



March 18, 2024

VIA ELECTRONIC SUBMISSION

Michelle Paczynski
Administrator, Office of Policy Development and Research
Employment and Training Administration
U.S. Department of Labor
200 Constitution Ave. NW, Room N-5641
Washington, DC 20210

RE: RIN: 1205-AC13, “National Apprenticeship System Enhancements” [Docket ID: ETA-2023-0004]

Dear Ms. Paczynski:

On behalf of the Job Creators Network Foundation, I am submitting comments regarding the Department of Labor’s Employment and Training Administration’s notice of proposed rulemaking entitled, “National Apprenticeship System Enhancements.”¹ This proposed rule would disincentivize employers of all sizes, but particularly small businesses, from participating in apprenticeship programs at a time when the country is facing a skilled labor shortage.

JCNF is a nonpartisan organization founded by entrepreneurs who believe that many government policies are getting in the way of the economic freedom that helped make this country prosperous. We believe the best defense against bad government policy is a well-educated public and accomplish this by educating employees of Main Street America. In this way, we help protect the eighty-five million people who depend on the success of small businesses.

JCNF urges the Department to withdraw its proposed apprenticeship rule because it is illegal and would significantly harm small businesses across the country.

¹ 89 Fed. Reg. 3118 (Jan. 17, 2024).

The Proposed Apprenticeship Rule is Illegal

DOL's proposed rule illegally exceeds the Department of Labor's statutory authority under the National Apprenticeship Act.² Enacted in 1937, the NAA, which is only two-pages in length, directs the Department, among other things to "formulate and promote the furtherance of labor standards necessary to safeguard the welfare of apprentices" and "cooperate with State agencies engaged in the formulation and promotion of standards of apprenticeship."³ The statute does not authorize a federal takeover of apprenticeship programs across the country, as this proposal (which is 395 times longer than the two-page statute it claims to implement) envisions.⁴ And the extensive paperwork and data collection requirements that make up a significant part of this proposed rule will do nothing to protect the welfare of apprentices, as the Department claims. Indeed, these burdensome new requirements will disincentivize employers from participating in apprenticeship programs, thereby *hurting* the welfare of apprentices who would have a much harder time finding an apprentice program to participate in.

Moreover, the proposed rule illegally introduces diversity, equity, and inclusion into apprenticeship programs. Yet, the Supreme Court's decision in *Students for Fair Admissions, Inc. v. Harvard*, raises significant questions about whether these programs are even legal.⁵ At a minimum, businesses offering apprenticeships would be required to pay attorneys to structure and review these DEI programs to make sure they comply with the law.

Lastly, it is clear the NAA offers no statutory authority for a federal takeover of CTE programs, which are primarily administered by state and local governments.⁶

The Proposed Apprenticeship Rule Would Hurt Small Business

Thousands of small businesses, particularly in the construction industry, participate in government-registered apprenticeship programs (GRAP). The Department estimates that small business sponsors of these programs would incur \$3,420 in costs their first year because of this proposed rule.⁷ But that figure assumes small businesses would spend a mere \$412 to become familiar with this rule⁸ that totals twenty-seven pages in regulatory text.⁹ It also assumes \$842 for program reviews by "noncompliant sponsors."¹⁰ The extensive rewriting of the apprenticeship regulations in this proposal would render a significant number of existing

² National Apprenticeship Act of 1937, 50 Stat. 664 (codified as amended at 29 U.S.C. 50).

³³ Id.

⁴ See "[Ranking Member Cassidy on Biden's Proposed Apprenticeship Rule, Ignoring Congressional Authority](#)" (Dec. 15, 2023).

⁵ *Students for Fair Admissions, Inc. v. Harvard*, 600 U.S. ___ (2023), Docket No. 20-1199.

⁶ Education Commission of the States, "[50-State Comparison: Secondary Career and Technical Education.](#)"

⁷ 89 Fed. Reg. at 3250.

⁸ Id.

⁹ Id. at 3271-3298.

¹⁰ Id. at 3250.

employer-sponsored programs “noncompliant.” Meanwhile, most small businesses do not have attorneys or compliance officers on staff to review regulations and ensure the company is complying with them. According to JCNF’s Small Business IQ polls, the vast majority of small business owners have ten employees or less. For these businesses, it will be the small business owner who reads these regulations and restructures its apprenticeship program to comply with them.¹¹ Or, more likely, they will pay thousands of dollars to an attorney to do it. Like so many other commenters have noted, the Department’s compliance cost estimates do not come close to matching the actual costs small businesses would have to pay if this rule is promulgated.

Finally, JCNF also shares the concern that many other commenters have expressed about the inflexibility of the requirements in the proposed regulation. We are particularly troubled by the Department’s requirement that all apprenticeship programs be at least 2,000 hours in length. This is just a number and does nothing to really measure whether a worker has mastered the skill needed for the job for which he or she is being trained. Competency-based training is much more efficient, effective, and less costly.¹²

Conclusion

The Department of Labor’s proposed apprenticeship rule is illegal, would hurt small businesses, and would only add to the skilled labor crisis facing the country.

For the above reasons, JCNF urges the Department to withdraw this rule.

Thank you for your consideration of these comments. If I can be of assistance or provide the agency with additional information, please contact me.

Sincerely,



Elaine Parker
President
Job Creators Network Foundation

¹¹ <https://sbipoll.icnf.org/>.

¹² Jill W., “[Why is Competency-Based Training So Effective](#),” SkillBuilder (May 4, 2021).