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VIA FEDERAL eRULEMAKING PORTAL

Adele Gagliardi
Administrator
Office of Policy Development and Research
U.S. Department of Labor
200 Constitution Avenue NW
Room N-5641
Washington, DC 20210

Re: Apprenticeship Programs, Labor Standards for Registration, Amendment of Regulations, RIN 1205-AB85

Dear Administrator Gagliardi:

We, the undersigned attorneys general of Washington, [other states], write to express our concerns regarding the U.S. Department of Labor's (hereafter, "the Department") "Apprenticeship Programs, Labor Standards for Registration, Amendment of Regulations" Proposed Rule, 84 Fed. Reg. 29970 (June 25, 2019).

Apprenticeships are an important pathway for individuals in our states to gain skills, and are responsible for broadening pathways for professional success. High-quality apprenticeship programs boost our economy, provide opportunities for traditionally underserved communities, and ensure that Americans are prepared for the important, specialized work that helps our communities thrive.

We are concerned that the Proposed Rule fails to meet these critical goals because it does not do enough to ensure the welfare of apprentices or guard against a proliferation of low-quality programs that can inflict long-term harm. It is critical to ensure that apprenticeships not become

traps, and the Proposed Rule does not adequately protect apprentices' investments of time and money and incentivize high-quality programs.

A. The Proposed Rule Does Not Incorporate Sufficient Workplace Protections, Consistent with the National Apprenticeship Act.

The National Apprenticeship Act "direct[s]" the Department "to formulate and promote the furtherance of labor standards ***necessary to safeguard the welfare of apprentices***." 29 U.S.C. § 50 (emphasis added). Congress' intent is clear: the Department must ensure that the standards it promotes serve, first and foremost, to protect the welfare of apprentices. The Proposed Rule falls short of this directive.

Fundamental to protecting the welfare of apprentices is ensuring that they benefit from the education and training they receive. The Proposed Rule does not provide sufficient clarity about the standards necessary for certification of Industry Recognized Apprenticeship Programs (IRAPs).

Many of the terms in the Proposed Rule are too vague to meaningfully protect apprentices. For example, the Proposed Rule provides, "[an] Industry Program has structured work experiences, and appropriate classroom or related instruction adequate to help apprentices achieve proficiency and earn credential(s); involves an employment relationship; and provides apprentices progressively advancing industry-essential skills." These requirements are too broadly written to provide any meaningful guidance. They provide no measureable educational or training component and thus fail to ensure that programs recognized under the Proposed Rule are adequate to provide apprentices training necessary to *actually* compete in the modern economy.

By comparison, Washington's apprenticeship regulations require that apprenticeship programs include at least two thousand hours of reasonably continuous employment, and a minimum of one hundred forty-four hours per program year of educational instruction. Further, Washington's regulations provide minimum qualifications for individuals providing education instruction, including both expertise within an industry and training in teaching techniques and adult learning styles. These requirements ensure that apprenticeship programs in Washington provide apprentices beneficial training and education and protect their time and financial investments. Without similarly measurable, enforceable standards about the quality of apprenticeship programs, the Proposed Rule fails to ensure that all apprentices receive quality training that actually enables them to meet the requirements of a changing economy.

Moreover, the Proposed Rule also fails to impose adequate protections against discrimination for apprentices. Part 30 prohibits *apprenticeship programs* and *sponsors* from discriminating against apprentices based on race, color, religion, national origin, sex, sexual orientation, age (40 or older), genetic information, and disability. Although the Proposed Rule provides that SREs should only recognize Industry Programs that adhere to antidiscrimination laws, it does not directly require Industry Programs and Standard Recognition Entities to comply with the same anti-discriminatory standards and affirmative obligations imposed by Part 30 on Registered Programs and Sponsors. *See* 29 C.F.R. Part 30.1, 30.3 – Equal Employment Opportunity in Apprenticeship. Indeed, Title VII itself does not seem to cover Industry Programs under Section 2(d) of the Act. 42 U.S.C. § 2000e-2(d). The problem stems, in part, from the fact that while the above referenced rules and statutes regulate Apprenticeship Programs as specifically defined in Section 29.2, they do not cover the newly created "Industry Programs" or "Registration Entities" as defined by Section 29.20 of the Proposed Rule. *See* 29 C.F.R. Part 30.1, 30.3. Industry Programs and Registration Entities should be explicitly directed to comply with all obligations imposed by Part 30, whether in the definition of these terms or elsewhere.

B. The Proposed Rule Fails to Incorporate Measures to Protect Apprentices and Would-be Apprentices Against Low-Quality IRAPS.

As the chief law enforcement officers in our respective states, we are unfortunately all too familiar with the myriad ways in which predatory entities exploit vague regulations and loopholes to harm vulnerable people. Many of us have taken action to stop the harms posed by predatory for-profit colleges. There are far too many examples of institutions across the country that have used deceptive tactics to attract students, including misrepresenting the quality of their programs and graduates' job placement rates. These schools scammed students, many of whom face continuing economic harm. Consistent with the National Apprenticeship Act's mandate to safeguard the well-being of apprentices, the Department of Labor must not allow IRAPs to become another trap for hard-working Americans trying to improve their lives.

However, we are concerned that the Proposed Rule lacks any proactive role for oversight by the Department to ensure that apprentices are not trapped in low-quality industry programs. The Proposed Rule instead relies entirely on self-policing and complaints to ensure that Standard Recognition Entities (SREs) are only accrediting high-quality IRAPs. As our offices have repeatedly seen with accreditor oversight in the higher education context, such oversight is entirely insufficient. Without enforcement of robust standards for SREs and IRAPs, the Department will be unable to ensure that apprentices are not taken advantage of by low-quality IRAPs.

The Proposed Rule establishes a mechanism for apprentices to submit complaints about SREs, and gives the Department authority to derecognize SREs, but fails to establish a similar mechanism for apprentices to submit complaints about, or for the Department to derecognize, the IRAPs in which apprentices are enrolled. There is no reason apprentices would have an issue with the SREs that recognized their programs. Apprentice complaints are vastly more likely to concern the IRAPs. A process or forum for apprentices to raise concerns not only allows individual apprentices the opportunity for their complaints to be addressed, but also provides critical information to the Department about which programs need additional scrutiny. Additionally, the Department must eliminate the requirement that the complaint "must be submitted within 60 days of the circumstances giving rise to the complaint." The requirement, and the additional conditions set in §29.26(b) would make it very unlikely that a complainant could submit adequate information and documentation within the required timeframe, and far too likely that the Department could then dismiss the complaint out of hand, with no regard for its merit.

The Proposed Rule does not adequately address potential conflicts of interest, and we are concerned about the potential for SREs to have financial incentives to recognize as many IRAPs as possible. The Proposed Rule fails to categorically prohibit SREs from operating or providing services to apprenticeship programs. It also does not bar officers, directors, and managers of SREs from owning or controlling any entities offering IRAPs recognized by the SRE.

C. The Proposed Rule Does Not Provide Sufficient Authority for the Department to Act When IRAPs Fail to Meet Requirements to Protect Apprentices.

As we discussed above, the Proposed Rule does not go nearly far enough to establish protections for apprentices. It also fails to provide the Department adequate enforcement mechanisms to act when IRAPs fail to provide quality training and education, and fails to require that SREs timely take action against IRAPs that fail to meet the requirements set out in the rule.

Our experiences in the for-profit college industry have shown repeatedly that strong protections (which this proposal lacks entirely) are not enough; protections must be paired with robust enforcement. The Proposed Rule fails to fully incentivize SREs to take action when IRAPs they recognize are failing apprentices, and SREs should be liable to any apprentice injured by a failing IRAP in the same measure as the IRAP.

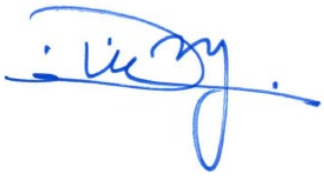
We are concerned that the Proposed Rule does not make federal funding and recognition of IRAPs contingent on meeting certain material thresholds, such as minimum completion rate for

apprentices, or minimum employment rate for apprentices within certain time frames, such as one, three, and five years. This requirement would not only protect apprentices, but would also protect taxpayer investment by diverting funding from low-quality, underperforming IRAPs.

The balance of power between industry and workers is tilted far to the side of industry, and we fear that the Proposed Rule is simply one more opportunity for unscrupulous businesses to prey on individuals seeking the training and work experience that apprenticeships can provide. We urge the Department not to proceed with the Proposed Rule.

Sincerely,

Bob Ferguson
Washington State Attorney General



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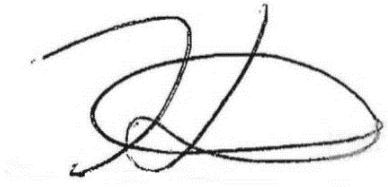

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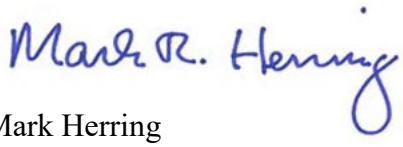

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