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**ELECTRONICALLY SUBMITTED VIA REGULATIONS.GOV**

Mr. Brent Parton  
Principal Deputy Assistant Secretary for  
Employment and Training, Labor  
U.S. Department of Labor  
200 Constitution Avenue NW  
Washington, D.C. 20210

**RE: *Comments on Proposed Rule: Docket No. ETA-2023-0004 – National Apprenticeship System Enhancements (RIN 1205-AC13)***

Dear Principal Deputy Assistant Secretary Parton:

On behalf of the National Association of Home Builders of the United States (NAHB), I am pleased to submit these comments in response to the Department of Labor's (DOL or the Department) Employment and Training Administration proposed rule on National Apprenticeship System Enhancements that was published in the Federal Register on Jan. 17, 2024 (89 Fed. Reg. 3,118). As interested stakeholders in this regulatory activity, NAHB urges the Department to consider the following recommendations as it proceeds with its rulemaking to revise the regulations for registered apprenticeship programs (RAPs).

NAHB is a Washington, D.C.-based trade association whose members are involved in home building, remodeling, multifamily construction, property management, subcontracting, design, housing finance, building product manufacturing and other aspects of residential and light commercial construction. NAHB's builder members construct about 80 percent of the new housing units each year, making housing a large engine of economic growth nationally.

Most importantly, NAHB believes a skilled and capable workforce that is adequate to meet our nation's housing demand is vital to home builders. To achieve this goal, NAHB works closely on various workforce development issues and programs with its nonprofit partner the Home Builders Institute (HBI), a national leader for career training in the building industry. Serving more than 15,000 individuals annually, HBI provides students the skills and experience they need for successful careers through pre-apprenticeship training, job placement services, mentoring, certification programs, textbooks and curricula. With an 85 percent job placement rate for graduates, HBI training programs are taught in local communities across the country to youth, adults, veterans, transitioning military personnel, justice-affected youth and adults, and displaced workers. Each year, HBI trains thousands of youths and adults in brick masonry; carpentry; electrical wiring; building construction technology; heating, ventilation and air conditioning; landscaping; painting; plumbing; solar installation; and weatherization. HBI's approach combines technical and employability skills with basic academics. Students can earn industry-recognized credentials such as an HBI pre-apprenticeship certificate, Occupational Safety and Health Administration (OSHA) 30 & 10-Hour Safety Training, CPR, First Aid and more.

While HBI focuses on its programs on pre-apprenticeship training, both NAHB and HBI remain involved in the national apprenticeship system through its diverse membership and network of state and local home builder associations. As such, we are concerned over many provisions in this NPRM that will stifle apprenticeship program innovations and flexibility, as well as place undue burdens on program sponsors and participating employers. Therefore, we request DOL withdraw this rulemaking and re-evaluate the development of a rulemaking with the following recommendations in mind. Additionally, NAHB has joined the Jobs and Careers Coalition (JCC) in opposing provisions of the proposed rule and, therefore, adopts and incorporates by reference the JCC comment letter.

As an initial response to this rulemaking, NAHB submitted a letter to DOL in February requesting a comment deadline extension of 30 days to provide the residential construction industry adequate time to gather, analyze, and disseminate the types of information the Department is seeking with this comprehensive revision to the regulations.<sup>1</sup> Unfortunately, DOL denied NAHB and other organizations' extension requests, stating the given 60-day comment period is a reasonable and adequate amount of time to provide the public an opportunity to review and comment on the NPRM.<sup>2</sup> We disagree. Therefore, along with the following recommendations, NAHB strongly urges DOL to reopen the comment period and allow more time to gather, analyze and disseminate substantive data.

#### **I. About the Residential Construction Industry and its Skilled Labor Shortage**

The residential construction industry (i.e., home building) in the United States is predominantly comprised of small employers. Several NAHB studies examining the structure and composition of companies and NAHB's members highlight this fact as over 95 percent of home builders fall within the U.S. Small Business Administration's (SBA) definition of a small business.<sup>3</sup>

The vast majority of the new homes in the U.S. are constructed by small home builders and specialty trade contractors who compete in a fierce marketplace that challenges their economic survival. More than 75 percent of NAHB's builder members construct fewer than 25 homes per year, and 60 percent build 10 or fewer homes per year, with the median number of housing starts at six. A typical NAHB builder member firm is truly a small business. NAHB's builder members reported a median of five employees, which include both construction and non-construction jobs.<sup>4</sup>

Importantly, home builders and remodelers typically subcontract out a large portion of their construction work to specialty trade contractors who can more efficiently deliver individual pieces of the construction process. Specialized subcontractors perform much, or even all, of the actual labor associated with most new home construction and renovation work. Work typically performed by subcontractors includes excavation, framing, roofing, plumbing, electrical, tile, finish carpentry, masonry, painting, dry wall, and paving.

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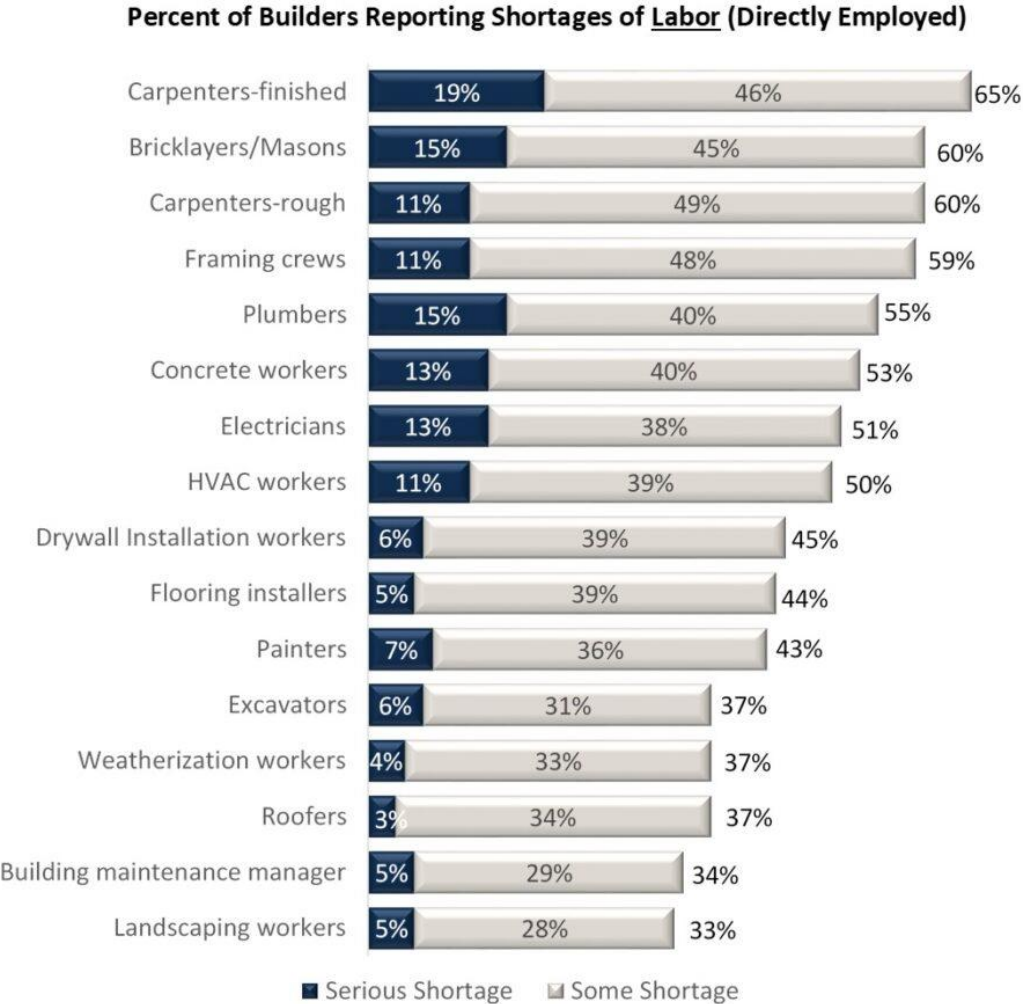
<sup>1</sup> <https://www.regulations.gov/comment/ETA-2023-0004-0044>.

<sup>2</sup> <https://www.regulations.gov/document/ETA-2023-0004-0082>.

<sup>3</sup> To qualify as a small business, the SBA has established ceilings of \$45 million for all types of builders (including residential remodelers), and \$19 million for specialty trade contractors. [https://www.sba.gov/sites/default/files/2023-06/Table%20of%20Size%20Standards Effective%20March%2017%2C%202023%20%28%29.pdf](https://www.sba.gov/sites/default/files/2023-06/Table%20of%20Size%20Standards%20Effective%20March%2017%2C%202023%20%28%29.pdf) (Accessed February 26, 2024).

<sup>4</sup> Eric Lynch, *Who Are NAHB's Builder Members?*, National Association of Home Builders, Aug. 11, 2023, <https://www.nahb.org/blog/2023/08/member-census> (Accessed March 6, 2024).

Given this heavy reliance on subcontractors and specialty firms, NAHB has been analyzing the economic impact the skilled labor shortage is having on the costs for residential construction. In a recent survey of its members, NAHB confirmed that labor and subcontractor shortages remain widespread in February 2024, and continue to impact the industry in a number of ways, including putting additional upward pressure on new home prices. According to the results from special questions in the February 2024 NAHB/Wells Fargo Housing Market Index (HMI), which asked builders specifically about shortages in 16 specific trades, shortages of labor directly employed by builders remained fairly widespread for each of the 16 occupations, ranging from a low of 33 percent for landscaping workers to a high of 65 percent for performing finished carpentry.<sup>5</sup> See Figure 1. The impact of the labor shortage on home prices is particularly significant, as this is one of the factors contributing to the ongoing problem of housing affordability.



**Figure 1 – Builders Reporting Labor Shortages (by Specialty Trade)**

<sup>5</sup> Paul Emrath, PhD., *Labor Shortages Ease, But Remain Worse Than in the Last Boom*, National Association of Home Builders, Feb. 23, 2024, <https://eyeonhousing.org/2024/02/labor-shortages-ease-but-remain-worse-than-in-the-last-boom/> (Accessed March 6, 2024).

Clearly, policies and programs that directly address the labor shortage within the construction industry and focus on workforce development are sorely needed not only to address the current housing shortfall, but also housing attainability.

## **II. Summary of NAHB's Response to the NPRM**

NAHB is willing and eager to provide data, information, and recommendations to assist the Department in improving the quality of RAPs and supporting efforts needed to bolster and develop forms of career and technical education that address the needs of the construction sector<sup>6</sup> and other industries facing severe worker shortages. As part of its efforts, NAHB engages in promoting positive working relationships between state and local home builder associations and career and technical education institutions across the country to promote and advance careers in home building. Our affiliated associations also work with local school districts to provide curriculum, career guidance and mentors to help students understand the vast opportunities and benefits of pursuing careers in the construction field.

Like most industries, there is no one set career path that leads potential workers to construction sites. Degreed programs, on the job training, mentorships, apprenticeships and other opportunities can all spur interest and the selection of construction as a career choice. But to be most effective in bringing new workers to the jobsite, those programs need to be wide-ranging and complementary. Looking at construction alone, which is one of many industries facing severe workforce shortages, the rate at which apprentices complete programs in the industry each year<sup>7</sup> does not come close to the 400,000+ job openings. While apprenticeships are not the only programs needed to address the industry skills gap, NAHB strongly supports policies that expand opportunities for stakeholder participation and welcomes students, veterans, immigrants and nontraditional workers to the industry.

Unfortunately, many of the provisions in the NPRM reduce the flexibility for all parties to innovate in ways that address their specific needs and increase the compliance burden for participating employers, thereby providing a stark disincentive for taking part in the program that is designed to help address their respective workforce shortage issues. While NAHB acknowledges the need for certain changes to be made to the national apprenticeship system, some of which are addressed in this proposed rulemaking, we strongly recommend the following revisions be addressed and implemented in the Department's final rule.

## **III. The NPRM Restricts Apprenticeship Program Flexibility and Innovation**

Under the current § 29.5(b)(2) of the standards, RAPs may adopt one of three alternative approaches to provide apprenticeship training: 1) a "time-based" approach that focuses on 2,000 hours of on-the-job (OTJ) training; 2) a "competency-based" approach, where the program sponsor assesses the apprentice's relevant occupational skills without a required minimum duration; and 3) a "hybrid" approach that combines the previous two processes and determines an apprentice's acquired skills through a minimum number of OTJ training and a successful demonstration of competency.<sup>8</sup> Further, the standard

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<sup>6</sup> The U.S. Bureau of Labor Statistics' January 2024 Job Openings and Labor Turnover Survey estimated 413,000 job openings in construction. U.S. Bureau of Labor Statistics, *Job Openings and Labor Turnover Summary*, March 6, 2024, <https://www.bls.gov/news.release/jolts.nr0.htm> (Accessed March 6, 2024).

<sup>7</sup> According to Apprenticeship.gov data, the average number of completer apprentices between FY 2019 and FY 2023 is 28,641, with the highest number of completers at 31,255 during FY 2023.

<sup>8</sup> 89 Fed. Reg. at 3,153.

recommends 144 hours of related instruction in technical subjects related to the occupation. NAHB agrees with the current regulations for giving State Apprenticeship Agencies (SAAs) the option to approve programs with approaches that make the most sense for their workforce and apprentices the ability to choose programs that best fit their base capabilities, while also giving employers a better ability to engage programs that may fit their immediate needs.

The proposal's aim to eliminate the alternative approaches and adopt a unitary program procedure that resembles the "hybrid" model by requiring a minimum 2,000 hours of OTJ training and at least 144 hours of technical instruction, however, hinders these opportunities.<sup>9</sup> Namely, the proposed approach does not recognize the way in which different students and apprentices learn or the evolving nature of classroom and OTJ training. Additionally, the minimum instruction and OTJ training hours do not consider the merit of relevant pre-apprenticeship programs or other past knowledge or experiences.

Therefore, NAHB recommends the Department remove this provision and continue to allow the three different approaches to OTJ training and related technical instruction requirements. Construction, among other industries, must address the needs of an evolving labor market coupled with technical advances and innovation within the building sciences, the progression of the education system into nontraditional learning practices, resource efficiency regarding both. Placing strict limitations on how an apprenticeship program can operate contradicts the very purpose of the apprenticeship system.

Moreover, the proposal's suitability determination process removes power from the SAA in an attempt to harmonize the process with federal practices by giving that power to the Office of Apprenticeship (OA). DOL argues the proposed process aims to prevent occupation splintering when an occupation is too specific or specialized within an occupational subset and to do so in a consistent manner.<sup>10</sup> However, this practice runs counter to the typical growth-oriented practice of apprenticeship programs, and instead, states with their own SAAs should be the entities with the authority to determine occupational suitability for their respective workforces, *not* DOL's OA.

#### **IV. The Department Must Clarify Key Terms**

The Department's unclear terms and definitions leave many gray areas for employers and sponsors and could make it more difficult to engage prospective participants and/or result in current participants opting out of future involvement.

First, regarding suitability determinations, the new requirements for program sponsors to demonstrate that an apprenticeship leads to a "sustainable career" is extremely vague.<sup>11</sup> Employers in emerging technologies, trades and industries may feel disincentivized to participate. Similarly, there may be potential programs in emerging industries that have proven or will prove necessary to practices within well-established industries. With the introduction of drones used to survey sites and check the progress of construction projects, for example, an apprenticeship program could be developed and marketed to a small number of employers at this time, yet a need for drones could be more commonplace as regulations, marketplaces and economies of scale evolve. However, the Department's view on this issue can be

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<sup>9</sup> *Id.*

<sup>10</sup> 89 Fed. Reg. at 3,149.

<sup>11</sup> *Id.*

interpreted to suggest there is no foresight in this thinking and there must be an immediate and vast need for a program to be approved. This provision is short-sighted and takes the responsibility of responding to market needs away from businesses. Further, by allowing only the OA to make final decisions on suitability determinations, DOL limits the power granted to SAAs and reduces their role to an advisory capacity, when the roles should be reversed.

Next, the Department's equally vague text to address splintering<sup>12</sup> could have a similar effect on emerging trades and an inadvertent effect of outright denying employers from participating. The language regarding suitability of an activity that "replicates a significant proportion" of work processes of an already established occupation is entirely subjective and left to interpretation. For instance, the increasing practice of installing solar panels on homes, 3D printing homes using concrete or other materials, or manufacturing prefabricated and modular building materials may share a significant portion of skills with well-established trades, but there are still unique skills that should be recognized in specialized apprenticeship programs. The language within the proposal may not allow this.

The Department must remove the proposed text for sections (3) and (4) of proposed § 29.18(e) from any final rule. Should DOL proceed with the rule as written, the agency must provide for clear definitions for all the terms discussed above in the final regulatory text or through subregulatory guidance.

#### **V. The Department Must Revise its Cost Estimate**

As explained in the NPRM, the Department estimates costs through the first 10 years of participation to be between \$3,080 and \$3,659 per program sponsor, with the first-year costs for items such as rule familiarization; data collecting; and reporting and recordkeeping at \$412, \$111 and \$138 per registered apprenticeship program sponsor, respectively.<sup>13</sup> However, NAHB believes these cost estimates – particularly for data collection and recordkeeping– are significantly lower than the likely true costs. During a February 2024 roundtable hosted by SBA's Office of Advocacy, a representative from a construction industry trade association stated his affiliated chapter organizations, many (if not all) of which sponsor apprenticeship programs, may need to hire between one and three additional full-time employees in order to comply with the NPRM's reporting and recordkeeping requirements. Additionally, DOL did not consider the opportunity cost for program sponsors that may be unable to hire additional staff and instead take away time from curriculum development, teaching, field work and other necessary duties in order to comply with the new requirements.

The Department also explicitly states certain costs were not included in the calculation due to a lack of data or other reason. One of those incalculable costs involves the technical instruction that accompanies OTJ training, also referred to as off-the-job training. Off-the-job training is not currently required, yet DOL's proposal would mandate 144 hours of off-the-job training. While many state plans mandate this

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<sup>12</sup> Proposed sections (3) and (4) of § 29.18(e) states that an occupation will not be approved as suitable for registered apprenticeship training when "the proposed scope of the apprenticeship training is confined to a narrowly specialized subset of skills and competencies within an existing occupation that are not readily transferable between employers in the sector; or the occupation includes or replicates a significant proportion of the work processes that are covered by another occupation that OA previously approved...but does not lead to a more advanced occupation." According to the preamble of the NPRM, the Department would implement recommendations made by the Advisory Committee on Apprenticeship on the issue of splintering in its 2022 Interim Report at <https://www.apprenticeship.gov/sites/default/files/aca-interim-report-may-2022.pdf>.

<sup>13</sup> 89 Fed. Reg. at 3,249.

component, those who sponsor apprenticeship programs in OA-controlled states may have to create, subcontract out to companies or hire individuals to develop a curriculum that reaches the 144-hour threshold. While unlikely, there is also the possibility of apprenticeship programs that do not have an off-the-job training component and must not only hire individuals or entities to develop curriculum, but also hire instructors to teach the curriculum. NAHB is very concerned these costs were not considered and outreach was not exhausted in order to determine the scope of these additional costs. Therefore, DOL should halt the progress of this rulemaking until a revised estimate that realistically captures the cost burdens on businesses is provided.

#### **VI. The Department Must Address Confidentiality Issues with its Data Collection**

Of additional concern to NAHB is the provision that would allow the relevant Registering Agency access to all records listed in the proposed regulatory text. Specifically, proposed § 29.18(c) states a program sponsor (and any participating employer) must allow access to the records deemed relevant to compliance by the Registration Agency upon request “for the purpose of conducting program reviews and investigating complaints arising under this part.”<sup>14</sup> While the NPRM states the information obtained will be used only in connection with the administration of these standards, there still remains the question of protecting potentially confidential business information from public disclosure. Since the agency’s interpretation of necessary and relevant compliance documents is overly broad, the Department must explicitly guarantee that any sensitive data collected will not be released to the public.

#### **VII. Conclusion**

NAHB appreciates DOL's consideration of these comments and welcomes the opportunity to engage with the Department to find workable solutions for the critical labor shortages faced by many in the construction industry, and specifically builders in the residential sector. NAHB encourages DOL to continue to work with the entire construction industry to ensure that positive efforts and opportunities exist to increase the availability of skilled workers on both a short- and long-term basis.

Sincerely,



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National Association of Home Builders  
of the United States

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<sup>14</sup> 89 Fed. Reg. at 3,284.