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Proposed Rule on Industry-Recognized Apprenticeship Programs

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Introduction

On June 25, 2019, the Department of Labor (DOL) published a proposed rule in the *Federal Register* to establish a process for recognizing new Standards Recognition Entities (SREs) that would be authorized to approve Industry-Recognized Apprenticeship Programs (hereinafter, “Industry Programs”) as being in compliance with federal standards.¹ The standards that SREs would apply to Industry Programs are established in the proposed rule. The new system of SREs and Industry Programs would operate as an alternative system, co-existing with the established registered apprenticeship system in which governmental agencies approve apprenticeship programs as being in compliance with federal standards. The proposed rule would not have a direct impact on the existing registered apprenticeship system and associated processes.

As of this writing, DOL is accepting comments related to the proposed rule. The notice specified that comments must be submitted by August 26, 2019.

This report focuses on the proposed rule and provides limited information on the broader federal approach to apprenticeship. A more detailed description of established federal efforts related to registered apprenticeship is available in CRS Report R45171, *Registered Apprenticeship: Federal Role and Recent Federal Efforts*.

Background

Apprenticeship is a workforce development strategy that trains a worker for a specific occupation using a structured combination of paid on-the-job training and related instruction.² Historically, federal involvement in apprenticeship has occurred through a system authorized in regulatory provisions in which government agencies “register” programs as being in compliance with specified standards and assist apprenticeship sponsors in developing programs that meet those standards. The registration agency can be the Office of Apprenticeship (OA) at DOL or an OA-approved state apprenticeship agency (SAA).

Key workforce development initiatives of the Trump Administration have included expanding the use of apprenticeship in new sectors and increasing private-sector involvement in the development and approval of apprenticeship programs. The proposed rule on Industry Programs is a facet of these efforts.

National Apprenticeship Act and Registered Apprenticeship System

The National Apprenticeship Act (NAA), enacted in 1937, is a relatively brief piece of legislation that directs DOL to “safeguard the welfare of apprentices” and “bring together employers and labor for the formulation of programs of apprenticeship.”³ To carry out this law, DOL has established regulations that set standards for apprenticeship programs and procedures for

¹ The full notice was published as pages 29970-30020 in Vol. 84, No. 122 of the *Federal Register*. See <https://www.federalregister.gov/documents/2019/06/25/2019-13076/apprenticeship-programs-labor-standards-for-registration-amendment-of-regulations>.

² For a more detailed discussion of federal involvement in apprenticeship and the registered apprenticeship system, see CRS Report R45171, *Registered Apprenticeship: Federal Role and Recent Federal Efforts*.

³ See 29 U.S.C. 50 et seq.

registration agencies to register individual apprenticeship programs that are in conformity with those standards (hereinafter, “registered apprenticeships”). Regulations also establish oversight responsibilities and procedures for registration agencies.⁴

The emphasis of the NAA and associated regulations is creating administrative systems that will support the objectives of the law. The NAA does not authorize appropriations to provide direct financial support for apprenticeship sponsors.

Executive Order, Apprenticeship Task Force, and Other Executive Branch Actions

The publication of the proposed rule is the latest development in a series of ongoing efforts by the Trump Administration to increase the role of private industry in the federal apprenticeship system. In June 2017, President Trump issued Executive Order (EO) 13801, “Expanding Apprenticeships in America.”⁵ The EO directed DOL to “consider proposing regulations” that “reflect an assessment of whether” to modify the registration process to increase the role of nongovernment entities.

The EO also directs DOL to convene a task force “to identify strategies and proposals to promote apprenticeships, especially in sectors where apprenticeship programs are insufficient.” The first meeting of the task force was in October 2017 and its final report was issued in May 2018. The recommendations in the final report included the broad contours of an Industry Program.⁶

In July 2018, DOL issued a Training and Employment Notice (TEN) on Industry Programs. The TEN set out “at a high level, the policies and procedures that certifiers will be expected to have in place to establish standards, establish certification intervals determined by those industries, evaluate and certify programs focused on outcomes and process, report results, and maintain records.”⁷ The TEN was updated in June 2019 to reflect the release of the proposed rule.⁸

Description of the Proposed Rule

Under the proposed rule, the OA within DOL would approve SREs that meet specified requirements. The proposed rule establishes a process by which SREs would consider individual apprenticeship programs in the context of standards established by the proposed rule and formally recognize programs that are in conformity with those standards.

Standards Recognition Entities (SREs)

Under the proposed rule, OA-approved SREs would be responsible for applying standards to individual programs. The proposed rule specifies the types of entities that can become SREs:

⁴ See 29 C.F.R. 29-30.

⁵ For full text, see <https://www.govinfo.gov/content/pkg/FR-2017-06-20/pdf/2017-13012.pdf>.

⁶ See recommendations 14-26 of the final report, available at <https://www.dol.gov/apprenticeship/docs/task-force-apprenticeship-expansion-report.pdf>.

⁷ See Training and Employment Notice 3-18, July 27, 2018, https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=5367.

⁸ See Training and Employment Notice 3-18, Change 1, June 25, 2019, https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=7448.

- trade, industry, and employer groups or associations;
- educational institutions, such as universities or community colleges;
- state and local government agencies or entities;
- nonprofit organizations;
- unions;
- joint labor-management organizations; or
- a consortium or partnership of entities such as those listed above.⁹

To apply to be an SRE, an entity (or consortium thereof) must submit an application to the OA. The application must demonstrate that the entity has sufficient expertise in the applicable industries or occupational areas and that it is able to fulfill other administrative requirements.

In its application, a prospective SRE must establish policies and procedures that demonstrate impartiality on several fronts. It must establish that it will provide equitable treatment for programs seeking recognition. If the SRE intends to recognize its own programs, it must establish its impartiality and mitigate any potential conflict of interest. If the SRE provides services such as consultation, it must similarly establish impartiality and mitigate any potential conflicts of interest.¹⁰

If the OA approves an SRE's application, the SRE will be recognized for five years. If the OA does not approve the application, it must specify the reasons for denial and what remedies must be made for the application to be approved.

The proposed rule establishes a process by which the OA can review, suspend, and withdraw recognition of an SRE that is not in substantial compliance with the regulations. Under the proposed rule, the OA may initiate a review of an SRE if it receives information that the SRE (1) is not in substantial compliance with regulations or (2) is no longer capable of continuing as an SRE.¹¹

Standards for Industry Programs

Under the proposed rule, an SRE would only be able to recognize an Industry Program if the program meets nine requirements.¹² An Industry Program must

1. train apprentices for employment in jobs that require specialized knowledge and experience and involve the performance of complex tasks;
2. have structured work experiences, and appropriate classroom or related instruction adequate to help apprentices achieve proficiency and earn credential(s); involve an employment relationship; and provide apprentices progressively advancing industry-essential skills;
3. ensure that, where appropriate, apprentices receive credit for prior knowledge and experience relevant to the instruction of the program;
4. provide apprentices with industry-recognized credential(s) during participation in or upon completion of the program;

⁹ See proposed 29 C.F.R. 29.20(a)(1)(iv).

¹⁰ See proposed 29 C.F.R. 29.22(d)-(f).

¹¹ See proposed 29 C.F.R. 29.26-30.

¹² Requirements are largely verbatim from proposed 29 C.F.R. 29.22(a)(4).

5. provide a safe working environment for apprentices that adheres to all applicable federal, state, and local safety laws and regulations;
6. provide apprentices with structured mentorship opportunities to ensure they have additional guidance on the progress of their training and their employability;
7. ensure apprentices are paid at least the applicable federal, state, or local minimum wage; and provide a written notice to apprentices of what wages they will receive and under what circumstances their wages will increase;
8. affirm its adherence to all applicable federal, state, and local laws pertaining to Equal Employment Opportunity (EEO); and
9. disclose, prior to when apprentices agree to participate in the program, any ancillary costs or expenses that will be charged to them (such as costs related to tools or educational materials).

An SRE may recognize an Industry Program for a maximum of five years. SREs are responsible for maintaining an “ongoing quality control relationship” with the Industry Programs it has recognized.¹³

Reporting Requirements

The proposed rule would require DOL to make publicly available a list of SREs and the Industry Programs they recognize.¹⁴ The proposed rule does not specify how often this list must be updated.

The proposed rule requires SREs to make publicly available, on an annual basis, information on each program they recognize, including the following:

- up-to-date contact information for each program,
- the total number of apprentices annually enrolled in each program,
- the total number of apprentices who successfully completed the program annually,
- the annual completion rate for apprentices,
- the median length of time for program completion, and
- the post-apprenticeship employment rate of apprentices at completion.¹⁵

Excluded Sectors

The proposed rule states an intention of creating an additional option for occupations and industries that do not make wide use of the existing registered apprenticeship system. As such, the proposed rule specifies that occupations and industries with significant existing apprenticeship opportunities under the registered apprenticeship system may not apply for recognition as an Industry Program. The proposed rule defines a sector with “significant registered apprenticeship opportunities” as one that “had more than 25% of all federal registered apprentices per year on average over the prior 5-year period, or that has had more than 100,000 federal registered

¹³ See proposed 29 C.F.R. 29.22(g)-(h).

¹⁴ See proposed 29 C.F.R. 29.24.

¹⁵ See proposed 29 C.F.R. 29.22(j).

apprentices per year on average over the prior 5-year period, or both.”¹⁶ In practice, these criteria mean that construction industry sponsors would be ineligible to apply to SREs for recognition as Industry Programs.¹⁷ The criteria would also exclude the apprenticeships in the U.S. military (a member of the Armed Forces can complete a registered apprenticeship program in the course of his or her service).

Method to Approve Industry Programs as Registered Apprenticeships

The proposed rule would establish an expedited process for a recognized Industry Program to be approved as a registered apprenticeship as well. The proposed rule specifies that the Industry Program must provide to the OA information necessary to establish conformity with the registered apprenticeship portion of the regulations and that the OA must make a decision on approval within 60 days.¹⁸ If the OA determines the program to be in conformity with the registered apprenticeship portion of regulations, it will register the program. Qualifying as a registered apprenticeship may be particularly relevant for an Industry Program due to registered apprenticeships’ distinct treatment in other aspects of federal policy (see the “Integration with Other Federal Programs” section later in this report).

The explanation accompanying the proposed rule notes that the goal of establishing Industry Programs is to create an additional and parallel pathway to encourage expansion of apprenticeships beyond those industries where registered apprenticeships already are effective and substantially widespread,” further noting that “the Department does not expect many, if any, dual apprenticeship programs[.]”¹⁹

Projected Scale of SREs and Industry Programs

In the proposed rule, DOL estimates that it will receive approximately 270 new applications from prospective SREs in the first year. It estimates that it will approve about 75% of these applications, resulting in approximately 200 approved SREs. DOL anticipates that the volume of SRE applications will decline after the first year and that there will be approximately 315 recognized SREs after 10 years.²⁰ The proposed rule does not limit the number of SREs, nor does it require DOL to approve a certain number or proportion of applications.

DOL further estimates that SREs will recognize approximately 2,000 Industry Programs in the first year. It estimates that the number of programs recognized each year will decline after the first year and that there will be approximately 9,100 recognized Industry Programs after 10 years.²¹ The proposed rule does not estimate the number of apprentices that will participate in these programs. For comparison, there were approximately 23,000 registered apprenticeship programs with about 585,000 active apprentices in FY2018.²²

¹⁶ See proposed 29 C.F.R. 29.31(b).

¹⁷ See page 29981 of the *Federal Register* notice.

¹⁸ See proposed 29 C.F.R. 29.25.

¹⁹ See pages 29977-29978 of the *Federal Register* notice.

²⁰ See Exhibit 2 on page 29984 of the *Federal Register* notice.

²¹ See Exhibit 3 on page 29985 of the *Federal Register* notice.

²² U.S. Department of Labor, “National Registered Apprenticeship Results,” https://doleta.gov/oa/data_statistics.cfm.

Comparison of Registered Apprenticeships and Industry Programs

The structure and design of the regulations governing registered apprenticeship are not directly parallel to the proposed rules for SREs and Industry Programs, so direct comparisons of many aspects of the respective frameworks are challenging. This section of the report highlights some differences between the existing registered apprenticeship regulations and the proposed Industry Program rules. It should not be considered a comprehensive comparison.

Structure and Duration of Programs

The existing registered apprenticeship regulations specify that programs can be time-based (i.e., an apprentice establishes competency by spending a specified amount of time on the skill), competency-based (i.e., an apprentice establishes a skill acquisition through demonstration of the skill as verified by the sponsor), or a hybrid of the two. The proposed rule for Industry Programs does not outline these specific program options. The explanatory material accompanying the proposed rule specifies that DOL “anticipates many or all SREs will set competency-based standards for training, structure, and curricula.”²³

The existing registered apprenticeship regulations define an eligible occupation as one which, among other requirements, requires the attainment of skills and knowledge for which at least 2,000 hours of on-the-job training would be necessary.²⁴ The proposed rule does not include any provisions related to the expected or minimum duration of Industry Programs.

The existing registered apprenticeship regulations do not require sponsors to have a system to evaluate and recognize an apprentice’s prior knowledge and experience. The proposed rule would require Industry Programs to demonstrate that apprentices receive credit for prior knowledge and experience.²⁵

Schedule of Wage Increases

Both the registered apprenticeship regulations and the proposed Industry Program regulations establish that apprentices must be paid at least the federal minimum wage (or higher if specified by state or local law). The registered apprenticeship regulations further require “[a] progressively increasing schedule of wages to be paid to the apprentice consistent with the skill acquired.”²⁶

The proposed rule requires that Industry Program sponsors “provide a written notice to apprentices of what wages apprentices will receive and under what circumstances apprentices’ wages will increase.”²⁷

Equal Employment Opportunity Provisions

Registered apprenticeship programs are subject to a dedicated set of Equal Employment Opportunity regulations in 29 C.F.R. 30. The proposed rule requires Industry Programs to affirm

²³ See page 29973 of the *Federal Register* notice.

²⁴ See 29 C.F.R. 29.4.

²⁵ See proposed 29 C.F.R. 29.22(a)(4)(iii).

²⁶ See 29 C.F.R. 29.5(b)(5).

²⁷ See proposed 29 C.F.R. 22(a)(4)(vii).

their “adherence to all applicable Federal, State, and local laws pertaining to Equal Employment Opportunity (EEO).” The explanation accompanying the rule specifies that “[t]his requirement is distinct from the requirements that apply only to registered apprenticeships under 29 CFR 30.”²⁸

Integration with Other Federal Programs

While registered apprenticeship programs do not necessarily qualify for federal funds, there are a number of federal funding streams for which registered apprenticeship is an allowable use.²⁹ For example, registered apprenticeship programs are automatically eligible for state formula grant funds under the Workforce Innovation and Opportunity Act (WIOA).³⁰ Similarly, registered apprenticeship programs are “deemed approved” for the GI Bill and do not have to complete an in-depth review.³¹

The proposed rule does not mention integrating Industry Programs with any federal funding streams. Further, the explanatory material accompanying the proposed rule states that “recognition as an Industry Program does not confer categorical eligibility for government programs which provide special status to programs registered under the National Apprenticeship Act.”³²

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²⁸ See page 29975 of the *Federal Register* notice.

²⁹ For a summary of these funding sources, see U.S. Department of Labor, *The Federal Resources Playbook for Registered Apprenticeship*, <https://www.doleta.gov/oa/federalresources/playbook.pdf>.

³⁰ For a detailed discussion of the interaction of registered apprenticeship and WIOA, see DOL Training and Employment Guidance Letter (TEGL) 13-16, January 12, 2017, https://wdr.doleta.gov/directives/attach/TEGL/TEGL_13-16_acc.pdf.

³¹ See 38 U.S.C. 3672 and CRS Report R44728, *The Role of State Approving Agencies in the Administration of GI Bill Benefits*.

³² See page 29981 of the *Federal Register* notice.

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