



December 6, 2022

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. These new recommendations address upgrading the standards for registered apprenticeship programs (RAPs) in 29 C.F.R. part 29 and supplement the recommendations concerning apprenticeship standards in SMART's June 25, 2021 letter (attached) to the Task Force.

The regulatory processes implementing the Davis-Bacon Act and the National Apprenticeship Act of 1937 (NAA) are the federal rules with the greatest impact on construction unions, our membership, and signatory contractors. SMART and SMACNA commend the U.S. Department of Labor on its recent proposals to amend the regulations governing DBA survey methodology, coverage, and enforcement¹ and its efforts to address the complicated issues surrounding classification and sub-classification of work functions within each trade by issuing a proposed "Directory of Classifications and Sub-Classifications."² SMART and SMACNA also appreciate the DOL's rescission of the Industry-Recognized Apprenticeship Program (IRAP) and its acknowledgement in the preamble to the Final Rule of suggestions on "how to improve

¹ Notice of Proposed Rulemaking, Updating the Davis-Bacon and Related Acts Regulations, to amend Parts 1, 3, and 5 of these regulations. 87 *Fed.Reg.* 15711, 15706 (Mar. 18, 2022).

² Agency Information Collection Activities; Comment Request; Report of Construction Contractor's Wage Rates, 87 *Fed.Reg.* 36152 (June 15, 2022).

Registered Apprenticeship” and statement that the DOL “continues to be interested in ideas to expand Registered Apprenticeship while elevating important quality standards and promoting advancement opportunities for workers.”³

SMART and SMACNA encourage the Office of Apprenticeship (OA) to modify the regulations in part 29 governing registered apprenticeship to better effectuate the purpose of the NAA, which is to “safeguard the welfare of apprentices.”⁴ Collectively, the changes recommended below will ensure that apprentices receive broad-based, quality training that will 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.”⁵ SMART and SMACNA urge the OA to strengthen its standards by incorporating the recommendations set forth below. This letter is divided into two major sections. The first section sets forth: 1) an overview of the California requirement that an applicant for sponsorship of an apprenticeship program submit “evidence” that it has the financial and training resources to maintain a high-quality training program; 2) recommended modifications to the federal standards in part 29 based largely on the California model; and 3) detailed arguments in support these modifications. The second section uses the same format to advocate for upgraded apprenticeability standards, based largely on the Washington State model, to ensure that apprentices are provided with broad-based training rather than training in repetitive tasks that involve only a portion of a trade.⁶

Sheet metal joint apprentice and training committees (JATCs) deliver high-quality training. The vast majority of our 148 U.S.-based JATCs were established in the early 1900s. They have a proven track record sustained over more than 100 years of providing broad-based training to sheet metal workers to meet the demands of a changing economy. Our JATCs have the financial and training resources to deliver excellent training because: 1) there has been investment in development of facilities throughout the country for generations: the current generation of apprentices benefits from the investments of prior generations; 2) ongoing and reliable contributions to the JATCs, which are established under CBAs and based on the number of hours worked by covered workers; and 3) the International Training Institute,⁷ which is a national training fund jointly sponsored by SMART and SMACNA, provides updated curricula and train-the-trainer instruction to all JATCs regardless of size. These features promote great stability in our programs, and thus, ensure that registered apprentices know with certainty that their JATC will not become defunct before graduation.

³ Final Rule, Apprenticeship Programs, Labor Standards for Registration, 87 *Fed.Reg.* 58269, 58275 (Sept. 26, 2022).

⁴ See SMART’s recommendations concerning apprenticeship standards in our June 25, 2021 letter to the White House Task Force at pages 8 to 10 (attached).

⁵ Notice of Proposed Rulemaking, *Apprenticeship Programs, Labor Standards for Registration*, 86 *Fed.Reg.* 62966, 62968 (Nov. 15, 2021)(proposed rescission of the IRAP rule).

⁶ See Appendix A for the proposed revisions to part 29.

⁷ The ITI protects the interests of apprentices in JATCs during the term of their apprenticeship and throughout their careers in a variety of ways: by almost 50 years of curriculum development that anticipates the need for training and re-training as technology evolves; journeyperson upgrades for graduates so that their skills do not become obsolete as technology changes; diverse on-the-job training; a nationally-recognized, portable credential; college credit; an opportunity for expedited progression; and multi-modal options for related instruction.

PART I

MANDATORY VERIFICATION OF FINANCIAL RESOURCES

Overview: The California Model Requires Written Documentation by Prospective Sponsors of Sufficient Financial and Training Resources to Maintain a Quality Program

California regulations require that applicants for sponsorship of apprenticeship programs submit “evidence” to the Chief of the Department of Apprenticeship Standard of financial viability.⁸ These regulations 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.⁹ The “financial information” submitted to the DAS must demonstrate:¹⁰

- (i) a budget for training that covers income and proposed funding sources, expenses, including personnel, instruction, facilities, and insurance (including workers' compensation);
- (ii) a detailed explanation of how sufficient funding will be provided to meet the budget; and
- (iii) if the program will rely on member participation, the number of participants and the required financial obligation for each participant;

An applicant for sponsorship must also submit “evidence” that it “has or will obtain adequate classroom facilities for related and supplemental instruction before it begins operation,” including facilities that are “adequate to replicate the on-the-job experience” if the curriculum involves “hands-on instruction.”¹¹ Another key provision in the California code is that an applicant must disclose the “the number of new apprentices the applicant seeks to enroll during the next five years in the new or expanded program, the number of employers that have agreed to participate, and the number of journeyworkers that each employer employed in the past 12 months.”¹²

Most fundamentally, program sponsors must have the financial resources to run a quality training program. Both the start-up and operational costs of apprenticeship programs for skilled trades in the construction industry are high. As recognized in a U.S. Department of Commerce study, it is “difficult for individual small employers to keep up with new developments in technology; joint training centers have staff that ensure that new skills ... are incorporated into

⁸ Cal. Code Regs., Tit. 8, §212.2, Eligibility and Procedure for DAS Approval of an Apprenticeship Program.

⁹ §212.2(a)(5).

¹⁰ §212.2(a)(6)(B)(i)-(iii).

¹¹ §212.2(6)(D)(i).

¹² §212.2(a)(6)(A). The California code further states that the applicant must submit “a written plan providing a reasonable timetable to obtain sufficient additional employer participation during the first five years after approval to employ the new apprentices.” §212(a)(6)(C).

apprentice training and continuing education.”¹³ In the union sector, an ongoing stream of funding is ensured because each contractor contributes to the program an amount based on the number of hours of work performed by each employee depending upon the rate set forth in its collective bargaining agreement. By contrast, as detailed below, unilateral contractors often seek approval of programs without the funding or training resources necessary to sustain a quality program and often become defunct, fail to enroll apprentices, have low graduation rates, and/or provide poor quality training.

Recommendations:

As detailed in Appendix A, the OA would best ensure that newcomers to the workforce can rely on the OA’s approval of programs as a stamp of quality control if the OA conducts a more thorough inspection of applications, particularly the adequacy and reliability of funding and training resources. These modifications, which are largely based on the California model, require prospective sponsors to submit written documentation of the financial ability and training resources to maintain a quality training program for a minimum of five years, including: ¹⁴

- **Detailed budget:** A detailed budget for training that covers income and proposed funding sources and expenses, including personnel, instruction (including anticipated ratio of mentors and instructors to apprentices), facilities, and insurance (including workers' compensation);
- **Adequacy and reliability of funding:** A detailed explanation of how adequate funding will be timely provided to meet the budget and proof of reliability of funding sources;
- **Agreement documenting financial commitment:** In circumstances where the program will rely on contributions from participating employers, the OA should require disclosure of the number of participating employers and the financial obligation(s) of each participating employer and submission a copy of a signed agreement(s) documenting the amount and duration of each contributor’s financial commitment to the program.
- **Commitment from providers of on-the-job learning:** A sufficient number of participating employers with the ability to provide safe and broad-based training opportunities, as demonstrated by employment history in the 12 months preceding the sponsor’s submission of its application to the OA. The OA should require submission of the number of journeypersons that each participating employer employed in the past 12

¹³ U.S. Department of Commerce partnered with Case Western Reserve University in producing this study. See Susan Helper, Ryan Noonan, Jessica R. Nicholson, and David Langdon, “The Benefits and Costs of Apprenticeship: A Business Perspective,” Case Western Reserve University and U.S. Department of Commerce, November 2016, at 15.

¹⁴ The length of individual training programs will vary depending upon the apprenticeable occupation and other factors. SMART and SMACNA are **not** advocating for mandatory minimum length of training. See Dale Belman (2022). *Registered Apprenticeship in Construction: Built to Last?* Institute for Construction Economic Research, at page 6 (“Most apprentices complete their program by successfully working through a three-to-five-year structured program of on-the-job and classroom training.”) <http://iceres.org/wp-content/uploads/2022/07/Registered-Apprenticeship-in-Construction-Built-to-Last.pdf>.

months and a detailed description of the on-the-job learning opportunities that will be provided by each employer; and

- **Safe and adequate facilities:** Proof that the sponsor has reliable access to facilities for hands-on training that adequately replicates the on-the-job experience.

Arguments in Support of Recommendations:

SMART AND SMACNA ENCOURAGE THE OA TO REQUIRE WRITTEN DOCUMENTATION BY PROPOSECTIVE SPONSORS OF SUFFICIENT FINANCIAL AND TRAINING RESOURCES TO MAINTAIN A QUALITY PROGRAM FOR A MINIMUM OF FIVE YEARS

SMART and SMACNA’s recommendation that the OA require that prospective sponsors submit written documentation of sufficient financial and training resources to maintain a quality program for a minimum of five years is supported by the following arguments.

A. Rooting Out RAPs that Lack the Funding to Provide Quality Program is Urgent and Should be a Priority of the Biden Administration

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. The Treasury Department and the Internal Revenue Service are currently developing guidance on implementation of both standards.¹⁵

B. Open Shop Programs Account for a Small Fraction of the Total Expenditures on Training Registered Apprentices in the Construction Industry

Scrutiny of financial and training resources of entities seeking to sponsor RAPs is critical to ensure that new entrants into construction training deliver high quality training. Launching new apprenticeship programs requires companies to make a “significant resource commitment and

¹⁵ See Notice 2022-51, Request for Comments on Prevailing Wage, Apprenticeship, Domestic Content, and Energy Communities Requirements Under the Act Commonly Known as the Inflation Reduction Act of 2022 (Oct. 5, 2022). <https://www.irs.gov/pub/irs-drop/n-22-51.pdf>

assume long-term risks.”¹⁶ In the open shop sector, these risks are more daunting because resource commitments are typically not pooled by a consortium of employers. Businesses are “wary of the costs associated with sponsoring an apprenticeship program, such as management fees, wages, and tuition, relative to the time it takes for an apprentice to become productive” and are concerned that there is “no guarantee that these trained workers will stay on after such an investment in them is made.”¹⁷ As a consequence, contributions by unilateral programs account for a small fraction of the total expenditures on apprenticeship training in the construction industry.¹⁸

At present, union contractors account for nearly all expenditures on RAPs.¹⁹ In Indiana, Illinois, and Wisconsin, for example, JATCs are responsible for 94%, 95%, and 99% of expenditures for construction apprentice training, respectively.²⁰ In Indiana, about \$56,873,080 is spent each year on construction industry training by non-profit organizations headquartered in the state; JATCs spend a total of \$54,410,780; and the non-union construction industry spends an annual total of \$2,462,300 on apprentice training.²¹ A 2018 study of expenditures on apprenticeship programs in New York demonstrates the same imbalance between union and non-union expenditures.²² Additionally, JATCs train the vast majority of apprentices in the construction industry. In Illinois, 97.5% of construction apprentices – 74,458 – were enrolled in JATCs between

¹⁶ Final Report (May 2018). Task Force on Apprenticeship Expansion. <https://omb.report/icr/201812-1205-001/doc/88448201> The Final Report cites U.S. Department of Commerce cited in footnote 3.

¹⁷ *Id.*

¹⁸ According to economist Dale Belman, it is “difficult to locate information on training expenditures” on individual non-joint programs on a per capita basis, as the “leading organizations do not publish this data. Professor Peter Philips, a labor economist at the University of Utah, has proxied expenditures with program assets report by the IRS-990 form for small tax-exempt organizations.” See page 10 of Dr. Belman’s 2022 study, *supra* at footnote 14, citing Elird Haxhiu & Peter Philips, *The Role of Collective Bargaining, Remuneration Strategies and Regulations in Fostering Apprenticeship Training in US Construction* (unpublished manuscript). Dr. Belman explained that Dr. Philips has “proxied expenditures with program assets report by the IRS-990 form for small tax-exempt organizations.” According to Dr. Philips’ research, in 2014, “non-signatory (meaning non-labor-management or typically non-union) organizations involved in construction training had \$242 million in assets. In contrast, and again using the IRS 990 forms, training providers associated with signatory (meaning union or labor-management) organizations had \$2.7 billion in assets.”

¹⁹ In Pennsylvania, for example, between 2000 and 2016, although JATCs accounted for “only a quarter of all apprenticeship programs, they account[ed] for 85% of all registered apprentices” in the state. During that time frame, there were 315 “active” apprenticeship programs serving the construction industry in Pennsylvania, with JATCs accounting for just under one in four (72 programs). Stephen Herzenberg, Diana Polson, and Mark Price (2018). *Construction Apprenticeship and Training in Pennsylvania*. Capital Area Labor-Management Council, Inc., at 9.

²⁰ Kevin Duncan (2018). *Implications of Clarifying the Definition of Public Works and Prevailing Wage Coverage in New York: Effects on Construction Costs, Bid Competition, Economic Development, and Apprenticeship Training*. <https://faircontracting.org/wp-content/uploads/2019/04/NY-PW-report-Duncan-3-15-18.pdf>

²¹ See the attached *Summary of Apprentice Expenditures for the Indiana Construction Industry* (April 2022), which is based on an analysis of IRS forms.

²² Duncan (2018) reported that the nonprofit training program affiliated with ABC had three employees, approximately \$350,000 in training expenditures, and net assets of about \$149,000. By contrast, the 11 JATCs that offer the same trade training as ABC have combined net assets of over \$87 million, \$18.0 million in expenditures, and 128 employees. Duncan Report at 8.

2000 and 2016.²³ In California, JATCs train 92% of apprentices in the state.²⁴ The sponsors of unilateral programs produce a minor percentage of graduates of RAPs.

C. The Threat of Poaching is a Deterrent to Investment in Training in the Open Shop Sector

In the open shop sector, the threat of poaching is a major deterrent to investment in training. Individual employers that contemplate private investment in sponsorship of a unilateral program assume the risk that their investment will result in a financial loss. Employers hesitate to invest in human capital that the worker might then sell elsewhere. A study by economists at the University of Utah identified the following key deterrents, particularly for smaller employers, from investing in unilateral apprenticeship programs:²⁵

- “Turbulent” construction demand always poses the prospect that the contractor will fail to find work, which idles not only physical capital but any human capital investment that the contractor might make.
- Since most construction contractors are small and have a “short” duration in the sector, the time frame within which to recoup their human capital investment is limited.
- While larger contractors are better positioned to keep their workers occupied primarily by moving them across a wider geographical area in search of work compared to more geographically limited smaller contractors, the possibility of losing workers to other competitors is “real and problematic.”
- Unlike larger contractors, smaller and medium-sized contractors have a lesser ability to “lock” in workers through health insurance “due to possible economies of scale in offering health insurance associated with firm size.”

In the union sector, JATCs have voluntarily elected to develop a cooperative framework that has provided participating employers with a guaranteed return on investment. A great advantage of joint labor-management programs is that contributing employers know that they will receive a return on their investment in training.

²³ Robert Bruno and Frank Manzo IV (Jan. 6, 2020). *The Apprenticeship Alternative/Enrollment, Completion Rates, and Earnings in Registered Apprenticeship Programs in Illinois*, at 3. <https://faircontracting.org/wp-content/uploads/2020/01/ilepi-pmcr-the-apprenticeship-alternative-final.pdf>

²⁴ Dan Calamuci (2020). *Training the Golden State: An Analysis of California Apprenticeship Programs*. Smart Cities Prevail. <https://faircontracting.org/wp-content/uploads/2021/01/Training-the-Golden-State.pdf>

²⁵ Jaewhan Kim & Peter Philips, “Health Insurance and Worker Retention in the Construction Industry.” *Journal of Labor Research*, Mar. 2010, Vol. 3, Issue 1.

D. Employers Participating in Poor Quality RAPs are Unjustly Benefited on Prevailing Wage Jobs

Unilateral employers have long had strong financial incentives – the payment of significantly lower rates to registered apprentices on prevailing wage jobs – to sponsor RAPs. Employers participating in poor quality RAPs in the construction industry are unjustly benefited, because they pay apprentices less than the journeyman rates of pay but do not spend the needed resources to provide adequate training. The construction industry is the only industry in which employers have a strong financial incentive to establish apprenticeship programs irrespective of an employer’s ability to provide quality training since Davis-Bacon regulations²⁶ permit contractors to pay registered apprentices wage rates that are below the prevailing rates. Unlike employers in other industries, construction contractors save as much as 40% per hour on the wages of workers classified as first-year apprentices on Davis-Bacon jobs. In a legitimate training program, this short-term reduction in wages for a novice with limited skills is a fair trade-off for obtaining the necessary training to develop diverse skill sets in a marketable trade. There is a compelling need to protect apprentices in the construction industry, because one’s status as an apprentice determines the prevailing rates of pay to which the person is entitled.²⁷ Duly registered apprentices or trainees are the “only employees covered by the labor standards of the Davis-Bacon and related Acts and regulations applicable thereto who may be paid less than the predetermined wage rate for the work they perform.”²⁸

The intent to exploit apprentices is often apparent on the face of applications for sponsorship. The ABC Empire State Chapter, for example, submitted applications in 2019 with the NYSDOL for registration of an apprenticeship program to train apprentices in 11 different trades, including sheet metal work, without sufficient resources to embark on this undertaking. The proposed wage progression for sheet metal apprentices, which began at \$15.00 per hour and ended at \$19.00 per hour, was deficient because it was based on a percentage of grossly deflated journeyman rates.²⁹ The ABC listed the wage rate for journeymen as \$20.00 per hour in all 11 applications – sheet metal worker, plumber, pipefitter, electrician, carpenter, iron worker, operating engineer (heavy equipment), painter/decorator, roofer, dry wall finisher, and laborer – regardless of whether an apprentice works in a metropolitan or rural area. The proposed rate failed to take into account local market rates and the different skill sets required to master the various trades and was grossly below the wage rates posted by the NYSDOL and the U.S. DOL. In the seven counties that comprise New York City and Long Island, sheet metal workers earn \$52.10 per hour in wages and \$55.27 per hour in fringe benefits, for a total package of \$107.37 per hour.

²⁶ 29 C.F.R. § 5.5(a)(4)(i).

²⁷ This special recognition of apprentices registered with federal or state agencies dates back to the first promulgation of Davis-Bacon regulations in 1951. *See Miami Elevator Co.*, 2000 WL 562698, citing 16 *Fed.Reg.* 4430 (May 12, 1951).

²⁸ *Miami Elevator Co.*, quoting *Soule Glass and Glazing Co., Portland, MA*, 1979 WL 29169 (DOL WAB). *See also, CRC Development Corp.*, 1978 WL 22697 (DOL WAB)(“payment of the apprentice rates are permitted under the Davis-Bacon Act cases only to the very limited extent that is spelled out in the approved apprenticeship agreements.”)

²⁹ *See* attached Feb. 21, 2020 comments of the International Training Institute to the NYSDOL in opposition to the ABC’s application for a sheet metal apprenticeship program. ITI is a national training fund, which is jointly sponsored by SMART and SMACNA, a national employer association representing 3,500 unionized sheet metal contractors.

E. The Lack of Adequate Investment in Unilateral Programs Results in Limited Training Opportunities, Low Graduation Rates, No Enrollees, and High Closure Rates

The lack of investment in unilateral programs produces dismal results: 1) low graduation rates; 2) no enrollees for long periods of time; 3) high closure rates; and 4) training opportunities that are inadequate to acquire broad-based skills. The following examples illustrate each of these deficiencies.

1. Low Graduation Rates

A 2020 study of educational programs in Illinois demonstrates that the graduation or completion rates in unilateral programs in the construction industry are low, relative to graduation rates for all other types of programs during the period of 2000 to 2011, including JATCs, public universities, not-for-profit institutions, for-profit institutions, public community colleges, and non-construction apprenticeship programs.³⁰ The Illinois Chapter of the ABC graduated just 16% of the apprentices it enrolled since 2000, far lower than the completion rate for other employer-only construction programs – 37% – and far below the rates of JATCs in Illinois, which vary by trade, with a high of 78.2%.”

2. No Enrollees for Extended Intervals of Time

SMART’s recent experiences in opposing the registration of substandard programs illustrate the importance of rigorous examination of proposed programs, particularly in the construction industry. In Nevada, for example, the ABC Northern Division Apprenticeship Trust submitted an application in 2019 to the State Apprenticeship Council for approval of the classification of sheet metal worker in its apprenticeship program in northern Nevada despite the fact that the ABC’s sheet metal program in Las Vegas had not registered a single apprentice since 2011.³¹ Mechanical trades, including sheet metal workers, pipefitters, etc., and electrical trades normally account for the largest number of apprentices in the country.³²

3. High Closure Rates

SMART’s review of NYSDOL records while preparing an opposition to the Empire State ABC’s application in 2020 demonstrates that unilateral programs often become defunct.³³ In the classification of “sheet metal worker,” the NYSDOL registered 32 individually-sponsored

³⁰ Robert Bruno and Frank Manzo IV (2020), at 12.

³¹ Jeffrey Waddoups & Kevin Duncan (2019). *The Impact of Nevada’s Ninety-Percent Prevailing Wage Policy on School Construction Costs, Bid Competition, and Apprenticeship Training*. <https://faircontracting.org/wpcontent/uploads/2019/09/NV-PW-Study-Waddoups-Duncan-Format-3-5-19-2.pdf>

³² According to Dr. Belman’s 2022 study (page 6), the “electrical industry, and the mechanical industry (pipe trades, sheet metal, boilermaker, and HVAC) account for the largest number of apprentices with 173,485 and 116,453 respectively in 2016-2020.”

³³ Likewise, the Apprenticeship and Training Office of the Pennsylvania Department of Labor and Industry has approved at least 67 unilateral programs – most of which were sponsored by individual employers – in the sheet metal industry over many decades. The Department records do not indicate which programs have closed or become defunct. It is possible that this lack of information indicates limited oversight following approval of programs.

programs. Of these programs, 14 were deregistered or closed between 2007 and 2018;³⁴ one became inactive;³⁵ one was relatively new and on probation; and 16 were still active at that time.³⁶ Thus, during this 11-year interval, nearly half of the individually-registered programs in the sheet metal trade de-registered, closed, or became inactive. By contrast, all the JATCs registered by the NYSDOL during that time frame in the sheet metal craft remain active. These numbers demonstrate that effectively rubber-stamping unilateral programs and placing them on probation is inadequate to protect the interest of apprentices. Behind these registration/closure numbers are young workers who participated a government-approved program and did not receive the training to which they were entitled.

4. Limited Training Opportunities

On-the-job training opportunities are often limited by scope of work performed by participating employers and/or the narrow focus of unilateral training programs, which often seek to subdivide trades into work functions that fail to encompass the entire craft.³⁷ An example of the former is Eastern Pennsylvania ABC's 2021 application for approval "sheet metal worker/HVAC" apprenticeship program with the Pennsylvania Apprenticeship and Training Office. The program was approved despite the fact that the application made clear that the ABC program was not equipped to provide the broad-based training needed to acquire skills to become marketable as a sheet metal worker upon graduation. ABC's application admits that it filed its application before generating adequate interest in the program, in stating that "We are continuing to talk with others that have shown an interest as we go through the approval process."³⁸

F. Stringent Screening of Proposed Programs and Sponsors is Important Because Existing Remedies Fail to Make Apprentices Whole

More stringent screening of program sponsors during the approval process is important because existing remedies in part 29 do not make apprentices whole for missed training and work opportunities. The OA and some state agencies attempt to manage quality control by placing programs on probation and/or de-registering programs that perform poorly. In the construction industry, deregistration of failing programs does not redress the harms caused to apprentices who earn less than prevailing rates of pay ostensibly in exchange for obtaining the training needed to

³⁴ ARC Mechanical Corp.; BHV Sheet Metal Fabricators Inc.; Eagle Mechanical & General Construction LLC (deemed de-registered); LeClaire-Fleming Mechanical, Inc., Dynabil Industries Inc., St. James Mechanical, Inc., J.S.F. Sheet Metal Inc., Rainbow Sheet Metal, Inc., Martec Industries: Powerhouse Sheet Metal Co., Inc., DASNY Mechanical Inc., Public Works Utilities, North Star Mechanical Corp., and Roland J. Down, LLC.

³⁵ RLT Heating and Air Conditioning, Inc.

³⁶ Peko Precision Products, Inc.

³⁷ See page 16 below for a discussion of efforts to "de-skill" trade and the negative impact on an apprentice's marketability and page 15 for a discussion of Axiom's application to Washington State Apprentice and Training Council to train on only a subset of the skill sets involved in mastering the sheet metal trade.

³⁸ See attached August 18, 2021 letter of SMART Local 19 Gary Masino to the Pennsylvania to the Apprenticeship and Training Office, which quotes the Eastern PA ABC's application, at 4.

attain journeyman status.³⁹ Under the current regulations governing deregistration, when programs are terminated, the only required assistance to apprentices is that they are “referred to the Registration Agency for information about potential transfer to other registered apprenticeship programs.”⁴⁰ This action does not provide adequate assistance to apprentices who lack the skill needed to find employment in the applicable trade.

SMART and SMACNA have encouraged the Treasury Department to be proactive in collaborating with the OA in rooting out sham unilateral programs to prevent exploitation of apprentices and wage theft as the Treasury Department implements guidance and regulations to implement the IRA.⁴¹ DOL precedent amply demonstrates that financial self-interest has long resulted in: 1) misclassification of workers as apprentices even though they are not individually registered in a bona fide RAP with the OA or State Apprenticeship Agency recognized by the OA;⁴² 2) using apprentices on covered projects even though the contractor does not have an approved apprenticeship program;⁴³ 3) failure to pay the proper percentage of the journeyman wage rate;⁴⁴ and/or 4) a failure to honor required ratios of journeymen to apprentices.⁴⁵

³⁹ In the Davis-Bacon context, the WHD recognized the need to make workers whole in a recent rulemaking in which it proposed to amend Part 5 regulations to include, for the first time, anti-retaliation protection. In that context, available remedies include, but are not limited to, any back pay and benefits denied or lost by reason of the violation; other actual monetary losses sustained as a direct result of the violation; interest on back pay or other monetary relief from the date of the loss; and appropriate equitable or other relief such as reinstatement or promotion; expungement of warnings, reprimands, or derogatory references; the provision of a neutral employment reference; and posting of notices that the contractor or subcontractor agrees to comply with the DBRA anti-retaliation requirements. *See* NPRM, 87 *Fed.Reg.* at 15747, where the DOL discussed the failure of existing remedies – backpay – to make the injured worker whole. The DOL observed that, under its current regulations, the WHD may not order reinstatement, back pay for the period after the worker is fired, or compensation for differences in pay resulting from retaliatory demotions or reductions in hours. *See also* proposed 29 C.F.R. § 5.18.

⁴⁰ 29 C.F.R. § 29.8(b)(8).

⁴¹ *See* SMART and SMACNA’s joint comments (attached) addressing implementation of the prevailing wage and apprenticeship utilization standards in the IRA, which were submitted in response to the recent request for information by the Treasury Department and Internal Revenue Service.

⁴² *Tollefson Plumbing and Heating*, WAB 78-17 (Sept. 24, 1979); *Clevenger Roofing and Sheet Metal Co.*, WAB 79-14 (Aug. 20, 1983).

⁴³ *Jos. J. Brunetti Construction Co. & Dorson Electric & Supply Co., Inc.*, WAB Case No. 80-9 (Nov. 18, 1982); *Spartan Mechanical Corp.*, WAB Case No. 80-6 (April 16, 1984); *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 (9th Cir. 1995).

⁴⁴ *Bay State Wiring Co.*, WAB 76-8 (June 14, 1977).

⁴⁵ *Johnson Electric Co.*, WAB 80-3 (April 11, 1983); *CRC Development Corporation*, WAB Case No. 77-01 (Jan. 23, 1978); *Repp & Mundt, Inc. & Goedde Plumbing & Heating Co., Inc.* WAB 80-11 (Jan. 17, 1984); *Palmer and Sicard, Inc.*, WAB 77-12 (Dec. 14, 1977).

G. Deregistration Addresses “Severe Performance Problems” that Persist for Many Years But is Not an Adequate Mechanism to Ensure Quality Control or to Safeguard the Welfare of Apprentices

In addition to the inadequacy of the deregistration as a remedy for exploited apprentices, it is also rarely used as a means to protect apprentices who will enroll in the future. In a 2008 rulemaking, the OA stated that its deregistration proceedings apply to programs with “severe performance problems.”⁴⁶ As described by the OA, a “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. The OA’s deregistration regulation, adopted 2008, states that “reasonable cause” for deregistration by the registration agency include:⁴⁷

[T]he 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: 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 apprentices skills acquired; or persistent and significant failure to perform successfully.

Quality control would be better achieved by preventing sponsors who lack appropriate financial support and training resources from registering in the first place.

⁴⁶ *Apprenticeship Programs, Labor Standards for Registration, Amendment of Regulations*, 73 *Fed.Reg.* 64402, 64416 (Oct. 29, 2008).

⁴⁷ 29 C.F.R. §29.8 Deregistration of a registered program.

PART II

UPGRADING APPRENTICEABILITY STANDARDS

Overview: Upgrading “Apprenticeability” Standards to Ensure Broad-Based Training, Continuing Education, and Enduring Marketability

The DOL’s four-part standard, 29 C.F.R. § 29.4(a)-(d),⁴⁸ for determining whether an occupation is “apprenticeable” does not, as currently written and applied by the OA, adequately protect apprentices from enrolling in programs that fail to provide broad-based training in an occupation involving sufficient skill to obtain and retain marketability. Narrow training is at odds with the purpose of the NAA and studies that recognize the need for broad-based training in a knowledge-based economy. The broader the skill sets acquired, the greater the likelihood that a graduate will have the versatility to remain marketable and employed throughout a career.

The Washington State standard, with the additional factors recommended below, is an excellent model for ensuring that sponsors provide training that does not sub-divide the training in existing programs and is designed to establish marketability throughout a career. The Washington code defines “apprenticeable occupation” as follows:⁴⁹

A specified occupation which must:

- (a) Involve skills customarily learned in a practical way through a structured, systematic program of on-the-job supervised learning;
- (b) Be clearly identified and commonly recognized throughout an industry;
- (c) Involve the progressive attainment of manual, mechanical, or technical skills and knowledge which, in accordance with the industry standard for the occupation, would require the completion of at least two thousand hours of on-the-job learning to attain;
- (d) Require a minimum of one hundred forty-four hours of related instruction per program year to supplement on-the-job work experience;
- (e) **Involve sufficient skill to establish career sustaining employment;**
- (f) **Not be part of an occupation previously recognized by the registering agency as apprenticeable.**

⁴⁸ § 29.4 Criteria for apprenticeable occupations.

An apprenticeable occupation is one which is specified by industry and which must:

- (a) Involve skills that are customarily learned in a practical way through a structured, systematic program of on-the-job supervised learning;
- (b) Be clearly identified and commonly recognized throughout an industry;
- (c) Involve the progressive attainment of manual, mechanical or technical skills and knowledge which, in accordance with the industry standard for the occupation, would require the completion of at least 2,000 hours of on-the-job learning to attain; and
- (d) Require related instruction to supplement the on-the-job learning.

⁴⁹ Washington Administrative Code 296-05-003 (WAC)(emphasis added).

Recommendations:

As delineated in Appendix A, SMART and SMACNA encourage the OA to expand upon existing criteria in the apprenticeability standard in 29 C.F.R. §29.4 by requiring documentation of the following additional criteria:

- **Broad-based skills:** Broad-based skills rather than limited or discrete skills within a subset of a recognized occupation
- **Marketable skills:** The apprentice will obtain training in a marketable occupation⁵⁰
- **Continuing education:** Continuing education for updating skills to keep pace with new technology; and
- **No sub-division of a recognized trade:** Not part of an occupation previously recognized as apprenticeable by the registering agency.⁵¹

Arguments in Support of Recommendations:

SMART AND SMACNA URGE THE OA TO UPGRADE “APPRENTICEABILITY” STANDARDS TO PROMOTE BROAD-BASED TRAINING, CONTINUING EDUCATION, AND ENDURING MARKETABILITY THROUGHOUT A CAREER

The OA’s current regulatory definition of “apprenticeability” in 29 C.F.R. § 29.4(a)-(d) and its administration of it are inadequate to ensure that an apprentice is offered broad-based training, continuing education, and enduring marketability throughout a career. The OA’s current process does not root out programs that train apprentices on a subset of skills within a trade in the construction industry, and thereby, fail to provide apprentices with a range of skills to remain marketable yearlong and from decade to decade. The “de-skilling” of occupations – i.e., training on only a portion of the skills required to become a journeyman – diminishes a worker’s earning potential and ability to obtain stable employment.

The sheet metal trade, for example, is broad, diverse, and highly skilled and encompasses architectural sheet metal work, installation of duct and units on heating, ventilating, and air conditioning (HVAC) systems; testing, adjusting, and balancing of HVAC equipment and duct work in new construction, renovation, and ventilation verification; custom fabrication of duct, and other related work. As discussed below, the diversity of our trade enhances the marketability of sheet metal workers and other trades in the construction industry, which is subject to cyclical and seasonal fluctuations.

⁵⁰ WAC 296-05-003(e).

⁵¹ WAC 296-05-003(f).

A. State Apprenticeship Standards Better Protect Apprentices by Recognizing the Value of Broad-Based Training and Ensuring Marketability of Skills

Washington and many other states recognize the importance of broad-based training and/or retention of marketability for the protection of the welfare of apprentices in their apprenticeship standards.

1. Broad-Based Training

New Mexico’s administrative code states under “work processes” that an “apprenticeship program should contain a sufficiently broad schedule of work processes for the acquirement of reasonable competency in the trade.”⁵² At least three states – Delaware, New York, and Pennsylvania – includes as a factor in an apprenticeship determination that an “occupation” 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.”⁵³

2. Marketability of Skills

The State of Louisiana requires “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 apprenticeship occupations list.”⁵⁴ One such factor is that the “occupation is considered ‘high demand’ according to Louisiana labor market information.” As noted above, Washington State’s six-part apprenticeship standard – the most protective standard in the country – safeguards apprentices by ensuring that the breadth of training in a proposed program will be “sufficient” to “establish career sustaining employment.”⁵⁵

3. The “Not Part of a Previously Recognized” Occupation in Washington’s Standard Protects Apprentices from De-Skilling

The Washington Code requirement that proposed programs are “not part of an occupation previously recognized by the registering agency as apprenticeship” protects apprentices by ensuring that registered programs do not train them on only a portion of the skills needed to become a journeyman in a trade.⁵⁶ Under this standard in the Washington Code, the Washington State Apprenticeship and Training Council rejected a request by a single employer, Axiom, for approval

⁵² 11 NM Admin Code 11.2.3.24. Work Processes. <https://www.revisor.mn.gov/statutes/cite/178.036>

⁵³ Section 1101- 5.1.5; New York (d)(6); 34 Pa. Code § 83.4(5).

⁵⁴ Louisiana, Chapter 3. Apprenticeship Division Standards and Procedure, §317. Criteria for Apprenticeship Occupations

⁵⁵ WAC 296-05-003(e).

⁵⁶ WAC 296-05-003(f).

of proposed apprenticeship standards for “architectural sheet metal worker” – a subset of the sheet metal trade – as a “stand-alone” occupation. In an October 12, 2021 decision (attached) rejecting the application, the Council stated that the occupation in Axiom’s proposed standards “will perform only a subset of the work of the Sheet Metal Worker occupation.”

B. The Legislative History of the NAA Shows that its Purpose is to Prevent the Practice of Training Apprentices on Only “Discrete Tasks” Rather Than a Recognized Trade

The legislative history of the NAA demonstrates that Congress intervened to upgrade what the private sector had been calling apprenticeships with uniform standards and to prevent rampant exploitation of young workers by providing so-called training on a narrow range of skilled or unskilled tasks. In introducing the NAA as H.R. 6205, Representative William Fitzgerald made clear to Congress that 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.”). An essential goal of standardization was to prevent the practice of paying lower wages to young apprentices but failing to teach them a trade. According to the testimony of an AFL representative, these young workers never learned a trade, but rather became “specialists” in discrete tasks, or worse, only performed unskilled labor. As a result, they were not equipped to function as full journeypersons when they finished their “apprenticeships.”⁵⁷ Representative Fitzgerald stated that young workers who “agreed to be apprenticed to a trade, to learn all of the different parts, . . . are being exploited on one particular machine. At the end of 4 years’ time, at small wages, these boys and girls went out into the world as specialists, and they were not equipped.” 81 *Cong. Rec.* 2600 (1937).

C. Broad-based Skills Provide Construction Workers with a Greater Ability to Remain Employed in a Volatile Industry and to Earn Wage Commensurate with Their Knowledge

As described by economist Peter Philips, apprenticeable crafts are collections of skills that allow the craft worker to perform a range of jobs included therein, as that worker moves from project to project.⁵⁸ These collections of skills evolve over time in response to “changing technologies, changing construction materials, and changing organizations of work” in an industry that include job sites that are ever-changing and employment is subject to cyclical and seasonal fluctuations.⁵⁹ Dr. Philips asserts that, in construction, to remain employable, a worker must learn how to address a “multiplicity of jobs.”⁶⁰ The craft approach, as contrasted with “de-skilling” by

⁵⁷ To Safeguard the Welfare of Apprentices: Hearing on H.R. 6205 Before the Subcomm. Of the H. Comm. Of Labor, 75th Cong. 1 (1937), at 42, 60, 72-73.

⁵⁸ Dr. Peter Philips, Professor of Economics, University of Utah. *How Should Davis-Bacon Surveys Be Conducted?* May, 2021, at 15-16, filed in Docket No. RIN 1235-AA40 (NPRM amending Davis-Bacon regulations).

⁵⁹ *Id.*, at 15.

⁶⁰ *Id.* at 16.

training on only a subset of the work encompassed within a trade, enables workers to carve out lifetime careers in a volatile industry.

There are different cycles of employment/unemployment within sectors of various trades in the construction industry. Population density and local weather conditions greatly impact job stability. In metropolitan areas, there is a greater demand for all building and residential work. In the sheet metal trade, exterior work, such as erecting metal roofs and wall, is seasonal. Rain, snow, and other work impact the ability to perform architectural sheet metal work. Different seasons and weather conditions within seasons dictate the types of work that may be safely performed.⁶¹ Interior work in the sheet metal industry, such as HVAC duct and unit installation, is year-round. When weather conditions make outside work unfeasible, a sheet metal worker may go into a building that has already been covered (a shell is up); renovating, repairing, and altering building systems in existing buildings are also year-round activities. Breadth of skill and experience in an apprenticeable trade improves marketability. In some localities, architectural sheet metal work may be a greater percentage of the total amount of sheet metal work in an area; at other times, it is a smaller portion of the total. A sheet metal apprentice with training that is limited to either interior or exterior work is less marketable than an apprentice with training on both.

D. Acquisition of Broad-based Skills Increases a Graduate's Marketability as Technological Advances Occur

Studies of apprenticeship programs recognize the need for development of skills that will enable graduates to adapt to an ever-changing economy as technological advances render some vocational skills outdated or obsolete.⁶² The skills generated by apprenticeship programs facilitate an apprentice's initial transition into the labor market but may become obsolete decades before retirement without upgrades or re-training. To prevent obsolescence, a stable program also ensures that graduates have a program to which they can return for re-training so that they do not lose their investment of time in becoming a journeyman. Continuing education and opportunities for skills upgrades are the hallmark of quality training programs.

In a "knowledge-based economy, early employment gains with vocational training may lead to later problems when specific skills become obsolete and workers lack the ability to adjust to a changed economic environment."⁶³ Apprentices benefit from a "strong educational

⁶¹ OSHA describes the safety challenges confronting sheet metal workers: "In the sheet metal trade, for example, sheet metal is heavy, and the edges and corners can be extremely sharp. Furthermore, metal is an excellent conductor of electricity and heat and will become hot quickly if exposed to the sun or other heat sources. Likewise, sheet metal exposed to the elements of a winter's day may be cold, icy or wet." <https://www.osha.gov/sites/default/files/2019-03/sheetmetal.pdf>

⁶² Russ Juskalian, "Rebuilding the Ausbildung", *MIT Technology Review*. Jul/Aug 2018, Vol. 121, Issue 4, which states that some experts warn that Germany's vocational system will struggle to adapt as the economy grows more dependent on artificial intelligence and robotics and that it could "shackle much of the workforce to skills that will soon be outdated." The author quotes Eric Hanushek, an economist at Stanford University, as stating that "Germany has shown that they can prepare people for a range of jobs today and over the next decade. What they haven't shown is that they are preparing people who are as adaptable when the economy changes."

⁶³ Eric A. Hanushek, Guido Schwerdt, Simon Wiederhold, & Ludger Woessmann, "Coping with Change: International Differences in the Returns to Skills," April 2017; and Eric A. Hanushek, Guido Schwerdt, Ludger Woessmann, Lei Zhang, "General Education,

foundation” that gives them the “ability to adapt as demands change.”⁶⁴ The cornerstone of excellent training is the opportunity for re-training on an as-needed basis so that the journey person has the skill set to perform decades after graduation. Middle-aged and older Americans suffer significant discrimination based upon age.⁶⁵ They should not be further disadvantaged by attempting to market obsolete skills in a changing economy.

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
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Vocational Education, and Labor-Market Outcomes over the Life-Cycle,” Winter 2017.
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⁶⁴ Eric A. Hanushek and Ludger Woessmann, “Apprenticeship programs in a changing economic world,” June 28, 2017.
<https://www.brookings.edu/blog/brown-center-chalkboard/2017/06/28/apprenticeship-programs-in-a-changing-economic-world/>

⁶⁵ Victoria A. Lipnic, Acting Commissioner, EEOC. *The State of Age Discrimination and Older Workers in the U.S. 50 Years After the Age Discrimination in Employment Act (ADEA)*. <https://www.eeoc.gov/reports/state-age-discrimination-and-older-workers-us-50-years-after-age-discrimination-employment>

PROPOSED REGULATORY LANGUAGE

SMART and SMACNA’s recommended changes to part 29 are highlighted below in bold.

§ 29.3 Eligibility and procedure for registration of an apprenticeship program.

- (a) Eligibility for registration of an apprenticeship program for various Federal purposes is conditioned upon a program's conformity with the apprenticeship program standards published in this part **and demonstration of sufficient employer participation to provide broad-based on-the-job learning opportunities and the financial ability to maintain a program satisfying such standards for a minimum of five years.** For a program to be determined by the Secretary as being in conformity with these published standards, the program must apply for registration and be registered with the Office of Apprenticeship or with a State Apprenticeship Agency recognized by the Office of Apprenticeship. The determination by the Secretary that the program meets the apprenticeship program standards is effectuated only through such registration.
- (b) Only an apprenticeship program or agreement that meets the following criteria is eligible for Office of Apprenticeship or State Apprenticeship Agency registration:
 - (1) It is in conformity with the requirements of this subpart and the training is in an apprenticeable occupation having the characteristics set forth in § 29.4; and
 - (2) It is in conformity with the requirements of the Department's regulation on Equal Employment Opportunity in Apprenticeship and Training in 29 CFR part 30, as amended.
 - (3) It is in conformity with the requirements with the criteria in §29.5(b) for establishing that the program has sufficient employer participation to provide broad-based on-the-job learning opportunities and the financial ability to maintain an apprenticeship program which satisfies these standards for a minimum of five years.**

(h) Eligibility for registration is conditioned upon disclosure by the sponsor of all current and/or prior involvement by the sponsor or participating employers with apprenticeship programs (including those that closed or became defunct); the annual enrollment and graduation rates for each occupation in these programs; and the source(s), amount(s), and model(s) for funding (e.g., hourly contributions) of training and apprenticeship for each program.

§ 29.4 Criteria for apprenticeable occupations.

An apprenticeable occupation is one which is specified by industry and which must:

- (a) Involve skills that are customarily learned in a practical way through a structured, systematic program of on-the-job supervised learning;
- (b) Be clearly identified and commonly recognized throughout an industry;
- (c) Involve the progressive attainment of manual, mechanical or technical skills and knowledge which, in accordance with the industry standard for the occupation, would require the completion of at least 2,000 hours of on-the-job learning to attain;
- (d) Require related instruction to supplement the on-the-job learning;
- (e) **Involve broad-based skills rather than limited or discrete skills within a subset of a recognized occupation;**
- (f) **Enable apprentices to retain marketable skills through continuing education to update skills as technological changes impact performance of the occupation; and**
- (g) **Not be part of an occupation previously recognized by the registering agency as apprenticeable.**

§ 29.5 Standards of apprenticeship.

An apprenticeship program, to be eligible for approval and registration by a Registration Agency, must conform to the following standards:

- (b) **The program must have sufficient employer participation to provide broad-based on-the-job learning opportunities and the financial ability to maintain a program for a minimum of five years, and must submit written evidence to demonstrate satisfaction of these criteria, including:**
 - (1) **A detailed budget for training that covers income and proposed funding sources, expenses, including personnel, instruction (including anticipated ratio of mentors and instructors to apprentices), facilities, and insurance (including workers' compensation);**
 - (2) **A detailed explanation of how sufficient funding will be timely provided to meet the budget;**
 - (3) **If the program will rely on contributions from participating employers, disclosure of the number of participants and the financial obligation(s) of each participant and a copy of a signed agreements documenting each contributor's financial commitment to the program;**
 - (4) **Documentary evidence that the applicant has or will obtain adequate and safe equipment and facilities for hands-on instruction and supervision and for related and supplemental instruction before the program begins operation; and**

(5) The number of journeyworkers that each participating employer employed in the past 12 months and a detailed description of the on-the-job learning opportunities that will be provided by each employer to registered apprentices.

(c) The program standards must contain provisions that address:

(1) The employment and **broad-based** training of the apprentice in a skilled occupation.

§ 29.6 Program performance standards.

(b) Registration Agencies must evaluate performance of registered apprenticeship programs.

(1) The tools and factors to be used must include, but are not limited to:

(i) Quality assurance assessments;

(ii) Availability of adequate and safe facilities that replicate the on-the-job experience, opportunities for broad-based on-the-job learning, and the financial ability to fund the program;

(iii) Equal Employment Opportunity (EEO) Compliance Reviews; and

(iv) Completion rates.

(2) Any additional tools and factors used by the Registration Agency in evaluating program performance must adhere to the goals and policies of the Department articulated in this subpart and in guidance issued by the Office of Apprenticeship.