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United States Senate

COMMITTEE ON HEALTH, EDUCATION,
LABOR, AND PENSIONS

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April 3, 2024

VIA ELECTRONIC TRANSMISSION

The Honorable Julie A. Su
Acting Secretary
U.S. Department of Labor
200 Constitution Ave., NW
Washington, D.C. 20210

Acting Secretary Su:

I write to urge you to withdraw the U.S. Department of Labor’s (DOL or the Department) Notice of Proposed Rulemaking (NPRM or proposed rule) titled “National Apprenticeship System Enhancements.” The proposed rule represents a blatant attempt to legislate through rulemaking, creating 135 pages of new regulatory requirements under the *National Apprenticeship Act of 1937* — a two-page law. It centralizes federal authority over, and injects political ideology into, the registered apprenticeship system. Instead of streamlining apprenticeship regulations to encourage more apprentice and employer participation, it drastically expands regulations and creates new burdensome requirements on states and apprenticeship sponsors that will discourage voluntary participation. This will lead to fewer apprenticeship opportunities for Americans as workforce shortages continue to challenge job creators.

Cutting Out Apprenticeships That Work by Imposing a One-Size-Fits-All Apprenticeship Model

On March 6 the Biden administration reiterated its goal to expand registered apprenticeships through an executive order on using federal grant programs and contracts to increase the use registered apprenticeships.¹ It is perplexing that the proposed rule would eliminate the competency-based and hybrid models of apprenticeships, limiting registered apprenticeships. The competency-based approach allows registered apprenticeship programs to measure skill acquisition, not just the amount of time spent in on-the-job learning, while the hybrid model is a mix of competency- and time-based requirements. Competency-based apprenticeships allow for greater alignment with career pathways that result in upward mobility for apprentices. Apprentices

¹ *Executive Order on Scaling and Expanding the Use of Registered Apprenticeships in Industries and the Federal Government and Promoting Labor-Management Forums*, The White House (Mar. 6, 2024), <https://www.whitehouse.gov/briefing-room/presidential-actions/2024/03/06/executive-order-on-scaling-and-expanding-the-use-of-registered-apprenticeships-in-industries-and-the-federal-government-and-promoting-labor-management-forums/>.

benefit from the added flexibility that rigid time-based models do not afford.² The NPRM's analysis shows that competency-based and hybrid apprenticeship models have contributed 59 percent of new registered apprenticeships since 2017. DOL's own projections show that by 2034, 32 percent of existing registered apprenticeships will be competency-based or hybrid programs.³ The Biden administration would eliminate this growth, along with successful competency-based and hybrid registered apprenticeships, in favor of a one-size-fits-all time-based requirements of a minimum 2,000 hours of on-the-job training and 144 hours of related instruction.

Stifling the Growth of Registered Apprenticeships by Imposing New Burdensome Compliance and Registration Requirements on Apprenticeship Sponsors and Employers

The NPRM positions DOL's Office of Apprenticeship as an expert on all manner of subjects unrelated to apprenticeships, while imposing severe costs on apprenticeship program sponsors and employers at no clear benefit to apprentices. For example, the Department proposes in section 29.10(a)(5) that applicants for an apprenticeship program supply "information showing that the prospective program sponsor possesses and can maintain the financial capacity and other resources necessary to operate the proposed program."⁴ This would include providing DOL with information on financial planning and funding streams, creating a significant paperwork burden on prospective apprenticeship sponsors. Neither the Department nor an SAA would have the expertise to assess a business's future solvency through evaluating such financial information. The added burden consequently would have little to no positive impact for apprentices.

The NPRM proposes in 29.8(a)(18) to require program sponsors and employers disclose the amount of costs incurred by apprentices during the course of the program."⁵ These costs must be "necessary and reasonable" without imposing "inequitable financial barriers" to enrollment or program completion."⁶ While it is important not to impose unnecessary costs on apprentices, the Department has designated itself as arbiter of when "necessary and reasonable" expenditures do not create "inequitable financial barriers." This lack of clarity will mean program sponsors and employers must guess whether they are or are not in compliance with the proposed rule. DOL should provide clearer guidelines for sponsors and employers so they are not forced to rely on arbitrary determinations to know if their program satisfies the NPRM's requirements.

Proposed section 29.10(a)(6) stipulates that, in order to be registered, a sponsor or employer's apprenticeship program must disclose in writing "all instances" where any federal, state, or local government agency had found the "prospective sponsor (or any of its officers or employees)" violated any "applicable laws governing workplace practices or conduct." The prospective sponsor must also detail the actions it had taken to remedy the reported violations.⁷ It is laudable to protect

² *Competency-Based and Hybrid Instruction: Two Alternative Approaches to Time-Based Registered Apprenticeships*, Jobs for the Future (November 2020), https://www.aacc.nche.edu/wp-content/uploads/2021/05/AACC5_Compentency-Based-and-Hybrid-Instruction1.pdf.

³ *National Apprenticeship System Enhancements*, 89 Fed. Reg. 3118 (proposed 01/17/2024) (to be codified at 29 C.F.R. pts. 29 and 30).

⁴ *Ibid.*

⁵ *Ibid.*

⁶ *Ibid.*

⁷ *National Apprenticeship System Enhancements*, 89 Fed. Reg. 3118 (proposed 01/17/2024) (to be codified at 29 C.F.R. pts. 29 and 30).

apprentices from unscrupulous employers. Yet without any limiting principle, this provision creates an unnecessarily daunting paperwork burden on smaller sponsors and employers, who must detail labor or employment law violations from a program’s inception, regardless of their relevance to participation in a registered apprenticeship program. This alone would significantly deter participation. In addition, it subjects employers to a kind of double jeopardy, where DOL’s Office of Apprenticeship and SAAs make determinations on areas of labor and employment law in which they have neither expertise nor jurisdiction.

Centralizing Authority Within DOL’s Office of Apprenticeship at the Expense of State Discretion

The proposed rule confines apprenticeship programs only to occupations DOL deems suitable, taking away states’ discretion to administer registered apprenticeships in a way that best meets their workforce needs. Thirty-one states and territories, including Louisiana, operate SAAs, which register and oversee apprenticeship programs.⁸ Operating as an SAA can provide states greater flexibility to administer apprenticeship programs, improve responsiveness and customer support, streamline quality assurance, and support statewide outreach efforts while coordinating resources allocation and development efforts across apprenticeship programs.⁹ The Department’s proposed rule, however, centralizes power over apprenticeships and undermines states’ ability to expand their apprenticeship programs.

For example, the NPRM revokes SAA’s authority to recognize suitable occupations in their states. This will reduce the number of occupations deemed suitable for apprenticeships, rendering the registered apprenticeship model less responsive to local needs and decreasing the number of potential apprenticeships. The NPRM states that “registered apprenticeship training is not suitable for all occupations, including many occupations that are essential for the healthy functioning of the national economy.”¹⁰ DOL thus appears to relegate registered apprenticeships to a niche training model only for certain national industries, rather than allow them to serve a regional need. Limiting the number of occupations suitable for registered apprenticeships even further, the Department designates itself as the sole arbiter of whether an occupation is “a standalone, distinct occupation” and establishes a new requirement for occupations to be deemed suitable for apprenticeships: whether they will “lead to a sustainable career.” DOL does not articulate what evidence it will consider to make such a determination, or even what a “sustainable career” is with any specificity. Taken together, these provisions will make it difficult to establish new apprenticeships in specialized fields or grow new programs that meet local workforce needs.

Injecting Ideology into Registered Apprenticeships

The Department asserts that advancing diversity, equity, inclusion, and accessibility (DEIA) strategy for employers and program sponsors is “central” to apprenticeship programs. Federal law, including 29 C.F.R. Part 30, already include equal employment obligations and diversity

⁸ *Apprenticeship USA About Us*, U.S. Department of Labor (2024), <https://www.apprenticeship.gov/about-us/apprenticeship-system>.

⁹ *Leveraging Registered Apprenticeship To Build A Thriving And Inclusive Economy*, National Governors Association (Dec. 15, 2021), <https://www.nga.org/publications/leveraging-registered-apprenticeship-to-build-a-thriving-and-inclusive-economy/>.

¹⁰ *National Apprenticeship System Enhancements*, 89 Fed. Reg. 3118 (proposed 01/17/2024) (to be codified at 29 C.F.R. pts. 29 and 30).

requirements. The NPRM imposes additional burdens on states and forces them and apprenticeship sponsors to adopt ideological policies that may not pass legal scrutiny. Private companies' programs that give preference to certain demographic groups are of questionable legality due to the Supreme Court's recent interpretation of the Civil Rights Act and the U.S. Constitution's 14th amendment.¹¹ DOL should not require states or apprenticeship sponsors to treat apprenticeship applicants on the basis of their race or any other demographic category in the pursuit of registering apprenticeship programs.

The proposed rule also requires apprenticeship sponsors seeking to register an apprenticeship program to submit a written plan for the equitable recruitment and retention of apprentices, including those from underserved communities. For the apprenticeship program to gain approval, DOL or the SAA must determine the submission is satisfactory—effectively creating a federal mandate on apprenticeship program sponsors. This will lead to fewer registered apprenticeship opportunities, including for those the NPRM seeks to serve through its DEIA provisions. DOL should pursue policies that expand, not limit, opportunities for all workers who desire to enter a registered apprenticeship as a pathway to a good job.

DOL Should Rescind the Proposed Rule

Imposing 135 pages of red tape on the registered apprenticeships system will limit participation, contrary to the administration's goal. Employer and sponsor participation in the registered apprenticeship system is completely voluntary. When an employer registers an apprenticeship program with DOL or an SAA, it chooses to opt into the regulatory requirements governing registered apprenticeships. But the proposed rule does not eliminate a single employer or sponsor requirement.¹² States and employers will simply set up their own apprenticeship programs outside the registered apprenticeship system to avoid subjecting themselves to the proposed rule's costly and ideologically motivated mandates that have little to nothing to do with improving outcomes for workers. I urge the Department to rescind the proposed rule in order to avoid damaging the registered apprenticeship system.

Sincerely,



Bill Cassidy, M.D.
Ranking Member
U.S. Senate Committee on Health,
Education, Labor, and Pensions

¹¹ *Students for Fair Admission, Inc. v. President and Fellows of Harvard College*, 143 S. Ct. 2141, 2176 (2023).

¹² *Advancing Apprenticeship: Opportunities and Challenges in the National Apprenticeship System Enhancements Proposed Rules*, Apprenticeships for America (February 2024), <https://adobe.ly/3UTZOFx>.