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Building and Construction Trades Department

AMERICAN FEDERATION OF LABOR—CONGRESS OF INDUSTRIAL ORGANIZATIONS
815 SIXTEENTH ST., N.W., SUITE 600 - WASHINGTON, D.C. 20006-4104

(202) 347-1461

www.BCTD.org

FAX (202) 628-0724

December 1, 2008

Secretaries and Chief Executive Officers
All State and Local Building and Construction
Trades Councils – United States Only

Dear Brothers and Sisters:

Enclosed is an analysis of DOL's recently published final rule that revises the regulations, which implement the National Apprenticeship Act of 1937. It appears that the Department of Labor did consider each of the comments submitted by the BCTD, other labor organizations and joint labor-management apprenticeship programs. However, DOL did not adopt all of the changes we recommended. Nonetheless, DOL has left the door open for issuance of compliance guidelines that will clarify the controversial provisions in the revised regulations in a manner, which best serves the interests of the Organized Construction Industry.

DOL announced in a one-page memorandum, which was distributed earlier this month, that it has identified six issues in the revised regulations for which policy guidance will be developed. These six issues are the most controversial in the revised regulations. DOL's Office of Apprenticeship ("OA") has made a commitment to consult closely with National Apprenticeship System stakeholders, including the Federal Apprenticeship Advisory Committee, which has established a Policy Guidelines Group to assist the OA in developing the new guidelines. The Policy Guidelines Group consists of three representatives each from labor, management and the public.

I want to thank Michael Callanan, Executive Director of the National Joint Apprenticeship Committee for the Electrical Industry, who serves as Chairman of the BCTD's Apprenticeship Committee as well as Union Co-Chairman of DOL's Federal Apprenticeship Advisory Committee, for preparing the enclosed analysis as well as his diligence and hard work concerning development of the revised apprenticeship regulations. In addition, I want to thank the BCTD General Presidents and the State and Local Building and Construction Trades Councils for their responses to my request for thoughts and comments concerning the revised apprenticeship regulations and what



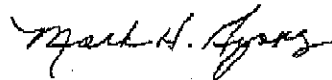
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policy guidance should be developed concerning not only the six areas identified by the Office of Apprenticeship but also other areas covered by the new rules.

I look forward to working with not only the thirteen national and international unions affiliated with the BCTD, but also the more than 300 state and local building and construction trades councils affiliated with the BCTD, as we participate in DOL's process of developing these policy guidelines. It is my hope and expectation that with persistence, perseverance and your assistance, our efforts to work with DOL's Office of Apprenticeship will produce policy guidelines, which interpret the revised apprenticeship regulations in a manner that best serves the interests of the Organized Construction Industry.

With kind personal regards, I am

Sincerely and fraternally,



Mark H. Ayers
President

Enclosure

29 CFR Part 29

**Apprenticeship Programs, Labor Standards for
Registration, Amendment of Regulations**

Final Rule Analysis

Michael I. Callanan

Background

The National Apprenticeship Act of 1937 authorized the Department of Labor (DOL) 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 their inclusion in contracts of apprenticeship, to bring together employers and labor for the formulation of programs of apprenticeship, and to cooperate with State agencies engaged in the formulation and promotion of standards of apprenticeship. The DOL promulgated regulations in 1977 for the implementation of the National Apprenticeship Act. Since that time, the regulations have remained virtually unchanged.

Over the course of the past three years, the DOL and the Office of Apprenticeship (OA) have worked with the Federal Advisory Committee on Apprenticeship (ACA) to formulate revised regulations. On December 13, 2007 the DOL issued a Notice of Proposed Rulemaking on the Regulations. During an extended comment period that ended on March 12, 2008, the DOL received 2,660 comments on the proposed rule. Only 223 of the comments were considered "non-duplicative" and were reviewed and considered by the DOL.

Fortunately, the organized industry responded to our requests to send comments to the DOL on the proposed regulations. The majority of the substantive comments were submitted by "labor organizations and employer associations that sponsor apprenticeship programs."

The purpose of this document is to analyze the Final Rule and begin to lay the framework for an industry-wide discussion on how we can best implement the new regulations for the organized industry and take full advantage of the increased latitude and flexibility that the new regulations were designed to provide to program sponsors.

The regulations consist of fourteen principle sections. Analysis will be provided section, by section, in the order in which they occur within the regulations.

29.1 Purpose and Scope

While there are no regulatory provisions in this section, 29.1 does articulate a new emphasis by the DOL and OA to better "promote apprenticeship opportunity." This is encouraging because for too many years it seems like apprenticeship has been an afterthought and not an integral part of the DOL. The new regulations are also intended to appeal to a broader, "non-traditional" apprenticeship audience. The Final Rule would implement the Department's intention to further expand registered apprenticeship into new industries and occupations, and to continue to align registered apprenticeship with the changing workforce needs of business and industry.

Hidden within this philosophy and approach is a move within the DOL and OA to shift apprenticeship towards the workforce investment system. This will be an item that the ACA takes up at future meetings. I believe we need to monitor this closely as we in the organized industry, for the most part, do not participate or are not fully engaged with workforce development boards and we could potentially lose ground here.

29.2 Definitions

As with all Federal Regulations, the definitions section is of critical importance. Keys to a proper understanding of the regulation are often contained within the definition of the term itself. In the Final Rule, several terms were revised during the comment period and two new definitions were added.

Apprenticeship Committee – The definition was revised based on comments from the organized construction industry to clarify that the committee can be either joint or non-joint and consist of those persons designated by the sponsor to administer the program. This revision avoids any potential conflict with ERISA by clarifying and recognizing the responsibility of the committee to act in the interests of the participants when carrying out its fiduciary responsibilities.

Competency – Sixteen comments were sent to the DOL regarding this definition. This is an important definition because of the permission granted to program sponsors in the new regulations to utilize competency-based apprenticeship programs. The definition was revised to provide for the “attainment of manual, mechanical, or technical skills and knowledge as specified by an occupational standard and demonstrated by an appropriate written and hands-on measurement of proficiency.”

This too was the direct result of comments submitted by the organized construction industry which called into question the proposed rule which lacked any specific means or requirement to measure competency. This was probably one of the most controversial provisions of the proposed rule. We will look at this closely in our discussion on Section 29.4 but essentially the DOL tried to tighten up the regulations but refused to remove the competency-based provisions from the regulations. The DOL stated that “apprenticeship programs need flexibility when setting the requirements for training and the attainment of journeyworker status, so that the program standards can take into account the circumstances of particular occupations and programs.” I believe that they have in mind other industries, such as the medical industry, with this approach but the new regulations clearly do not limit the competency-based approach for any one, including programs within the construction industry.

Completion Rate – The Final Rule adds a definition of the term “completion rate.” Once again, based on input from the organized industry, the DOL recognized that a definition was needed to “facilitate compliance with the requirement in Section 29.6 to evaluate the performance of apprenticeship programs.” The definition states that “completion rate” is the “percentage of an apprenticeship cohort who receive a certificate of apprenticeship completion within 1 year of the projected completion date. An apprenticeship cohort is the group of individual apprentices registered to a specific program during a 1 year time frame.”

The stated reason for this definition was to increase “consistency” with the methodology used by other Federal employment and training programs. The importance of this definition is found in the application of Section 29.6 which now requires that Registration Agencies must evaluate performance of registered apprenticeship programs, including Quality Assurance Assessments. This will be discussed in greater detail in Section 29.6.

Interim Credential – Another controversial part of the proposed rule was the recognition by the DOL of “interim credential.” While the DOL did not revise the proposed definition, they have

addressed some of the concerns raised by the organized industry in Section 29.5. Our primary concerns were that these "credentials" could be misused by some program sponsors, to the detriment of the apprentice and in doing so, would diminish the standard for journey-level workers. I will discuss this concept in great detail in our analysis of Section 29.5

Quality Assurance Assessment – Another new definition included in the Final Rule is that of "quality assurance assessment." This is an important definition because of the requirement in Section 29.6 that requires that Registration Agencies must evaluate performance of registered apprenticeship programs and that assessment must include a quality assurance assessment. The new definition states that a quality assurance assessment is a "comprehensive review conducted by a Registration Agency regarding all aspects of an apprenticeship program's performance, including but not limited to determining if apprentices are receiving: On-the-job training in all phases of the apprenticeable occupation; scheduled wage increases consistent with the registered standards; related instruction through appropriate curricula and delivery systems; and that the Registration Agency is receiving notification of all new registrations, cancellations, and completions as required in this part." We will discuss the full importance of this in our analysis of Section 29.6

Related Instruction – In the Proposed Rule, the regulations included a definition for the terms "related instruction" and "supplemental instruction." In the Final Rule, the term "supplemental instruction" has been deleted. The revised definition of "related instruction" will permit program sponsors to teach both traditional subjects related to the apprenticeable occupation and those related, or supplemental, topics as well. The importance of this is that subjects such as, job site management, health and safety, leadership and communication can be included as part of the apprentices' related training. Recall that the definition of related instruction was also revised in the Proposed Rule to recognize distant learning and on-line learning delivery methods. This will certainly open the door for further development of distant learning programs for use within our apprenticeship programs.

Transfer – The definition of "transfer" has been revised in the Final Rule to clarify that in order for a transfer to occur, the affected parties must all agree before the apprentice's registration can be shifted from one program to another. This means that the apprentice and both of the apprenticeship committees must agree before a transfer can occur.

We will discuss this in greater detail in our analysis of Section 29.5 which contains the transfer requirements.

29.3 Eligibility and Procedure for Registration of an Apprenticeship Program

This section provides program sponsors with the procedures and conditions for registering an apprenticeship program. While this section does not directly deal with the administration of our programs there are a few important provisions that are worthy of mention.

Provisional Registration – The new regulations for the first time will recognize "provisional" registrations. This concept was added to "enhance monitoring of the performance of apprenticeship programs registered for Federal Purposes by the Office of Apprenticeship and recognized State Apprenticeship Agencies. New programs that meet the initial requirements for becoming a program sponsor will be given a provisional approval for 1 year. At the end of the

first year, the Registration Agency must review all new programs for quality and for conformity with all 29 CFR 29 regulations.

At that time, the Registration Agency may grant permanent status to the program, they may continue the provisional status, or in cases where there is nonconformance, they may deregister the program.

Program Reviews – Section 29.3 (h) additionally requires that after a successful one year review of new programs, there must be a subsequent review of the program “no less frequently than every five years.” This does not preclude the Registration Agency from conducting compliance reviews on a more frequent basis; however, they must be done at least every five years.

29.4 Criteria for Apprenticable Occupation

This short but important section defines the criteria for determining when an occupation qualifies as apprenticeship. There is one important point to make in the Final Rule provisions of this section. Section 29.4 (c) states that in order for an occupation to be apprenticeship, it must “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.”

In the Preamble to the Final Rule the DOL makes it very clear that the 2,000 hour requirement is ‘solely for the purpose of helping to define an apprenticeship occupation.’ The Preamble further states that “only ‘time-based’ apprenticeship programs will be required to provide for at least 2,000 hours of actual on-the-job learning. ‘Competency-based’ and ‘hybrid’ programs also will be required to provide for on-the-job learning, but the required hours will vary by program.”

This is a critical distinction and one that still leaves the potential for misuse within the competency-based and hybrid systems. We will discuss this further in our analysis of Section 29.5

29.5 Standards of Apprenticeship

By far the most comments generated on the Proposed Rule involved the many important provisions of Section 29.5. New provisions in this section address related instruction, apprentice instructor certification transfers, interim credentials and competency-based training. Over 132 comments were received alone on the use of the competency-based approach to progression through an apprenticeship.

29.5 (b) (2) Completion of Apprenticeship – Since the inception of the National Apprenticeship Act, the only recognized method for progressing through apprenticeship was the time based approach that combined on-the job training and classroom related training. In the Proposed Rule, three approaches to completion of apprenticeship were defined in Section 29.5. The three methods were: 1) time-based; 2) competency-based; and 3) Hybrid. Despite a loud outcry from the organized construction industry, the Final Rule retains these same three approaches to completing an apprenticeship. In the end, the DOL position was that the time-base approach “does not fit the norms of all industries or occupations seeking to use the registered apprenticeship model.”

In their defense, the DOL did attempt to clarify the application of the competency-based and hybrid approaches. One of the primary concerns expressed was that the competency-based approach did not require on-the-job learning as a prerequisite to acquiring a completion certificate. The DOL has stated that "An apprenticeship program's use of a competency-based or hybrid approach does not exempt apprentices from participating in the fundamental elements of registered apprenticeship: on-the-job learning and related instruction." While this sounds better, recall that in Section 29.4 the DOL clarified that "only 'time-based' apprenticeship programs will be required to provide for at least 2,000 hours of actual on-the-job learning. 'Competency-based' and 'hybrid' programs also will be required to provide for on-the-job learning, but the required hours will vary by program."

The DOL has identified this topic as one that the Office of Apprenticeship will develop compliance guidelines that will clarify how program sponsors and apprentices will comply with the requirements for minimum on-the-job learning for each major work process using either the competency-based or hybrid approach.

29.5 (b) (4) Related Instruction – The DOL has expanded the definition of related instruction to include electronic media. They believe that the "inclusion of electronic media for related instruction is critical to aligning the National Apprenticeship System with technological advances and appropriate industry application of such advantages." The DOL points out that this does not *require* but merely *permits* programs to utilize web-based and on-line delivery methods for their related instruction.

Several commenters within the organized construction industry were concerned about the potential misuse of electronic media in the delivery of related instruction. The DOL has decided that the delivery method for the related instruction is best left to the program sponsor but they have identified this area as another concern that will be addressed through additional compliance guidelines.

29.5 (b) (4) (i & ii) Apprentice Instructor Qualifications – The Final Rule has very specific requirements for instructors within our JATCs. They must either meet State Department of Education teaching requirements or be a journeyworker who is "recognized within an industry as having expertise in a specific occupation." Additionally, every instructor must "have training in teaching techniques and adult learning styles, which may occur before or after the apprenticeship instructor has started to provide the related technical instruction." This will place an increased emphasis on the importance of participating in our industry's National Training Institute to ensure that the JATC instructors meet the DOL regulations for qualifying as an instructor.

29.5 (b) (8) Probationary Period – Many within the organized industry were concerned with the provisions in the Proposed Rule related to the probationary period. Specifically they were concerned that since cancellations of the Apprenticeship Agreement during the probationary period did not count against a program's completion rate, there might be misuse of the probationary period. Many were justifiably concerned that by extending the length of the probationary period, a program sponsor could "hide" or otherwise obfuscate their true completion rates.

The DOL has addressed this concern in the Final Rule by adding language that limits the length of the probationary period. The final rule provides that the probationary period cannot exceed 25 percent of the length of the program, or one year, whichever is shorter.

29.5 (b) (13) Transfer – As discussed in the definition of “transfer” here was a lot of interest in the Proposed Rule concerning the new provisions for apprentice transfers. The Final Rule revises the transfer requirements to provide that a transfer must be based on agreement between the apprentice and the affected apprenticeship committees or program sponsors. The DOL has clearly stated that an apprentice cannot “unilaterally transfer from one program to another or from one employer to another employer in the same program without the consent of the affected apprenticeship committees or program sponsors.”

There was one additional change in the transfer requirements that is worth mentioning. The Proposed Rule was worded such that transfers would be permitted “to a related occupation or within the same occupation.” Unfortunately, in the Final Rule the “related occupation” provision was deleted. The DOL agreed that the term “related occupation” “could be ambiguous and overly broad.” I believe that this provision could have been particularly useful for the electrical construction apprenticeship programs. Clearly, three of four programs are “related” and this provision could have opened the door for us to have more latitude with working assignments for our apprentices. Often, it is difficult to sustain some apprenticeship programs because of the lack of work opportunities or contractors who perform that type of work. This provision would have made it easier for us to build and sustain Installer-Technician programs, for example, by moving apprentices in and out of their Inside program, a “related” occupation when work conditions worsened.

29.5 (b) (16) Interim Credentials – As discussed above under Section 29.2, there was considerable interest in the organized industry about the permission granted under the Proposed Rule to Program Sponsors to request “interim credentials” for their apprentices. Ninety-three comments were sent in on this topic alone. Many of the comments sought clarification about the intent and purpose of these credentials.

In the end, the DOL retained the provisions for interim credentials but separated the requirements into a new section and clarified the intended use within the industry. The DOL has clearly tried to address the many concerns expressed in the comments, especially those related to identification of acceptable or recognized interim credentials.

“The proposed provisions for interim credentials were not intended to require all program sponsors to issue interim credentials, nor even to require that all sponsors choosing to use the competency-based approach or hybrid approach issue interim credentials. Final § 29.5(b)(16) clarifies that program standards for apprenticeship program sponsors that choose to use the competency-based or the hybrid approach for completion of an apprenticeship and that choose to issue interim credentials must clearly identify the interim credentials, demonstrate how these credentials link to the components of the apprenticeable occupations, and establish the process for assessing an individual apprentice’s demonstration of competency associated with the particular interim credential. Further, interim credentials must only be issued for recognized components of an apprenticeable occupation, thereby linking interim credentials specifically to the knowledge, skills, and abilities associated with those components of the apprenticeable occupation.”

Once again, this is another area that the DOL has identified as in need of compliance guidelines to ensure that these provisions are applied properly within each respective industry. We need to monitor the development of these guidelines as closely as possible to ensure that our interests are fully protected. For example, the DOL has stated that interim credentials "do not indicate that an apprentice has met all of the requirements of an apprenticeship, nor that he or she has successfully mastered the full range of skills and competencies required for an occupation." Additionally, they have stated that "interim credentials are not intended to narrow the breadth and depth of the training component of registered apprenticeship. Rather, they provide opportunities for apprentices to obtain portable credentials commensurate with the skills and competencies acquired and demonstrated throughout an apprenticeship." It will be incumbent upon us to ensure that, in practice, this is the way interim credentials are used in our industry.

One final note on interim credentials, apparently, some of the State Apprenticeship Agencies, expressed concerns over the potentially drastic increased workload that interim credentials could place on a State Registration Agency. The DOL states in the Preamble to the Final Rule that "we agree that State Apprenticeship Agencies should not be required to issue interim credentials as a pre-condition for recognition. Accordingly, while recognized State Apprenticeship Agencies may choose to issue interim credentials using their own procedures in compliance with this part, the final rule does not require them to do so." Therefore, the Office of Apprenticeship will offer to issue interim credentials, nationwide, where the prerequisites are met. If a recognized State Apprenticeship Agency registers program standards that use a competency-based or hybrid approach, but does not issue interim credentials, the program sponsor may request that the Office of Apprenticeship issue interim credentials to apprentices who have successfully met the requirements of an interim credential established in the program standards for their respective apprenticeship programs. If a recognized State Apprenticeship Agency does not register program standards that use a competency-based or hybrid approach, then a program sponsor can petition to register the apprenticeship standards with the Office of Apprenticeship for Federal purposes, and the Office of Apprenticeship will issue interim credentials, when prerequisites are met.

29.6 Performance Standards

Section 29.6 is a new section that focuses on the quality and performance of registered apprenticeship programs. This has been an area that has been greatly neglected in the Federal Regulations. The fact of the matter is that once a program was recognized by the Registration Agency, there was very little done to ensure that the program met any type of performance or quality standard. We in the organized industry know all too well about the many non-union programs that have existed for years, in name only, without graduating a single journey level worker.

The DOL has provided the framework for a meaningful assessment of all apprenticeship programs on a fairly regular basis. The main concern is whether they have the resources to deliver the enforcement necessary to meet the requirements of the new standards.

One Registered Apprentice - One of the requirements of this section in the Proposed Rule was that every program must have at least one registered apprentice to be designated as and retain designation as a registered apprenticeship program. There were many within the organized industry who felt that while this was a step in the right direction, it simply did not go far enough. The DOL has addressed this concern somewhat by revising the Final Rule. "We agree that there

may be times when a sponsor may have a lag between training cycles and be without a registered apprentice for a short period of time. However, when a program lies dormant for a substantial period of time, it is appropriate to consider the program as no longer viable. Therefore, we agree with the suggestion to establish time frames for determining if a program has an active apprentice to account for the short lag times mentioned in the comment and other reasonable periods of inactivity that may occur in otherwise active programs. We consider a period of up to 1 year to be a reasonable period of inactivity. We have determined that the time frame for a program to not have an apprentice registered with a Registration Agency should not exceed 1 year."

Program Performance – Many within the organized construction industry felt that the addition of a program performance section was admirable. There was some concern however, about how the DOL intended to evaluate program performance. The DOL agreed that this area needed additional clarity and added two new definitions in Section 29.2 on "completion rate" and "quality assurance assessment." Both terms are used in Section 29.6 and need to be defined. The DOL has identified three performance factors in making the performance evaluation.

"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) Equal Employment Opportunity (EEO) Compliance Reviews; and (iii) completion rates."

Taken together, there is no doubt, that with proper enforcement and assessment, the provisions of this section will ensure that our programs are properly recognized as the finest in the organized construction industry. Our challenge will be to ensure that the Registration Agencies use these provisions to weed out and deregister those programs that have operated for too long as scams and merely exist to take advantage of the system and the apprentices.

This will require us to be vigilant in our efforts to ensure that the Registration Agency regularly conducts these performance and quality assessments and acts to deregister those programs that are found not to be in compliance. I am afraid this will be as challenging as ever. Already in the Preamble to the Final Rule the DOL stated that "The primary purpose of the completion rate evaluation is not to penalize programs. As described below, our goal is to establish an assessment mechanism to identify programs that will benefit from technical assistance to become high performing programs. Only when programs demonstrate a persistent and significant failure to perform successfully will poor completion rates factor into potential deregistration proceedings." One could argue that they are already backing down and taking the hammer out of their own hands.

One final note here: The DOL has revised the calculation of completion rates in the Final Rule to utilize "national averages" for the purpose of determining whether a program's completion rate is satisfactory. In the Proposed Rule the calculation was compared to those "of the same geographic area." In the Final Rule the completion rate for any one program will be compared to "the national average for completion rates." It will be interesting to see if this has any consequences for those programs that historically lag significantly behind in their completion rates from those of ours in the organized construction industry.

Cancellation during Probationary Period – Many within the organized construction industry took exception to the provision in the Proposed Rule that exempted cancellations during the

probationary period from counting against a program's completion rate calculation. We have invested a great deal of time and resources in developing meaningful and validated aptitude tests that are designed to ensure that we are selecting the applicants that have the greatest likelihood of success within a program. It is not in the best interest of the program nor the applicant to be selecting applicants that do not meet the minimum qualifications for the program or who have little hope of being successful in their efforts to complete the program.

Additionally, there was great concern that some programs may attempt to manipulate their completion rates by extending the probationary period, knowing full well that those dropped during the probationary period would not count against a program's completion rate calculation. In the end, the DOL did not remove this provision. They found that "the proposal for the cancellation of an apprenticeship agreement not to have an adverse impact on a sponsor's completion rate if the cancellation occurs during the apprentice's probationary period is an appropriate balance between the need to hold program sponsors accountable and the need to promote apprenticeship opportunities."

It should be noted, that as we discussed in Section 29.5 the DOL has added language that limits the length of the probationary period. The final rule provides that the probationary period cannot exceed 25 percent of the length of the program, or one year, whichever is shorter. This should help to ensure that there is very little misuse of drops during the probationary period and therefore, the final completion rate accurately reflects the effort the program has put into meeting the needs of their apprentices.

29.7 Apprenticeship Agreement

Section 29.7 contains the provisions that must be included, either directly or by reference in each apprenticeship agreement. Overall there were no controversial provisions added to this section and only editorial revisions were made to the wording in the Proposed Rule.

29.8 Deregistration of a Registered Program

Section 29.8 is an important section that grants the Registration Agency the authority to formally deregister a program upon reasonable cause. "Cause" is defined as a program's failure to conduct, operate or administer the program in accordance with the program's registered provisions or with the requirements of 29 CFR Part 29. The standards for deregistering a program are pretty high. "These circumstances include: the failure to meet longstanding standards of the National Apprenticeship System, such as failure to provide on-the-job learning, failure to provide related instruction, and failure to pay the apprentice a progressively increasing schedule of wages consistent with the apprentice's skills. In addition, the persistent and significant failure to perform successfully under the new performance standards established in section 29.6 may also lead to deregistration. However, a persistent and significant failure to perform successfully does not occur simply when a program's completion rate falls below the national average. Deregistration proceedings apply to programs with severe performance problems. 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."

29.9 Reinstatement of Program Registration

Section 29.9 permits a program that has been deregistered to be reinstated upon presentation of adequate evidence that the apprenticeship program is operating in accordance with 29 CFR Part 29. No additional revisions have been made to this section.

29.10 Hearings for Deregistration

Section 29.10 covers the provisions for establishing hearings to address the deregistration of a program. No additional revisions have been made to this section.

29.11 Limitations

Section 29.11 covers the limitations of 29 CFR Part 29 as the regulations apply to collective bargaining agreements or any special provisions for military veterans, minorities, women, etc. No additional revisions have been made to this section.

29.12 Complaints

Section 29.12 covers the provisions for any complaint regarding discrimination or any equal opportunity matter. No additional revisions have been made to this section.

29.13 Recognition of State Apprenticeship Agencies

The final controversial provision of the Final Rule concerns the provisions of Section 29.13. This important section contains the provisions that States must adhere to if they want to be recognized by the DOL. Recognition confers nonexclusive authority to determine whether an apprenticeship program conforms to the published standards and whether the program is, therefore, eligible for those Federal purposes which require such a determination by the DOL. During the Proposed Rule there were significant new requirements placed upon State Apprenticeship Agencies that are recognized by the DOL to oversee apprenticeship programs within their respective states.

This section received 125 comments, mostly on topics such as: recognition of the State Apprenticeship Agency; role of the State Apprenticeship Council; link with economic development and workforce investment systems; location of a State Apprenticeship Agency; requirements for resources to carry out the functions of a Registration Agency; reciprocal approval of programs and standards in the building and construction industries; Departmental review and approval of State apprenticeship legislation, regulations, policies, and operational procedures; application for recognition; and renewal and maintenance of recognition.

While this was an issue that most directly impacted the State Agencies, the organized construction industry did weigh in on some of their concerns about these new provisions.

State Apprenticeship Councils – Twelve comments focused on proposed § 29.13(a), which provides for “recognition” only of a State Apprenticeship Agency, and not a State Apprenticeship Council, and provides that the Department’s recognition of the State Apprenticeship Agency confers “non-exclusive authority” to determine whether an apprenticeship program meets published standards and is eligible for those Federal purposes

which require such a determination. The DOL did not accept these arguments and in the end wanted a "government-to-government" relationship with the State Apprenticeship Agency to "ensure that the entity that is held accountable for conformity with part 29 is clearly identified."

The DOL further added that "while we no longer recognize State Apprenticeship Councils for registration purposes, we are not eliminating the requirement to establish a State Apprenticeship Council for regulatory or advisory purposes." The Final Rule makes it clear that State Apprenticeship Councils operate under the direction of the State Apprenticeship Agency.

Resources – There was considerable opinion expressed during the comment period about the ability of the DOL and the OA to implement and enforce the many new provisions contained in the new regulations. The DOL side-stepped the comments related to their own available resources by stating they would simply move around or reallocate existing resources to ensure that they had adequate Federal resources they have stated fairly clearly that State Agencies must have "sufficient resources" to carry out the function of a Registration Agency."

There is no doubt that in the end, this will be a serious issue for the DOL, OA and State Agencies. There are clearly additional compliance and administrative responsibilities that these new regulations place on the backs of the Registration Agency. In the end it comes down to enforcement and the organized construction industry will need to carefully monitor the actual field responses to issues regarding program performance, assessment, administration and review. The best regulations in the world are meaningless if the resources are not there to support full enforcement and implementation.

Reciprocal Approval – In the Proposed Rule the DOL revised the requirements for "reciprocal approval" that had long existed within the Federal Regulations. Specifically, the exemption for reciprocal approval for apprenticeship programs in the construction industry was removed from the Proposed Rule. As revised, the requirements raised grave concerns about the employment of apprentices on projects subject to the provisions of the Davis-Bacon Act. There were 38 comments submitted concerning the elimination of the exception for programs and standards in the building and construction industries.

In the end, DOL did the right thing by modifying the proposed requirements to address the concerns of the organized construction industry. The Final Rule states that States assuming the authority for apprenticeship programs must "(A)ccord reciprocal approval for Federal purposes to apprentices, apprenticeship programs and standards that are registered in other States by the Office of Apprenticeship or a Registration Agency if such reciprocity is requested by the apprenticeship program sponsor. Program sponsors seeking reciprocal approval must meet the wage and hour provisions and apprentice ratio standards of the reciprocal State."

While this is a huge win for the organized construction industry, there remains a concern as to how this calculation will be made. Notice that the new wording ties the wage and hour and apprentice ratios to those of the reciprocal "State." We know that there can be significant differences even with the same State. Do we use the wage and hour provisions from New York City or Buffalo when determining the "State" rates? This will need to be clarified through the issuance of subsequent compliance guidelines by the DOL.

29.14 Derecognition of State Agencies

Section 29.14 covers the provisions for derecognition of State Agencies. No additional revisions have been made to this section.

Conclusion

There can be no doubt that the organized construction industry played an important part in the development of the Final Rule for 29 CFR Part 29. This said, we must remember that we were playing "catch up" during the comment period. The Proposed Rule was, in large part, developed by the Federal ACA which consisted of 30 members, who unfortunately had very little understanding of the apprenticeship system. The good news is that we helped to shape the Final Rule; the bad news is that the deck was already stacked against in a few key areas.

The single biggest concern that still remains is the addition of the "competency-based" approach to the completion of an apprenticeship program. With this approach, and with the "hybrid" approach, there is no minimum or maximum amount of on-the-job learning hours required to complete an apprenticeship program. They have tightened the use of the provision somewhat but there will remain great concern about how this program could be misused by some in our industry.

Additionally, the revised requirements for "interim credentials" will still not satisfy some within the organized construction industry. Their concerns remain that this provision may be used by the unorganized industry to weaken the Journeyman classification and will be used to manipulate apprenticeship to meet their needs on a job-by-job basis.

One last important point needs to be made about the Final Rule. The DOL has left the door open to a broad range of topics in the Final Rule, including both the competency-based approach and interim credentials for future compliance guidelines. This activity will be part of the work of the Federal ACA Committee, of which I now Co-Chair. While I cannot assure you that we will be able to rectify all of the concerns within this committee structure, I can assure you that our concerns will be heard in this forum.

In the end, the question simply comes down to this: Did the changes that the DOL and OA made to the Proposed Rule go far enough in addressing the concerns of the organized construction industry? Unfortunately, there is no simple answer to this question and it will remain for the local parties to weigh in and voice their concerns and answer this question for us.