



VIA ELECTRONIC SUBMISSION

Aug. 22, 2022

Stephanie Pollack
Deputy Administrator, Federal Highway Administration
U.S. Department of Transportation
1200 New Jersey Ave. SE
Washington, DC 20590

RE: Docket No. FHWA-2022-0008, Proposed Rule on the National Electric Vehicle Infrastructure Formula Program [RIN: 2125-AG10]

Dear Ms. Pollack:

Associated Builders and Contractors hereby submits the following comments to the U.S. Department of Transportation in response to the DOT's request for comments in the above-referenced Notice of Proposed Rulemaking published in the Federal Register on June 22, 2022, at 87 Federal Register 37262.

About Associated Builders and Contractors

ABC is a national construction industry trade association representing more than 21,000 members. ABC and its 68 chapters help members develop people, win work and deliver that work safely, ethically and profitably for the betterment of the communities in which ABC and its members work.

ABC's membership represents all specialties within the U.S. construction industry and is comprised primarily of general contractors and subcontractors that perform work in the industrial and commercial sectors for private and government customers. Moreover, the vast majority of ABC's contractor members are classified as small businesses. This is consistent with the U.S. Census Bureau and U.S. Small Business Administration's Office of Advocacy's findings that the construction industry has one of the highest concentrations of small businesses (82% of all construction firms have fewer than 10 employees)¹ and small business industry workforce employment (more than 82% of the construction industry is employed by small businesses).² In fact, construction companies that employ fewer than 100 construction

¹ U.S. Census Bureau 2019 County Business Patterns: data.census.gov/cedsci/table?q=CBP2019.CB1900CBP&n=23&tid=CBP2019.CB1900CBP&hidePreview=true and www.census.gov/programs-surveys/cbp/data/tables.2019.html.

² 2020 Small Business Profile, U.S. Small Business Administration Office of Advocacy (2020), page 3, cdn.advocacy.sba.gov/wp-content/uploads/2020/06/04144224/2020-Small-Business-Economic-Profile-US.pdf.

professionals compose 99% of construction firms in the United States; they build 63% of U.S. construction, by value, and account for 68% of all construction industry employment.³

In addition to small businesses that build private and public works projects, ABC also has large member companies that contract directly with federal, state and local governments to successfully build projects subject to government acquisition regulations and subcontract work to qualified small businesses that meet federal, state and local government small business contracting goals.⁴

ABC's diverse membership is bound by a shared commitment to the merit shop philosophy in the construction industry. The philosophy is based on the principles of nondiscrimination due to labor affiliation and the awarding of construction contracts through open, competitive bidding based on safety, quality and value.

Comments on the Proposed Rule

ABC previously offered comments⁵ in response to the DOT's request for information on implementing the National Electric Vehicle Infrastructure Formula Program, specific to future guidance on project development of EV charging infrastructure and hydrogen, propane and natural gas fueling infrastructure by state, tribal and local governments. ABC's comments warned that attempts to craft policy to allow for the predictable deployment of such EV and clean infrastructure receiving federal grants funded by taxpayers⁶ must champion inclusive and equitable policies to attract a skilled workforce and qualified contractors to build clean energy projects.

Unfortunately, Section 680.106(j)⁷ of this proposed rule fails to thoroughly address these concerns. Instead, it proposes problematic language requiring qualified electric vehicle supply equipment technicians⁸—defined as, “all electricians installing, operating, or maintaining EVSE [Electric Vehicle Supply Equipment]” on National Electric Vehicle Infrastructure Formula Program projects—to hold certification from the International Brotherhood of Electrical Workers' Electric Vehicle Infrastructure Training Program.⁹

As an alternative, the proposed rule states that qualified EVSE electricians are required to have graduated from a government-registered apprenticeship program, or GRAP, “for

³ U.S. Census County Business Patterns by Legal Form of Organization and Employment Size Class for the U.S., States, and Selected Geographies: 2019, available at thetruthaboutplas.com/wp-content/uploads/2021/07/Construction-firm-size-by-employment-2019-County-Business-Patterns-Updated-071321.xlsx.

⁴ For example, ABC members won 57% of the \$128.73 billion in direct prime construction contracts exceeding \$25 million awarded by federal agencies during fiscal years 2009-2021.

⁵ See ABC's Jan. 28, 2022, comments on Docket Number FHWA-2021-0022: www.regulations.gov/comment/FHWA-2021-0022-0387.

⁶ See RFI part 11, “What topics do you suggest that we address in guidance on project development of EV charging infrastructure and hydrogen, propane, and natural gas fueling infrastructure at the State, Tribal, and local levels to allow for the predictable deployment of that infrastructure?”

⁷ Section 680.106(j)⁷ Installation, operation, and maintenance by qualified technicians of electric vehicle charging infrastructure at: www.federalregister.gov/documents/2022/06/22/2022-12704/national-electric-vehicle-infrastructure-formula-program#sectno-reference-680.106.

⁸ www.federalregister.gov/d/2022-12704/p-214.

⁹ www.federalregister.gov/d/2022-12704/p-216.

electricians that includes EVSE-specific training and is developed as a part of a national guideline standard approved by the Department of Labor in consultation with the Department of Transportation.”¹⁰

The proposed rule also states that “for projects requiring more than one electrician, at least one electrician must meet the requirements above, and at least one electrician must be enrolled in an electrical registered apprenticeship program.”¹¹

Finally, the proposed rule states that “all other onsite, non-electrical workers directly involved in the installation, operation, and maintenance of EVSE must have graduated from a registered apprenticeship program or have appropriate licenses, certifications, and training as required by the State.”¹²

While perhaps well-intentioned, these policies as currently drafted are likely to exacerbate the construction industry’s skilled labor shortage, reduce the supply of experienced EVSE contractors, needlessly increase costs and ultimately undermine the Biden administration’s goal of increasing the number of EV charging ports across America from 48,000 to 500,000 by 2030.¹³

As is the case in many industries, the COVID-19 pandemic has created and accelerated numerous challenges currently facing the construction industry and clean energy contracting community, including a skilled workforce shortage, rising material costs,¹⁴ supply chain disruptions, less investment in private structures,¹⁵ jobsite delays, additional health and safety protocols and new government regulations. In addition, the Infrastructure Investment and Jobs Act’s injected an additional \$550 billion of government construction spending above baseline federal government investment into the construction marketplace over the next five years that will exacerbate many of these pressing issues.

The construction industry’s existing skilled workforce shortage—estimated at 650,000 workers in 2022¹⁶—will be a key factor in the ability to meet the Biden administration’s short- and long-term EV charging and clean energy infrastructure goals.

ABC urges the DOT to abandon these restrictive and costly provisions and instead pursue inclusive policies that will allow all of the experienced electrical contractor workforce and quality contractors to participate in building America’s EV charging infrastructure. In addition, ABC’s comments seek clarification for a number of provisions in the proposed rule.

1. The Proposed Rule’s Requirement for EVITP Certification Is Likely to Increase Costs and Slow Down Rapid Construction of Electric Vehicle Charging Stations.

¹⁰ See 87 Federal Register 37277: www.federalregister.gov/d/2022-12704/p-217.

¹¹ www.federalregister.gov/d/2022-12704/p-218

¹² www.federalregister.gov/d/2022-12704/p-219

¹³ “[The U.S. only has 6,000 fast charging stations for EVs. Here’s where they all are.](#)” Andrew Moseman, MIT Technology Review, June 28, 2022.

¹⁴ “[Monthly Construction Input Prices Decreased 2% in July, Up 17% From a Year Ago, Says ABC,](#)” ABC, August 2022.

¹⁵ “[Nonresidential Construction Spending Falls 0.5% in June, Says ABC,](#)” ABC, August 2022.

¹⁶ “[Construction Industry Faces Workforce Shortage of 650,000 in 2022,](#)” ABC, Feb. 23, 2022.

Currently, EVSEs or EV chargers are installed by electricians holding appropriate licenses, certifications and education as required by the state where the EV charger is installed. Similarly, technicians servicing EVSEs are trained by EVSE companies to repair and troubleshoot charging station components. While ABC supports continued upskilling for electrical contractors, an EVITP requirement would be unnecessary, duplicative and may lead to delays in installation of EVSEs.

The EVITP, a 20-hour continuing education program operated by the International Brotherhood of Electrical Workers, provides instruction on installation of EVSE. The program is limited to state licensed/certified electricians, as well as participants who can provide documentation of at least 8,000 hours of hands-on electrical construction experience.¹⁷ In general, this requirement would needlessly limit the supply of skilled labor and number of qualified contractors to install EVSE.

As documented in ABC's response to the FHWA RFI referenced previously, the EVITP website states it "has certified over 4,000 electricians in the U.S. and Canada."¹⁸ With roughly 650,000 electricians in America,¹⁹ this means less than 1% of U.S. electricians are EVITP-certified. In short, there are simply not enough EVITP participants and graduates to make this requirement feasible in the short term.

In addition, the EVITP requirement will unnecessarily limit the number of contractors needed to install EVSE rapidly. Currently, there are not enough contractors familiar and active with EVITP to make this requirement feasible in the short term. The number of EVITP contractors who have pledged to use EVITP-certified electricians on EVSE projects appears to be extremely limited. For example, according to the EVITP website, only 26 contractors have pledged to use EVITP-certified electricians for the entire state of Florida.²⁰ This means that less than half of 1% of the 7,322 electrical contractors in Florida have currently pledged to utilize EVITP. If similar percentages hold across the nation, as few as 325²¹ of the 93,092 electrical contractors in the United States may be eligible to perform work on EV charging projects funded by NEVI.²²

In the long term, the EVITP program curriculum, funding, capacity and overall scalability is untested, undermining the likelihood of successful program expansion to accommodate thousands of new participants steered into the program via regulatory requirements and policy benefiting special interests.

¹⁷ evitp.org/frequently-asked-questions/

¹⁸ evitp.org/about-us/. Of note, since Feb. 2022, the EVITP website has been edited by removing the reference to "certifying more than 4,000 electricians" for the phrase, "the program has certified thousands of electricians in the U.S. and Canada."

¹⁹ See U.S. Bureau of Labor Statistics Occupational Employment and Wages, May 2021, 47-2111 Electricians: www.bls.gov/oes/current/oes472111.htm#st.

²⁰ evitp.org/florida

²¹ The EVITP website does not list the total number of contractors who have *pledged* to use the EVITP program. It simply lists contractors who have taken the pledge, by state and counts the same firm with multiple offices in different states multiple times in state aggregate counts; evitp.org/find-a-contractor/.

²² See [U.S. Bureau of Labor Statistics Q4 2021 Quarterly Census of Employment & Wages data on number of electrical contractor establishments](https://www.bls.gov/news.release/archives/q421_08232021.pdf).

In discussing the EVITP with contractors and EV stakeholders, ABC found that it is unclear if the EVITP curriculum is relevant and/or useful to EVSE installation and service technicians already engaged in this work. Stakeholders also said that it is unclear if the EVITP is affordable, easily accessible online and testing is available online and on demand that would allow the EVITP to be adopted across the industry. In short, the proposed rule's establishment of EVITP as the primary gateway for labor to build EV charging stations will be extremely problematic for existing EV stakeholders.

In addition, the proposed rule's EVITP requirements favor one proprietary training program over others in an emerging marketplace that should be open to a diverse marketplace of educational providers, curriculum and stakeholders. According to the American Association of State Highway and Transportation Officials' comments submitted on this proposed rule: "State DOTs are committed to diversifying the workforce and supporting local businesses. Requiring certified technicians will make these goals more challenging to achieve. Requiring one specific type of certification will likely adversely impact the disadvantaged businesses, which are more likely to struggle to access training facilities and institutions."²³

The challenges posed by restricting certification to the EVITP will be especially difficult for rural areas, which have fewer training facilities and institutions and struggle to attract skilled laborers away from urban areas with higher pay rates and greater population density needed to sustain construction businesses. The DOT should at a minimum provide additional flexibility in certification requirements for rural areas.

Additionally, this requirement violates congressional intent, as this language was specifically not included in the IIJA passed by Congress. A House-passed version of the legislation included an EVITP mandate at the request of IBEW member Rep. Donald Norcross, D-N.J., and this language was removed from the final bill signed into law.

ABC cautions the DOT not to adopt this exclusionary policy that is likely to exacerbate the industry's existing skilled labor shortage needed to install EV chargers.

Mandating policies that will needlessly restrict the pool of labor and qualified contractors permitted to build NEVI Formula Program chargers will increase costs and drastically slow down the speed and quality of EV charger deployment.

2. The Proposed Rule's Government-Registered Apprenticeship Program Requirements Are Currently Unworkable and Will Have a Disproportionately Negative Impact on Nonunion Contractors and Workers and Small-, Minority- and Women-Owned Businesses and Employees.

The proposed rule insufficiently attempts to address some of the problems with the EVITP discussed above by offering an alternative definition of a qualified EVSE technician as an electrician who has graduated from a government-registered apprenticeship program "for

²³ See AASHTO comments at www.regulations.gov/comment/FHWA-2022-0008-0171.

electricians that includes EVSE-specific training and is developed as a part of a national guideline standard approved by the Department of Labor in consultation with the Department of Transportation.”²⁴

This “alternative GRAP language” is problematic and creates risk and uncertainty for stakeholders in the regulated community because it is currently unclear which GRAPs²⁵ contain EVSE-specific education that is “developed as a part of a national guideline standard approved by the Department of Labor in consultation with the Department of Transportation” in part because this standard has not yet been approved by the DOL and DOT. It would be impossible for graduates of any GRAPs to have participated in this program that has yet to be created. Therefore, the proposed rule’s alternative to the EVITP requirement is not a feasible alternative at this time.

At a minimum, ABC recommends that the DOT delay the proposed rule until this alternative is available and then engage in an appropriate notice and comment period once this alternative is defined and fleshed out for public discussion.

In addition, ABC recommends that the DOT amend the proposed rule to allow all electrical GRAPs to qualify as an alternative to EVITP requirements until new EVSE-specific training developed by the DOL and DOT is publicly released and phased in via an appropriate timeline to allow widespread adoption by the GRAP ecosystem.

Further, the proposed rule’s requirement for at least one apprentice enrolled in a GRAP to work on any project where more than one electrician is needed,²⁶ suffers from the same practical concerns as those expressed above because there is no new DOL/DOT standard²⁷ and this only introduces further bottlenecks on workforce development that will exacerbate the construction industry’s skilled labor shortage.

ABC supports the flexibility in the proposed rule for nonelectrical workers on NEVI Formula Program projects, who must have “graduated from a registered apprenticeship program or have appropriate licenses, certifications, and training as required by the State.”²⁸ The DOT should more broadly adopt this approach to include electrical workers with appropriate state licenses as a third alternative.

While perhaps well-intentioned, in practice mandating the use of GRAP apprentices will have a chilling impact on the ability of existing and future contractors—especially local, small, veteran-, disabled-, women- and minority-owned contractors and workers—to compete to build EV

²⁴ See 87 Federal Register 37277: www.federalregister.gov/d/2022-12704/p-217.

²⁵ GRAPs are currently approved either by the Office of Apprenticeship of the Employment Training Administration of the DOL or a state apprenticeship agency recognized by the Office of Apprenticeship pursuant to the Act of Aug. 16, 1937, (popularly known as the National Apprenticeship Act; 29 U.S.C. 50 et seq). A map of Federal Office of Apprenticeship states and State Apprenticeship Agencies states is available [here](#).

²⁶ See 87 Federal Register 37278: www.federalregister.gov/d/2022-12704/p-218.

²⁷ For www.federalregister.gov/d/2022-12704/p-218, the DOT should clarify if the apprentice enrolled in a GRAP that “includes EVSE-specific training and is developed as a part of a national guideline standard approved by the Department of Labor in consultation with the Department of Transportation,” or one that does not.

²⁸ See 87 Federal Register 37278: www.federalregister.gov/d/2022-12704/p-219.

chargers. It will artificially limit the pool of scarce labor and quality contractors needed to build EV chargers and carry out the Biden administration’s climate policy objectives.

A GRAP mandate policy would also violate the founding premise of the National Apprenticeship Act, i.e., that registered apprenticeship is a “voluntary program”²⁹ and congressional intent as registered apprenticeship mandates were explicitly not required in the IIJA for EV chargers.

ABC and its 68 chapters support GRAPs—offering more than 300 DOL and state GRAPs in 20 different construction occupations across America—as part of its all-of-the-above workforce development strategy³⁰ to tackle the industry’s skilled workforce shortage.³¹

In addition, individual ABC contractors, other construction industry trade associations and community and educational workforce development partners provide federal and state GRAPs offering four- or five-year programs to participants in approximately 20 different construction occupations, i.e., electricians, carpenters and painters.

However, participants and graduates of construction industry federal and state GRAPs constitute only a small fraction of the industry’s 7.7 million-person³² workforce.³³ In fact, some trades and specific geographic areas in the United States have few GRAPs and a limited number of apprentices enrolled in GRAPs to meet this new requirement. For example, nine states and territories (Guam, Mississippi, West Virginia, Louisiana, Nebraska, Oklahoma, Wyoming, Alabama and North Dakota) have 50 or fewer construction industry GRAPs, many of which are likely nonelectrical apprenticeships.³⁴ These areas may struggle to provide sufficient apprentices for the proposed rule’s apprenticeship requirements.³⁵

²⁹ See DOL Employment And Training Administration Final Rule, 81 Federal Register 92026, Dec. 19, 2016. (“Registered apprenticeship is a “voluntary national system.”)

³⁰ According to the [results](#) of [Associated Builders and Contractors’ 2022 Workforce Development Survey](#), ABC contractor members invested \$1.6 billion on workforce development initiatives in 2021, providing craft, leadership and safety education to 1.3 million course attendees to advance their careers in commercial and industrial construction. Safety education accounted for 56% of the total workforce investment, averaging \$2,200 per employee in 2021. ABC’s investment in an all-of-the-above approach to workforce development has produced a network of ABC chapters and affiliates in hundreds of locations across the country that offer more than 800 apprenticeship, craft, safety and management education programs—including more than 300 DOL and state equivalent government-registered apprenticeship programs across 20 different occupations—to build the people who build America. Available at: www.abc.org/News-Media/News-Releases/entryid/19400/abc-members-invested-1-6-billion-in-construction-workforce-education-to-upskill-1-3-million-in-2021.

³¹ “[ABC: Construction Industry Faces Workforce Shortage of 650,000 in 2022](#),” Feb. 23, 2022.

³² BLS Construction Employment Statistics, July 2022:

www.abc.org/Portals/1/CEU/Jobs_Table_8.5.22.jpg?ver=usepFUyzq4L0oO3sNekk3Q%3d%3d×tamp=1659705352222

³³ Unfortunately, there is no centralized reporting of government data for all State Apprenticeship Agency government-registered apprenticeship programs, as discussed by the Workforce Data Quality Campaign’s Registered Apprenticeship Data FAQs, available at thetruthaboutplas.com/wp-content/uploads/2019/04/Apprentice_FAQ_2pg_web-RAPIDS-020219.pdf.

³⁴ The DOL-provided data does not break down construction industry GRAPs by trade or the number of active and graduate enrolled apprentices, by trade.

³⁵ [See data provided by the DOL to ABC](#) from the DOL’s Registered Apprenticeship Partners Information Data System program, which receives data from all 23 Office of Apprenticeship states and 11 of the remaining State Apprenticeship Agency states plus Guam, and estimates there were 239,107 enrolled apprentices, 32,068 program completers and

The vast majority of contractors in almost all markets do not participate in GRAPs for a variety of reasons. In general, contractors who refrain from GRAPs argue these programs result in excessive government red tape and compliance burdens; teach employees unnecessary skills and tasks not utilized in a company's traditional/specialty scope of work; and subject firms to needlessly restrictive federal or state³⁶ apprentice-to-journey-level worker ratios that are especially onerous for small businesses and specialty contracting firms with a small number of craft workers on a jobsite.

Feedback from ABC contractors who do not participate in GRAPs indicate they prefer existing, industry-driven workforce development programs that produce a safe, competent and productive workforce through innovative and flexible learning models like just-in-time task training, competency-based progression and work-based learning. In addition, some contractors participate in workforce development programs through vocational and technical schools and community workforce development program partnerships that are not registered with the state or federal government, in order to attract minorities, women, veterans and other stakeholders in a community into the construction industry.

It is a common misperception by construction industry outsiders that GRAPs are the only way to attract new workers into the construction industry and educate a skilled, safe, productive and diverse construction workforce.³⁷ In contrast, data demonstrates the government-registered apprenticeship system is not meeting the industry's demand for skilled labor and cannot do it alone. According to FY 2021 DOL data,³⁸ the construction industry's federal government-registered apprenticeship system produced 23,881 completers of its four-to-five-year apprenticeship programs. In addition, construction industry apprenticeship programs registered with state governments produced an estimated 15,000 to 20,000 completers in FY 2021.³⁹ At current rates of completion, it would take more than 14 years for all government-

6,573 programs for the construction industry in 2021. There is no central information for non-RAPIDS states, but ABC estimates that only 40,000 to 45,000 construction industry apprentices graduated GRAP in 2021.

³⁶ [There are 27 states](#) that have a state-administered apprenticeship program. In these states, ratios are set through statute or regulation. Some states have regulations artificially limiting the number of apprentices per journey-level workers allowed on a jobsite. For example, Pennsylvania is the only state with a restrictive 4-1 ratio. Recently, some states have been relaxing their apprenticeship ratio regulations to address the skilled worker shortage by allowing more apprentices than journey-level workers in certain trades. Other states have a 1-1 ratio. In some states, union lobbyists have maintained nonsensical competitive advantages through anti-competitive policy, where unionized contractors are granted a more generous ratio than nonunion contractors. In the 24 states where the federal government administers the state's apprenticeship program, federal rules are silent on ratios, allowing program sponsors the flexibility to propose a ratio based on required supporting documentation, which is approved (or denied) by the program officer. However, some federal states with a strong union lobby remain less flexible. For example, California limits opportunities for apprentices with a one apprentice to five journey-level worker ratio.

³⁷ Review stories from 2015-2020 in "[The Hands That Build America](#)," presented by ABC's *Construction Executive* magazine, which document the construction industry's diverse workforce development ecosystem.

³⁸ See 2021 data from the DOL here: thetruthaboutplas.com/wp-content/uploads/2022/08/Registered-Apprenticeship-Participants-Completers-and-Programs-for-Construction-Industry-in-OA-states-FY2017-to-FY2021-US-DOL-data-Aug-2022-1.xlsx. In comparison, according to the DOL Office of Apprenticeship, in FY 2020 the construction industry's 4,793 federal government-registered apprenticeship programs had 188,452 active apprentices and produced just 20,749 completers. See Federal Data: Apprenticeship Statistics by Industry for Fiscal Year 2020*: www.dol.gov/agencies/eta/apprenticeship/about/statistics/2020.

³⁹ Ibid

registered construction industry apprenticeship program completers to fill the estimated 650,000 vacant construction jobs needed just in 2022.

For these reasons, a GRAP mandate will exacerbate the construction industry's current skilled labor shortage, eliminate opportunities for small businesses opposed to GRAP requirements and harm existing workforce development pipelines and programs not registered with federal or state government but utilized by the construction industry.

ABC is concerned GRAP requirements on EV chargers will result in favoritism toward unionized contractors and union workers by suppressing fair and open competition from firms that do not participate in registered apprenticeship programs.

According to U.S. Bureau of Labor Statistics data, in 2021 unionized contractors employ less than 13% of the U.S. construction workforce, while 87.4% of the U.S. construction workforce freely chooses to work for contractors not affiliated with unions.⁴⁰

Almost all unionized contractors participate in GRAPs through joint apprenticeship training committees as a condition of collective bargaining agreements with unions.

A 2015 report issued by construction unions⁴¹ claims that, "among construction apprentices, 74% are trained in the unionized construction sector known as the joint apprenticeship training committee (JATC) system," according to DOL Employment and Training Administration data from 2014.⁴² This means that roughly a quarter of all GRAPs apprentices are enrolled in nonunion GRAPs and a GRAP requirement would disproportionately favor unionized firms and participants in union programs.

In practice, the inherent favoritism in this policy would also undermine the ability of local, small, veteran, disabled, women- and minority-owned contractors and workers to participate in EV charger contracting opportunities because most of them are nonunion and do not participate in GRAPs. This would make it exceptionally difficult to meet small and minority business contracting and workforce utilization goals and undermine the IJJA's objective to ensure equitable deployment of money to support EV charger construction.

3. Federal Agencies Should Consider Existing Policies and Practices of the EV Charging Marketplace as Well as Alternatives.

Instead of requiring one program like EVITP, or one workforce development pathway like GRAPs, the DOT should conduct stakeholder outreach and evaluate existing programs and practices by experienced contractors and the original equipment manufacturers of EV chargers

⁴⁰ Bureau of Labor Statistics, Union Members Summary, Jan. 20, 2022; www.bls.gov/news.release/union2.nr0.htm. See additional data on the state unionization rates of the construction industry at www.unionstats.com.

⁴¹ See page 6 of "Construction Apprenticeship, The 'Other Four-Year Degree,'" by the North American Building Trades Unions available at partners.aflcio.org/system/files/2_bctd-appren-four-yr-degree-2015.pdf.

⁴² Note: The DOL does not provide data of union versus nonunion apprentices enrolled in registered apprenticeship programs to the public in an aggregate version/report. It is unclear if the DOL shared this data or if additional assumptions were made by report authors based on DOL data requested and calculated.

in the marketplace to determine if new certification programs and workforce development pathways are needed or are effective and welcome.

For example, if the safety of the construction of EV chargers is a concern for the DOT, it should evaluate existing policies and practices of the marketplace. Safety education is already a key component of an electrician's workforce development pathway to become a licensed electrician. State licensing standards are generally stringent and require thousands of hours of experience and/or classroom instruction and passage of state-administered safety and general certification exams.⁴³

Federal agencies should assess the extent to which state-certified electrician education and apprenticeship programs and state licensing bodies include safety training relevant to EVSE technology in electrician curricula and examinations to see if additional certification is necessary.

Of note, EVITP is a 20-hour, continuing education class for which there is no research demonstrating its effectiveness in better safety outcomes for workers and customers. In addition, it is unclear how much of the EVITP curricula is duplicative and/or is useful to original equipment manufacturers and contractors with successful experience installing, operating and maintaining EV charging stations.

State-licensed electricians already possess the skills necessary for the installation of EV charging stations. The same basic skills necessary for the installation of electrical equipment including three-phase industrial motors, three-phase transformers and any type of high-amperage electrical services are also applicable to EV charging stations. Adding more EVSE training requirements, whether through EVITP or GRAPs, is an unnecessary step that will increase costs and limit the supply of qualified electricians for these projects.

While ABC opposes EVITP and GRAP requirements, the DOT should consider a third alternative to the problematic EVITP/GRAP requirements, by allowing state-licensed electricians and their employers with experience installing EV charging stations to continue working on EV charging stations without additional certification. All electrical contractors with appropriate state licenses and substantial, documented experience installing 150+ kW chargers should be deemed qualified to work on NEVI Formula Program projects. ABC recommends a minimum requirement of 36 hours of field experience.

Implementing this additional option for certification would allow project developers to utilize the thousands of experienced small business contractors and licensed electricians who already have experience installing EV charging stations, facilitating rapid construction of this critical EV infrastructure need.

ABC is also concerned the proposed rule's certification requirements for EV chargers might be inadequate to account for the various maintenance, technology software and operation of EV chargers that may be unique to each OEM company's specific EV charger product. The DOT

⁴³ See Electrician Licensing Requirements by State: A Comprehensive Guide, Jan. 6, 2021: www.nextinsurance.com/blog/electrician-licensing-requirements/.

should clarify that EVITP/GRAP requirements do not extend to OEM servicing and related activity following initial EV charger installation to ensure that there are no unintended consequences to requiring EV chargers to be maintained exclusively by EVITP/GRAP electricians. Additional certification and gatekeeping may disrupt this marketplace as well as healthy competition and innovation in this young industry.

Finally, if the DOT is unwilling to establish alternatives to EVITP and GRAP requirements, the agency should at a minimum consider a phased approach to these requirements. In the first four years of the NEVI program following completion of a rulemaking for EVITP and GRAP alternatives, all licensed electricians with a certain amount of demonstrated experience could be permitted to install charging infrastructure, with EVITP/GRAP requirements introduced in later years once these programs are feasible and have produced graduates. While still not an ideal approach, this would mitigate the impact of these requirements and allow more contractors and electricians the time to complete this training.

Questions

Should the DOT proceed with the ABC-opposed EVITP/GRAP requirements, ABC requests clarification on the following issues prompted by the proposed rule:

- Can a journeyman electrician that's graduated from a GRAP administered by ABC chapters and/or similar trade associations and employers service and install EV chargers receiving NEVI Formula Program funding or does the journeyman have to re-enroll into the program once DOL and DOT approve the curriculum?
- Will a GRAP be able to have a stand-alone EVSE-specific upskilling course or module approved to build off of existing GRAP programs?
- If so, please specify that the journeyman is permitted to complete a new DOT/DOL approved module rather than start the entire GRAP over.
- What specifically will be required by a GRAP with EVSE content to receive approval by DOL/DOT?
- How long will the DOL/DOT approval process for this curriculum take?
- How will programs registered with State Apprenticeship Councils be handled? Will they need to coordinate with DOT as well as DOL?

Conclusion

The proposed rule's plan to needlessly exclude all contractors and workers who do not participate in EVITP and/or GRAPs from installing EV chargers and building EV charging stations receiving NEVI funding is extremely problematic. It will create even more of a shortage of contractors and skilled labor to complete these projects, undermine established and preferred industry workforce development pipelines not affiliated with GRAPs, displace contracts and jobs for businesses and workers already building the clean energy ecosystem, give an unfair competitive advantage to unionized contractors and labor, increase taxpayer-funded construction costs and ultimately threaten the Biden administration's climate change goals by delaying the swift construction of EV chargers and charging stations.

The rule also fails to provide clarity on how the recently passed Inflation Reduction Act's Davis-Bacon and GRAP requirements for clean energy projects receiving tax incentives will impact NEVI requirements.⁴⁴

ABC also strongly opposes Section 680.118(b), which states that "Davis Bacon Federal wage rate requirements... must be paid for any project funded with NEVI Formula Program funds."⁴⁵ Prevailing wage regulations under the Davis-Bacon Act will artificially raise costs, increase administrative burden and likely decrease the quantity of contractors submitting bids on NEVI-funded projects.

The DOL is currently engaged in a sweeping revision of Davis-Bacon regulations,⁴⁶ which will dramatically change the scope of covered workers and other compliance requirements for the regulated community.⁴⁷ Implementing new prevailing wage requirements while these significant changes are still under consideration will compound the regulatory burden on electrical contractors and EVSE stakeholders.

ABC urges the DOT to abandon EVITP and GRAP requirements for the NEVI Formula Program. ABC is open to partnering with federal agencies and industry stakeholders to explore ways to attract more people into the construction industry through an all-of-the-above approach to workforce development that includes but does not solely rely on GRAPs and EVITP.

We appreciate the opportunity to comment in this matter.

Respectfully submitted,



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⁴⁴ [P.L. 117-169](#), the Inflation Reduction Act of 2022, was signed into law on Aug. 16, 2022, and contains numerous new GRAP and prevailing wage requirements: www.abc.org/News-Media/Newsline/entryid/19552/democrats-reconciliation-package-is-signed-into-law-with-abc-opposed-wage-labor-mandates.

⁴⁵ See 87 Federal Register 37279: www.federalregister.gov/d/2022-12704/p-288.

⁴⁶ See 87 Federal Register 15698: www.federalregister.gov/documents/2022/03/18/2022-05346/updating-the-davis-bacon-and-related-acts-regulations.

⁴⁷ See ABC's May 17 comments on the proposed rule: www.abc.org/Portals/1/NewsMedia/ABC%20Comments%20on%20Updating%20the%20Davis-Bacon%20and%20Related%20Acts%20NPRM%20-%20205.17.22.pdf?ver=2022-05-17-234901-040.