

### References:

- “SAC State” = State that administers their apprenticeship program.
- “Registration Agency” = a SAC state’s identified governmental entity which administers the apprenticeship program.
- “BAT State” = State where the federal government administers the apprenticeship program.
- “USDOL” = U.S. Department of Labor.

### General Information:

- There are 25 SAC states – state’s which administer their own apprenticeship system. Of the 25, 14 SAC states follow federal rules and processes as described below. In 10 other SAC states, ratios are set through their state registration agency. In Pennsylvania, the ratio is set via regulation.<sup>1</sup>
  - In Pennsylvania, non-union program sponsors are mandated to have a 4:1 ratio.
  - In Pennsylvania, unions are granted flexibility to set their own ratio via a collective bargaining agreement. Non-union programs have no such flexibility.
- There are 25 BAT states – state’s where the federal government administers the apprenticeship system. These states have routinely been approved a 1:1 ratio.

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## 1. Main areas where Pennsylvania is not in compliance with federal regulations.

- **Powers of a State Apprenticeship Council:** Current state regulations authorize the State Apprenticeship Council to register, deregister, and grant exemptions (i.e. ratio modifications) to apprenticeship programs, among other powers. Under federal rules, state apprenticeship councils are to be advisory-only bodies.
  - Federal rules no longer allow state councils to be a “registration agency.”
  - Pennsylvania’s State Apprenticeship Council should not have the power to grant or deny apprenticeship program applications, nor should they have the power to grant or deny any modification request, including ratios.
- **Program Completion Reporting:** Federal rules require sponsored programs to report completion as a part of a performance standard review. Current state regulations are silent on completion reporting as part of the sponsor’s program standards.
  - **Note:** Federal rules define program completion as finishing both classroom instruction and on-the-job training hours, which will differ for each apprenticeship program.

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<sup>1</sup> 34 Pa. Code § 83.5(b)(7). The ratio of apprentices to journeymen should be consistent with proper supervision, training, and continuity of employment or applicable provisions in collective bargaining agreements. The standard Pennsylvania Apprenticeship and Training Council ratio for Non-Joint programs shall be one apprentice employed for the first, second, third and fourth journeymen regularly employed; two apprentices for the fifth, sixth, seventh, eighth and ninth journeymen regularly employed; three apprentices for the tenth, eleventh, twelfth, thirteenth and fourteenth journeymen regularly employed, and so on in units of five journeymen regularly employed. Exemptions to the Pennsylvania Apprenticeship and Training Council’s standard ratios may be granted upon written request and approval of the Council.

- **Program Modifications:** Under federal rules, the state registration agency has 90 days to review and respond to any request for modification or changes to programs. If modifications are denied, the agency must notify the program sponsor and include specific reasons for the denial and include technical assistance.
  - Current state regulations require modification requests to be made to the State Apprenticeship Council in writing. There is no requirement that the Council provide a reason for the denial or guidance or technical assistance to the program sponsor.
- **Reciprocity:** Under current state regulations, reciprocity is not permitted for building and construction industry programs. However, if Pennsylvania union programs have agreements with union programs in other states, they have access to those lower ratios. Under federal rules, the construction industry has the same reciprocity as other programs, if the reciprocal program is registered either with the state agency or the federal Office of Apprenticeship. Reciprocal approval must meet wage and hours standards as well as ratio standards of the reciprocal state.
- **Program Approaches:** Current state regulations only recognize a “time-based” program. The federal government recognizes multiple program approaches, as follows:
  - **Time-Based Approach:** Completion of industry standard for on-the-job learning, which is at least 2,000 hours.
  - **Competency-Based Approach:** The attainment of competency through successful demonstration of acquired skills and knowledge as verified by the program sponsor. This approach still requires on-the-job learning components.
  - **Hybrid Approach:** Measures an apprentice’s skill through a combination of on-the-job learning and competency testing.

## 2. What could happen under federal law if we do not come into compliance?

- States that are out of compliance run the risk of not being recognized by USDOL. If that happens, apprentices could not work on federally funded job sites because the federal government does not recognize the state’s apprentices.
  - **California Example:** California refused to come into federal compliance, so the USDOL derecognized their state apprenticeship program. If construction companies in California want apprentices to work on federal projects, they must register apprentices in a federally approved apprenticeship program. For state projects, construction companies must register apprentices under a separate state-approved apprenticeship program.

## 3. What is different for apprenticeship program sponsors if the feds take over the program?

- If the feds take over, sponsors are provided a provisional, one-year approval. This means a sponsor can start an apprenticeship program upon applying. Under current state regulations, a program sponsor must wait until the State Apprenticeship Council reviews and approves the application before it begins.
- If the feds take over, a program sponsor can go one year without a registered apprentice in a program. Under state rules, sponsors must have an apprentice in a program every year.

- If the feds take over, the rules are silent on ratios. Program sponsors have the flexibility to set their own ratios based on justification and information submitted with their application. Upon review, the federal Office of Apprenticeship would approve the ratio or request additional information if there are concerns or questions.
- If the feds take over, state apprenticeship programs are reviewed every 5 years.
  - Current state regulations say generally the Council, “will conduct regular reviews.” In practice, the reviews have been irregular.

#### **4. A brief history of how/when/why the federal rules changed (and PA didn’t).**

##### *Reasons for Rule Change*

- Recognition that regulatory review and modifications were not done in 30 years.
- Recognition that the apprenticeship system did not address the needs of the nation’s regional economies and provide for the development of a skilled, competitive workforce.<sup>2</sup>
- Rule changes included the process by which an apprentice becomes a journeyworker and how the apprenticeship system is managed at the state and federal levels.
- The federal regulations say state apprenticeship councils are to be advisory-only because members are not, “...accountable to the State or to the Department for their actions. Such accountability is essential to the functioning of the National Apprenticeship System, especially when it comes to safeguarding the welfare of apprentices and promoting apprenticeship opportunity.”

##### *Timeline*

- October 29, 2008: USDOL announced a final rule revising federal apprenticeship regulations. 29 CFR part 29.
- December 29, 2008: Final rule took effect.
- States had 2-years from the final rule date to apply for recognition to USDOL.
- States were provided 45 days from the final rule date to submit a “corrective action plan” for conformity. *It is unclear if the Pennsylvania Department of Labor & Industry provided the federal government such a corrective action plan at or around that time.*
- If a state fails to submit a corrective action plan, the federal government can rescind recognition of their apprenticeship programs for federal purposes.
- Once a state makes the necessary changes per the corrective action plan, USDOL grants unconditional recognition for 5-years. After that time, states must undergo a standard review to ensure it is complying with federal rules.
- States can request extensions for compliance. USDOL has the option of granting requests “for good cause upon written request of the state.”
- If states are not in compliance, the federal government may grant “conditional recognition” pending implementation of the revised regulations pursuant to the corrective action plan. *Pennsylvania has been granted this status.*

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<sup>2</sup> [https://www.doleta.gov/oa/pdf/Apprenticeship\\_Final\\_Fact\\_Sheet.pdf](https://www.doleta.gov/oa/pdf/Apprenticeship_Final_Fact_Sheet.pdf)

- Pennsylvania is the only state not to bring its apprenticeship program into compliance.
- The Pennsylvania Department of Labor & Industry has the information the Legislature needs to bring the state into compliance.
  - A March 11, 2016, and March 17, 2016, letter from USDOL to U.S. Congressmen Lou Barletta and Scott Perry, respectively, indicates USDOL reviewed and approved revised regulations submitted by the Department of Labor & Industry in April 2013.
- USDOL never started the “derecognition” process in Pennsylvania as it did in California.
- USDOL is waiting for Pennsylvania to take the steps necessary to implement the needed and pre-approved changes.
- While legislation has been introduced over multiple sessions to make necessary changes, the Legislature never took up the bills.