sept. 30, 1992), *aff'd North Star Industries v. Reich*, 67 F. 3d 307 (9<sup>th</sup> Cir. 1995).

<sup>58</sup> *Bay State Wiring Co.*, WAB 76-8 (June 14, 1977) (One apprentice not properly registered, and therefore, was not paid the prevailing wage rate for electricians, and another apprentice was not paid the proper percentage of the appropriate wage rate.)

<sup>59</sup> *Johnson Electric Co.*, WAB 80-3 (April 11, 1983) (employment of electrician apprentices on the project in excess of the permissible ratio of apprentices to journeymen); *CRC Development Corporation*, WAB Case No. 77-01 (Jan. 23, 1978) (two subcontractors employed apprentices in excess of the ratio required); *Repp & Mundt, Inc. & Goedde Plumbing & Heating Co., Inc.* WAB 80-11 (Jan. 17, 1984) (contractor hired apprentices in excess of the ratio of journeymen to apprentices permissible under the applicable collective bargaining agreement); *Palmer and Sicard, Inc.*, WAB 77-12 (Dec. 14, 1977) (apprentices were employed in excess of ratio requirements).

<sup>60</sup> *Cosmic Construction Co., Inc.*, WAB 79-19, Sept. 2, 1980 (misclassified composition roofers as slate and tile roofer helpers in order to pay them less than the correct predetermined wage rate.); *Jordan & Nobles Construction Co.*, WAB No. 81-18 (Aug. 19, 1983) (contractor classified and paid "employees as laborers who were performing the work of plumbers."); *Soule Glass and Glazing Co.*, WAB Case No. 78-18 (Feb. 8, 1979); *P&N, Inc./Thermodyn Mechanical Contractors, Inc.*, ARB Case No. 96-116, 1994-DBA-72 9Oct. 25, 1996); and *Sealtite Corporation*, WAB Case No. 87-6 (October 4, 1988).



State laws and administrative codes recognize the importance of monitoring violations of prevailing wage and other labor and employment laws that impact apprentices.<sup>61</sup> In Virginia, for example, sponsors are required to “notify” the DOL “within 30 days of receipt of a citation alleging a violation of the Davis-Bacon Act affecting any apprentice.”<sup>62</sup> A failure to report citations is an “omission for which the department may consider requiring a remedial action plan or deregistration of the sponsor’s program.”<sup>63</sup> The Virginia code further states that the DOL may “deregister sponsors who receive final orders of the USDOL or the courts confirming willful or repeated violations of the Davis-Bacon Act affecting registered apprentices.”<sup>64</sup>

## II. OA STANDARDS SHOULD PREVENT SPONSORS FROM EVADING RESPONSIBILITY FOR POOR PERFORMANCE BY SEEKING APPROVAL OF A NEW RAP UNDER THE NAME OF ANOTHER ENTITY IN WHICH IT HAS AN INTEREST

The OA should upgrade standards to prevent sponsors from evading responsibility for poor performance by seeking approval of a new RAP under the name of another entity in which it has an interest. SMART and SMACNA encourage the OA to include a definition of “interested party” in 29 C.F.R. § 29.2 that would prevent sponsors and their governing boards from seeking to register a new RAP by operating in another name, in the name of a family member, or in the name of an entity in which it has an interest. The following definition would close that loophole by targeting all interested parties:

“Interested party” means a sponsor, a member of the sponsor’s governing board, and/or owner(s), responsible officer(s), predecessor entit(ies), and/or spouse, child, parent, or other immediate family member of the sponsor or governing board; any firm, corporation, partnership, or association in which such sponsor, owner, responsible officer, predecessor entit(ies), spouse, child, parent, or other immediate family member, or governing board member has an interest.

By analogy, the WHD has recognized, in the Davis-Bacon context, that it is important to target both “unscrupulous”<sup>65</sup> contractors and “responsible officers” to “close a loophole where such individuals” could violate the law with impunity “by forming or controlling another entity.”<sup>66</sup>

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<sup>61</sup> At least two states empower their respective DOLs to condition approval of new RAPs upon resolution of a “violation of any federal or state labor laws or regulations affecting registration of programs.” Haw. Code R. §12-30-4(d) and Vt. Code R. § 4(n).

<sup>62</sup> 16 VAC 20-21-50. *Standards of apprenticeship programs*.

<sup>63</sup> *Id.*

<sup>64</sup> *Id.*

<sup>65</sup> See NPRM, *Updating the Davis-Bacon and Related Acts Regulations*, 87 *Fed.Reg.* 15711, 15746; see also, 40 U.S.C. § 3144(b); 29 C.F.R. § 5.12(a)(2).

<sup>66</sup> *Id.* at 15757.

### **III. IMPOSE A CONTINUING DUTY TO INFORM THE OA OF IMPEDIMENTS TO FULFILLING OBLIGATIONS TO APPRENTICES FOLLOWING REGISTRATION**

To better maintain quality control following approval of an application, the OA should impose an ongoing requirement that the sponsors notify the OA within a specified time of any post-application impediments to operating a quality programs, such as inability to retain qualified instructors to provide related instruction or a participating employer's breach of its written agreement to provide funding.<sup>67</sup> The failure to comply with the duty to notify requirement should result in extension of provisional registration (if applicable).

### **IV. THE OA SHOULD DELAY APPROVAL OF APPLICATIONS OF SPONSORS AND INTERESTED PARTES THAT ARE DEBARRED AND/OR SUSPENDED FROM WORKING ON GOVERNMENT CONTRACTS UNTIL THE TERM OF DEBARMENT OR SUSPENSION ENDS**

#### **A. The OA Should Consider State Regulations or Guidance that Have Mechanisms in Place to Prevent Debarred or Suspended Contractors from Serving as Sponsors or on the Governing Boards of RAPs**

There is currently nothing in the apprenticeship standards that prevents debarred or suspended parties from serving as sponsors or on their governing board despite the fact that the value of excluding them is widely recognized in regulations of state apprenticeship agencies and by divisions within the U.S. DOL, including the OA. Based on these models, SMART and SMACNA recommend that the OA delay approval of application of sponsors and interested parties that are debarred or suspended from working on government contractors until the term or debarment or suspension ends.

The OA should consider different mechanisms adopted by states to exclude bad actors from involvement in apprenticeship programs. In New York, the Labor Commissioner is authorized to de-register any program based on a finding that the "Sponsor or any Signatory" was "debarred from bidding on public contracts in the State of New York."<sup>68</sup> In California, the Labor Commissioner is required to consider the impact on apprentices in determining that length of debarment; two provisions in its standards for debarment that address the impact of violations on apprentices.<sup>69</sup>

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<sup>67</sup> See City of Columbus' Guide to Construction Prequalification, which states that the City of Columbus requires prequalified contractors to advise to the Office of Construction Prequalification of any change in circumstances that may be material to their prequalification status within seven (7) business days of such change. <https://www.columbus.gov/WorkArea/DownloadAsset.aspx?id=79435>

<sup>68</sup> N.Y. Comp. Codes R. & Regs. tit. 12 § 601.9(b)(6).

<sup>69</sup> California Code, Labor Code § 1777.1(d)(2)(A)-(E).

(2) The Labor Commissioner shall consider, in determining whether a violation is serious, and in determining whether and for how long a party should be debarred for violating Section 1777.5, all of the following circumstances:

(A) Whether the violation was intentional.

(B) Whether the party has committed other violations of Section 1777.5.

(C) Whether, upon notice of the violation, the party took steps to voluntarily remedy the violation.

**(D) Whether, and to what extent, the violation resulted in lost training opportunities for apprentices.**

**(E) Whether, and to what extent, the violation otherwise harmed apprentices or apprenticeship programs.**

The applications for sponsorship in other states also inquire about debarments and suspensions. For example, the Connecticut DOL's Application for Apprenticeship Sponsor requires that applicants disclose whether the "firm, any affiliate, (including any contractor of record) any predecessor company or entity, owner of 5.0% or more of the firm's shares, director, officer, partner or proprietor" has been the subject in the preceding five years of an extensive list of actions, including criminal convictions and debarments. Listed below are inquiries on the Connecticut application that pertain to debarments and suspensions:<sup>70</sup>

- A debarment from federal contracts for violation of the Davis-Bacon Act, 49 Stat 101(1931), 40 USC 276a-2 or pending enforcement proceeding for same.
- A debarment from state contracts for violation of Connecticut's prevailing wage law pursuant to Conn. Gen. Stat. Section 31-53a of the General Statutes, or pending enforcement proceeding for the same?
- A debarment or suspension for violation of any other state prevailing wage law or pending enforcement proceeding for same.
- A federal suspension, debarment, bid rejection or disapproval of any proposed contract or subcontract for lack of responsibility; or denial or revocation of pre-qualification for any bid in any state or municipality, or a voluntary exclusion agreement?

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<sup>70</sup> Connecticut Department of Labor Application for Apprenticeship Sponsor:  
<https://www.ctdol.state.ct.us/progsupt/appren/reciporocal/AT-2%20Reciprocity.pdf>

The applications for sponsorship of RAPs in many other states, such as Delaware,<sup>71</sup> Maine,<sup>72</sup> and Massachusetts,<sup>73</sup> require disclosure of debarments and violations of laws enacted for the benefit of workers.<sup>74</sup>

## **B. The OA Has Recognized the Value of Excluding Debarred or Suspended Entities**

The OA recognized its authority to prevent debarred entities from serving in an oversight capacity in the context of IRAPs.<sup>75</sup> The OA stated, in that context, that the “debarment restriction is intended to exclude entities that have carried out bad acts that would call into serious doubt their ability to effectively function as an SRE,” and, thus, the OA correctly observed that debarment is an appropriate remedy. The OA’s authority to exclude debarred contractors from serving as sponsor is fully consistent with its role as protector of the welfare of apprentices.

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<sup>71</sup> Delaware Department of Labor Division of Employment and Training:  
<https://laborfiles.delaware.gov/main/det/apprenticeship/Sponsor%20Application%20Form.pdf>

<sup>72</sup> The Maine DOL requires applicants to certify that “principals and any subcontractors and/or consultants” named in the application have not been debarred or convicted of enumerated crimes. *See* the following inquiry in Appendix B – Debarment, Performance, and Non-Collusion Certification: “Are not presently debarred, suspended, proposed for debarment, and declared ineligible or voluntarily excluded from bidding or working on contracts issued by any governmental agency?”

<sup>73</sup> The Massachusetts application requires disclosure of the following information:

- A debarment from federal contracts for violation of the Davis-Bacon Act, 49 Stat 101(1931), 40 USC 276a-2, or pending enforcement proceeding for same?
- A debarment from state contracts for violation of Massachusetts or any other state’s prevailing wage law, or pending enforcement proceeding for the same?

<sup>74</sup> Inquiries about OSHA violations are significant since young, inexperienced workers have higher rates of serious injuries in the construction industry than older, experienced workers.

<sup>75</sup> SMART and SMACNA strongly opposed the IRAP rule and supported the recent NPRM to rescind it since it since IRAPs constitute an unlawful delegation of the OA’s regulatory duties to private entities and are antithetical to the purpose of the NAA, which is to “safeguard the welfare of apprentices.” *See* § 29.21 (b)(5): “It [the Standards Recognition Entity] is not suspended or debarred from conducting business with the U.S. Federal Government.”

Thank you for the opportunity to submit these recommends to the Task Force. SMART, SMACNA, and representatives from the International Training Institute, which is jointly sponsored by SMART and SMACNA, are available to meet with you to further discuss these recommendations.

Sincerely,



Joseph Sellers, Jr.  
General President  
International Association of Sheet Metal,  
Air, Rail and Transportation Workers



Aaron Hilger  
Chief Executive Officer  
Sheet Metal & Air Conditioning  
Contractors' National Association

**Sample Questions for the Office of Apprentice's Use in  
Reviewing Applications for Sponsorship of New RAPs**

**RAPs Registered with State Agencies**

1. Do you have a program currently registered with a state registering agency? If yes, which state(s)? Are the RAPs in good standing and in compliance with requirements under apprenticeship law and regulations in the state(s) in which they are registered?

**Closed RAPs or Voluntarily or Involuntarily Deregistered RAPs**

2. Have you sponsored and/or functioned as a participating employer in a RAP(s) that closed or became defunct over the past ten years? If your answer is yes,
  - Identify the RAP(s) and the reason(s) that the program closed or became defunct.
  - Identify the registered apprentices who were denied the opportunity to complete the RAP and describe your efforts to place them in a RAP or other program in the same apprenticeable occupation.
  - Identify the process by which you assessed demand for apprentices and available hours of work for on-the-job learning during the term of apprenticeship before accepting apprentices into the RAP.
  - State whether you notified the OA or the state apprenticeship agency that the RAP was no longer enrolling apprentices and/or voluntarily cancelled the RAP. If you provided notification, attach documentation from the registering agency confirming cancellation of the program.
3. Have you sponsored and/or acted as a participating employer in a RAP(s) that was deregistered by the OA or a state apprenticeship agency? If yes, attach all relevant documentation.

## Budgets and Funding

4. ***Prior and Current RAPs:*** For each RAP that you have sponsored over the past five years, did you develop a training budget before enrolling apprentices? Did you obtain a written commitment from funding sources to provide sufficient funds to finance each item on the budget before enrolling apprentices? Explain the model(s) for funding (e.g., hourly contributions) and identify the funding sources for each RAP. Attach each RAP's budget, a copy of a signed written agreement from funding sources, and the minutes of meetings of the governing board. If you sponsored a single employer RAP over the past five years, did you invest sufficient funds to finance each item in your budget?
5. ***Proposed RAP(s):*** For the RAP(s) that you seek to sponsor, have you developed a detailed training budget? Have you obtained an enforceable written agreement from funding sources to provide sufficient funds to finance each item on the budget before enrolling apprentices? Explain the model(s) for funding (e.g., hourly contributions) and identify the funding sources for each RAP. Attach each RAP's budget, a copy of a signed written agreement from funding sources. If you propose to sponsor a single employer RAP over a five-year period, have you allocated sufficient funds to finance each item in your budget?

## Board Meetings

6. For each RAP that you sponsored over the past five years, state the number of board meetings held each year in which a quorum participated. Is a minimum number of meetings required in written rules, guidelines, or fund documents? If yes, did each RAP satisfy the minimum number?
7. If you sponsored a non-joint RAP over the past five years in a state, which requires employee representation of non-joint committee, did the RAP have an equal number of employer and employee representatives on the committee? If yes, attach minutes of meetings that demonstrate equal representation.

## Related Instruction

8. For each RAP that you sponsored over the past five years, itemize the annual costs of providing related instruction (instructor salaries, costs of maintaining training facilities, training materials, equipment upgrades, tracking hands-on performance, computer and/or iPad costs, etc.). State the percentage of related instruction time devoted to in-person class time, synchronous on-line instruction, pre-recorded audio or video lessons, self-study, and other means of knowledge acquisition.

9. What is the format for delivery of safety and health training? How many hours of safety and health training are offered before apprentices are dispatched for on-the-job learning? Does this training include OSHA-10 and OSHA-30?
10. State the ratio(s) of instructors to students for related instruction.
11. Are apprentices required to pay the costs of related instruction conducted by the RAP? If yes, what is the total cost paid by apprentices? Provide an itemized breakdown of the costs paid by apprentices.
12. For RAPs that you sponsored over the past five years, describe related instruction on life-skills and the number of hours dedicated to this training.
13. For RAPs that you sponsored over the past five years, are graduates provided with the opportunity to receive journeyman upgrades? If your answer is no, how do program graduates retain marketability in their trade as techniques used in the apprenticeable occupation evolve?
14. If the RAPs that you sponsored over the past five years contracted out related instruction to one or more third party, identify the third part(ies), the cost of tuition and materials on a per apprentice basis, the amount of the total costs paid by the apprentice, and the means through which the RAP tracked each apprentice's progress for the purpose of assigning apprentices to on-the-job learning commensurate with the skills acquired.
15. If the RAPs that you sponsored over the past five years required apprentices to obtain and pay for related instruction on their own, identify the provider of related instruction for each apprentice, the total costs paid by each apprentice, the amount of time required by each apprentice to complete the related instruction, and the means through which the RAP tracked each apprentice's progress for the purpose of assigning apprentices to on-the-job learning commensurate with the skills acquired.

### **Qualifications of Trainers**

16. For each RAP that you sponsored over the past five years, describe the screening process for selection of subject matter experts with the qualifications to provide technical instruction to apprentices. How do technical trainers in these RAPs typically acquire technical expertise?
17. For each RAP that you sponsored over the past five years, describe the RAP's process of providing updated technical instruction instructors. Are instructors required to obtain training in new curricula as techniques in your industry evolve? If yes, is the train-the-trainer instruction on new curricula taught internally by your RAP or is this training contracted out to a third party? Attach certificates of completion on new curricula issued by third parties (if applicable).
18. For each RAP that you sponsored over the past five years, has the RAP(s) required that instructors have training in teaching techniques and adult learning styles? If yes, has the RAP(s) taught such training internally or is this training contracted out to a third party? Identify the third party (name and



contact information) who provided this training to your instructors. Attach certificates of completion issued by third parties (if applicable).

### **Enrollment, Registration, and Reporting Cancellations**

19. How many apprentices were enrolled and/or are currently in each RAP that you have sponsored over the past five years? Specify which apprentices are current and former enrollees.
20. Describe the screening process for applicants, including standardized testing, interviews, reference checks, veteran preferences, and credit awarded to applicants who completed pre-apprenticeship programs.
21. Did you timely register each enrollee in the RAP(s) that you sponsored over the past five years with the OA or a state apprenticeship agency? If not, provide an explanation for the failure to timely registered apprentices. A registration is not “timely” for the purpose of this question if the apprentice participates in on-the-job learning before he or she is registered with the OA or a state apprenticeship agency.
22. Did you report all cancellations in the RAPIDS database or the database of the state apprenticeship agency and provide an explanation for each cancellation? Did you report all completions?

### **Assessment of Capacity to Provide On-the-Job Learning**

23. For each RAP(s) that you sponsored over the past five years, did you determine an estimated number of hours of on-the-job learning that the RAP(s) would be able to provide for each apprentice before enrolling apprentices in the RAP(s)? If yes, describe the process that you used to project journeyperson and apprentice hours, including estimating the number of hours required to perform projects already “on the books” and projects on which you had a reasonable expectation of obtaining during the term of apprenticeship.
24. Have you undertaken an assessment of capacity to provide on-the-job learning to apprentices in the programs that you are currently seeking to register? Describe the process that you used or are using to project journeyperson and apprentice hours. For each apprentice that you expect to enroll, state how many hours of on-the-job learning that you anticipate providing and explain how you derived that estimate.
25. Do your projections described in your response to question 24 take into account the goal of providing broad-based training, with the objective of producing a well-rounded, competent journeyperson? If yes, explain the process undertaken to ensure that each apprentice receives broad-based training.

### **Involuntary Cancellations**

26. For each RAP(s) that you sponsored over the past five years, how many apprenticeships were cancelled or suspended due to lack of available on-the-job learning? State the percentage of the total registered apprentices who were unable to complete the program within the time frame set forth in the apprenticeship agreement due to a shortage of available. Explain any extenuating circumstances (such as natural disasters or economic downturns) that impeded the sponsor's ability to more accurately project work opportunities. For each cancellation, identify each apprentice whose work assignment(s) were on almost entirely (at least 80%) on prevailing wage jobs.
27. How many apprenticeships were cancelled from each RAP for reasons that are based on an apprentice's failure to follow program rules or work rules (e.g., excessive absenteeism or tardiness, gross negligence in handling company equipment, etc.)?
28. How many apprenticeships were cancelled from each RAP for unsatisfactory acquisition of skills or performance? For each cancellation, describe the remedial efforts to assist apprentices with skill acquisition and performance.
29. How many apprentices were unable to satisfy program requirements due to alcohol or substance abuse or mental health problems? Were these apprentices offered formal assistance for rehabilitation and/or support and the opportunity to take an excused leave from the RAP?
30. Total the percentage of cancellations of apprenticeship that were involuntary (add your responses to questions 26 to 29 and divide by the number of registered apprentices).

### **Voluntary Cancellations**

31. How many apprenticeships were cancelled due to an apprentice's voluntary decision to discontinue participation in the program?

## Participation of Women and Minorities

32. ***Prior and Current Recruitment:*** For each RAP that you sponsored over the past five years, describe recruitment efforts to ensure that participation of women and minorities reflect the number on women and minorities working in the wider civilian labor force in the geographic area in which your RAPs are located.
33. ***Proposed RAP(s):*** For the RAP(s) that you seek to sponsor, describe recruitment efforts to ensure that participation of women and minorities reflect the number on women and minorities working in the wider civilian labor force in the geographic area in which your RAPs are located.

## Safety and Health

34. For each RAP(s) that you sponsored over the past five years, state the drug/alcohol screening protocols administered. When an apprentice tested positive for alcohol or non-prescription drugs, did the RAP offer the apprentice mentoring, referral to an assistance program, and/or treatment (counseling, in-patient rehabilitation, etc.)? If so, were apprentices offered a medical leave of absence while seeking treatment?
35. For each RAP that you sponsored over the past five years, were apprentices provided with employer-funded health benefits? For the RAP(s) that you seek to sponsor, will apprentices receive employer-funded health benefits?
36. For the RAP(s) that you seek to sponsor, does your budget include an allocation of funds for the items listed in questions 34 and 35?
37. Do participating employers in the RAP(s) that you seek to sponsor have a written safety program in full force and effect, a designated safety officer, regular on-site safety meetings, all required personal safety equipment, and on-site safety training?
38. Has the sponsor or any interested parties violated OSHA or state or municipal safety laws in the past five years? Are there any pending enforcement proceedings for violations of OSHA or state or municipal safety law? If your answer to either question is yes, attach all relevant documents. Describe all efforts to abate the unsafe or hazardous conditions.

### **Violations of Prevailing Wage/Adverse Impact on Apprentices**

39. Has the sponsor or any interested parties committed a violation of the Davis-Bacon and Related Acts or a state, county, or municipal prevailing wage law that adversely impacted apprentice(s) in the past five years? Are there any pending enforcement proceedings for violations of the Davis-Bacon and Related Acts or state, county, or municipal prevailing wage law? If your answer to either question is yes, attach all relevant documents.

### **Debarments or Suspensions**

40. Has the sponsor or any interested parties been debarred or suspended from federal contracts violations of the Davis-Bacon and Related Acts or from state or municipal contract for violations of prevailing wage law? Are there any pending enforcement proceedings for debarment or suspensions? If your answer to either question is yes, attach all relevant documents.