

March 18, 2023

**Via Federal eRulemaking Portal**

Brent Parton  
Principal Deputy Assistant Secretary for  
Employment and Training, Labor  
U.S. Department of Labor  
200 Constitution Avenue NW  
Room N-5641  
Washington, DC 20201

**Re: EPPC Scholar Comment Opposing DOL’s Proposed Rule “National Apprenticeship System Enhancements,” RIN 1205–AC13**

Dear Mr. Parton:

I am a scholar and Policy Analyst at the Ethics and Public Policy Center (EPPC). I write in opposition to the Department of Labor’s (DOL) proposed rule “National Apprenticeship System Enhancements.”<sup>1</sup>

While I appreciate the Department’s desire to “improv[e] the quality of registered apprenticeship programs,” the proposal’s arduous training requirements, many of which promote the Biden Administration’s diversity, equity, inclusion, and accessibility goals, are unwieldy.<sup>2</sup> In an environment where local and state governments are already dealing with apprenticeship labor shortages, as well as a shortage of registered national apprenticeship program sponsors, the Department’s proposed requirements for nondiscrimination, training, and education will deter apprentices and program sponsor applicants rather than encourage participation in the apprenticeship system. The proposed rule also raises serious religious freedom concerns, which the Department fails to address. Based on these concerns, I urge the Department to abandon its misguided rule.

**1. The proposed rule would add unwieldy requirements, exacerbating the current labor shortage.**

According to a fact sheet published by DOL, the National Registered Apprenticeship

---

<sup>1</sup> 89 Fed. Reg. 3118 (Jan. 17, 2024), <https://www.federalregister.gov/documents/2024/01/17/2023-27851/national-apprenticeship-system-enhancements>.

<sup>2</sup> *Id.*

System includes over “25k active apprenticeship programs” and over “800k apprentices served.”<sup>3</sup> These apprenticeship programs include “employers, industry associations, labor, education providers, Apprenticeship Industry Intermediaries, State Apprenticeship Agencies, and other Registered Apprenticeship stakeholders and sponsors.”<sup>4</sup> These programs are distributed across a wide variety of industries, such as “healthcare, cybersecurity, information technology, transportation, financial services, advanced manufacturing, hospitality, telecommunications, construction, and energy.”<sup>5</sup> Considering the breadth and scope of apprenticeship programs in the United States, DOL’s lengthy and complex proposed rule would impose burdensome standards and training across all apprenticeship program sectors.

For example, in Wyoming, the Department of State Workforce Services explained in their public comment submitted on this rule that in rural areas where there is already a labor shortage and “there are still a very limited number of apprenticeship sponsors,” the proposed requirements would “cause a sense of burden for sponsors and act as a deterrent to pursuing Registered Apprenticeship as a whole.”<sup>6</sup> Another commentator shared that the proposed rule would “add dozens of new burdensome and costly recordkeeping and reporting requirements on GRAP providers and employer participants [and] ... would also eliminate flexible, competency-based GRAPs that allow programs to be tailored to the industry and the student.”<sup>7</sup> These are just two of many comments the Department has received expressing their concerns with the arduous standards and training requirements proposed by this rule. I share those concerns.

As a result of the burdensome and undefined program requirements, I ask that the Department explain how it plans to mitigate the labor shortage and lack of programs in certain parts of the country that these new requirements will create or, at the very least, advance.

DOL also seeks to “increase[] clarity.” Despite a 182-page triple-columned document with a lengthy preamble describing the requirements across programs in all industry sectors, the proposed rule fails to define key terms and lacks an appreciation of the rule’s impact on registered programs. Further, the Department is creating a confusing and unclear standard by failing to provide relevant definitions and explanations. Thus, the proposed rule is bound to create more confusion, not “clarity.”<sup>8</sup>

The Department states in proposed § 29.1 that the purpose of the proposed changes is to “ensur[e] equitable apprenticeship opportunities for underserved communities.”<sup>9</sup> Yet these new standards and procedures may actually discourage access to the programs, undercutting their purported purpose. DOL states that it would like to “mitigate barriers and facilitate equal access and greater success for underserved communities,” but by adding excessive training and education requirements, fewer organizations would partner with the DOL to become registered

---

<sup>3</sup> U.S. Department of Labor, Office of Apprenticeship, [https://www.apprenticeship.gov/sites/default/files/DOL\\_IndustryFactsheet\\_AboutUs\\_110123.pdf](https://www.apprenticeship.gov/sites/default/files/DOL_IndustryFactsheet_AboutUs_110123.pdf).

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> Comment from Department of Workforce Services (DWS) (February 27, 2024), <https://www.regulations.gov/comment/ETA-2023-0004-0081>.

<sup>7</sup> Comment from Simmons, Eric (March 13, 2024), <https://www.regulations.gov/comment/ETA-2023-0004-0682>.

<sup>8</sup> *Id.*

<sup>9</sup> 89 Fed. Reg. 3270.

apprenticeship programs.<sup>10</sup> While the Department emphasizes the importance of access to these apprenticeship programs, the proposed rule fails to identify a single case where an applicant did not have an opportunity to be a part of a program. The proposed rule is a solution in search of a problem.

While the purpose of the proposed rule is to increase equity, the Department fails to provide definitions for “equity” or “equal access” and whether they are the same or different. In its final rule, I ask that the Department provide these definitions and clearly explain any differences between the terms. I also ask that the Department explain if equity and equal access can be achieved in the same manner or if different means are necessary.

## **2. The proposed rule unlawfully promotes “equity,” not nondiscrimination.**

DOL’s stated overarching theme and goal of this proposed rule is to “expand[] to create more opportunities for historically underrepresented populations.”<sup>11</sup> On its face, helping these groups by ensuring equality of opportunity is an admirable goal and one I support. However, it appears the Department is not seeking equality of opportunity but rather manufactured equal outcomes.

In support of its proposed rule, the DOL points to E.O. 13985, on advancing racial equity and supporting underserved communities. In accordance with the Biden Administration’s push for equity in federal programs, the Department must be careful not to illegally discriminate, permit, or encourage illegal discrimination by others. There has been a concerning trend by governments and others to illegally discriminate under the guise of equity. For example, under the current Administration, multiple states’ federally funded COVID-19 vaccine distributions used racial set-asides to promote “equity” in blatant violation of Title VI and Section 1557 of the Affordable Care Act.<sup>12</sup>

DOL has a legal duty to prohibit discrimination, even discrimination, for the purpose of equity. I urge DOL to ensure that your efforts to promote equity do not encourage or enable illegal discrimination and to make clear that such discrimination in their federally funded apprenticeship programs will not be tolerated.

## **3. The proposed rule should explicitly acknowledge protections for religious organizations and individuals.**

The proposed rule would define “underserved communities” as “historically marginalized communities or populations...that have been adversely affected by discrimination.”<sup>13</sup> These populations, according to the proposed rule, “include[], but [are] not limited to”:

---

<sup>10</sup> *Id.* at 3119.

<sup>11</sup> An Overview of Proposed Rulemaking 1205-AC13 National Apprenticeship System Enhancements (January 25, 2024), <https://www.workforcegps.org/events/2024/01/15/20/07/An-Overview-of-Proposed-Rulemaking-1205-AC13-National-Apprenticeship-System-Enhancements>.

<sup>12</sup> See Complaint for Race, Color, and National Origin Discrimination in Violation of Section 1557 and Title VI by New Hampshire et al. in COVID-19 Vaccine Distribution, [https://eppc.org/wp-content/uploads/2021/09/OCR-Complaint-for-Unlawful-Racial-Set-Asides-in-NH-COVID-Vaccine-Distribution\\_Redacted.pdf](https://eppc.org/wp-content/uploads/2021/09/OCR-Complaint-for-Unlawful-Racial-Set-Asides-in-NH-COVID-Vaccine-Distribution_Redacted.pdf).

<sup>13</sup> 89 Fed. Reg. 3276.

women; persons of color (including Black, Latino, Indigenous and Native American persons, and Asian Americans, Native Hawaiians, and Pacific Islanders); individuals with disabilities; persons adhering to particular religious beliefs or practices; veterans and military spouses; lesbian, gay, bisexual, transgender, queer, gender nonconforming, and nonbinary persons; and individuals with barriers to employment, as defined in WIOA sec. 3(24).<sup>14</sup>

The proposed rule also assigns the Department the role of “promot[ing] diversity, equity, inclusion, and accessibility.”<sup>15</sup> Under the proposal, programs would be required to “adhere to all of the applicable non-discrimination and EEO requirements contained in 29 CFR part 30.”<sup>16</sup>

Further, DOL’s proposal includes an “obligat[ion]” on “program sponsors and participating employers to promote and maintain a safe environment that is free from violence, harassment, intimidation, and retaliation.”<sup>17</sup> However, DOL does not define these terms in its proposal. It is unclear what constitutes harassment towards individuals that identify as “gay, bisexual, transgender, queer, gender nonconforming, and nonbinary.” Recently proposed harassment guidance by the Equal Employment Opportunity Commission stated that “sex-based harassment,” which it said covers “harassment on the basis of all orientation and gender identity, including how that identity is expressed,”<sup>18</sup> could include:

epithets regarding sexual orientation or gender identity; physical assault; harassment because an individual does not present in a manner that would stereotypically be associated with that person’s gender; intentional and repeated use of a name or pronoun inconsistent with the individual’s gender identity (misgendering); or the denial of access to a bathroom or other sex-segregated facility consistent with the individual’s gender identity.<sup>19</sup>

Example 4 in the proposed guidance provided a hypothetical scenario elaborating on the EEOC’s position on harassment based on gender identity.

Jennifer, a cashier at a fast food restaurant who identifies as female, alleges that supervisors, coworkers, and customers regularly and intentionally misgender her. One of her supervisors, Allison, frequently uses Jennifer’s prior male name, male pronouns, and “dude” when referring to Jennifer, despite Jennifer’s request for Allison to use her correct name and pronouns; other managers also intentionally refer to Jennifer as “he.” Coworkers have asked Jennifer questions about her sexual orientation and anatomy and asserted that she was not female. Customers also have intentionally misgendered Jennifer and made threatening statements to her, but her supervisors did not address the harassment and instead reassigned her to duties

---

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.* at 3127.

<sup>17</sup> *Id.* at 3160.

<sup>18</sup> EPPC Scholar Comment on EEOC Proposed Enforcement Guidance on Harassment in the Workplace 10-11 (November 1, 2023), <https://eppc.org/wp-content/uploads/2023/11/EPPC-Scholar-Comment-on-EEOC-Proposed-Harassment-Guidance.pdf>.

<sup>19</sup> *Id.* at 11-12.

outside of the view of customers. Based on these facts, Jennifer has alleged harassment based on her gender identity.<sup>20</sup>

Does the Department hold a similar view to EEOC that it is unlawful harassment to not use pronouns associated with a person’s identity or allow people to use sex-specific facilities aligned with their identity? Would a transgender pronoun and bathroom mandate be required under the proposed rule? If the answer is yes, this raises serious free speech and religious liberty concerns, especially when one of the goals of the proposed rule is to support “persons adhering to particular religious beliefs or practices.”<sup>21</sup>

The Department fails to cite the First Amendment or consider other federal laws protecting faith-based organizations and religious employers from making employment decisions based on religion, such as Title VII and the Religious Freedom Restoration Act. In cases where faith-based, religious organizations or religious employers seek to sponsor a program, I urge DOL to acknowledge and address the impact of all relevant federal laws protecting religious exercise, especially those identified by the Supreme Court in *Bostock*: the First Amendment’s ministerial exception, Title VII’s religious organization exemption, and the Religious Freedom Restoration Act.

## **Conclusion**

The Department should abandon its proposed rule.

Sincerely,

Natalie Dodson  
Policy Analyst  
HHS Accountability Project  
Ethics & Public Policy Center

---

<sup>20</sup> *Id.* at 12.

<sup>21</sup> 89 Fed. Reg. 3276.