JOBS AND CAREERS COALITION

March 17, 2024

Mr. Brent Parton
Principal Deputy Assistant Secretary
Employment and Training Administration
U.S. Department of Labor
200 Constitution Ave NW
Washington, DC 20210

Re: Comments on Notice of Proposed Rulemaking, "National Apprenticeship System Enhancements" (RIN: 1205-AC13)

Dear Mr. Parton,

As members of the Jobs and Careers Coalition, we wish to offer comments on the above-captioned proposed rule.

The coalition comprises leading employers and trade associations representing a range of industrial sectors. Its members share a commitment to career education and workforce development. The coalition focuses on four core goals: shining new light on the need for workforce training, driving a skills policy agenda, highlighting successful state initiatives, and changing national perceptions of technical careers and career training.

Our members are active in developing and championing apprenticeship programs. Directly and through member companies, the coalition sponsors thousands of apprentices each year. We believe in apprenticeship and its promise to address our workforce needs and advance economic opportunity for our employees. Sadly, the rules as proposed would seem to make it harder for employers to sponsor apprentices and erode progress made in the last decade to expand and diversify apprenticeship. And this would occur when innovations are needed as our economy transitions from knowledge-based to technology-enabled. In the end, employers will be much less likely to take the trouble to register their earn-and-learn training solutions, undermining the Department's ability to oversee and regulate apprenticeship nationwide.

We wish to register two broad concerns with the new rule. First, the proposed rule erects new burdens and costs to employer sponsors and participants in apprenticeship programs. The inevitable result will be to constrain the growth of registered apprenticeship programs, while existing programs could be impacted if required to recertify. Second, the creation of new administrative structures and requirements limit the flexibility of the national apprenticeship system and thereby undermines the Department's objective to diversify apprenticeship to new industries and occupations.

Specifically, we offer the following comments:

REDUCING BURDENS TO PARTICIPATION

Eliminating employer legal disclosure and monitoring. The proposed rules' requirement for a sweeping disclosure of all violations of workplace laws and the active monitoring by sponsors of employers for such violations is both chilling for prospective employer participation and inappropriately scoped to the apprenticeship activity in question. As it stands, such disclosures could cover events that took place decades in the past, at worksites that are no longer operated by the employer, and in entirely different divisions or subsidiaries. It is over broad in its construction and is likely to elicit strong negative reactions from would-be employer sponsors and partners. We strongly recommend these provisions be struck. *See 29.8(b)(2) and 29.8(b)(3).*

Simplifying the complaints process. The overly elaborated complaints process described in the proposed rule is another case where added requirements drive up cost and act as a disincentive for employers considering participation in registered apprenticeship. Furthermore, the complaints process as described presents opportunities for mischief by third parties seeking to undermine a firm or apprenticeship effort in bidding competitions and funding proposals – as we have seen in some states. We call for the Department to revert to the complaints language of the current rule. *See 29.17.*

Limiting access to records. The Department's proposed rules represent an overreach in terms of requirements on employer participants in group apprenticeship. We believe compliance with record-keeping requirements should be the responsibility of the sponsor. Any access to employer records should be through the sponsor. If a sponsor is unable or unwilling to produce needed records, the Registering Agency has many remedies to pursue with the sponsor, but the rule should not in any way suggest that agency can seek direct access to employer records. *See 29.18(c).*

Scoping record-keeping obligations to report on apprenticeship activity only. The proposed rules should not expand record-keeping obligations beyond those directly related to the registered apprenticeship program. We believe the rules should make clear that all stipulated record-keeping is scoped to the apprenticeship program only. General compliance with laws, employment and development activities related to hiring outside of the apprenticeship program, and operational aspects outside of those that directly impact apprentices should be struck or clarified so that it is clear they relate only to apprenticeship activity. *See for example 29.18(a)(vi).*

Eliminating provisions for unreimbursed costs/unpaid time in related instruction. Added requirements such as these lead to added costs which reduce an employer's incentive to participate in registered apprenticeship programs. In seeking to regulate unreimbursed costs and unpaid time in training, the Department fails to account for widely varying workplace and occupational contexts. What may be "reasonable" in one circumstance may not be in another. We believe the management of these provisions properly belongs to the interaction between an employer and a prospective apprentice and therefore call for the elimination of these provisions. *See 29.8(a)(18), 29.9(b)(11), 29.24(e)(3)(xi), 29.24(g)(9)(ii)(A)(6), 29.25(b)(7), 29.9(c)(14).*

Eliminating prohibitions on non-disclosure and non-compete provisions. Apprenticeship programs entail sizable investments by employers in their employees. In order to induce such investments, it is common for employers and employees to agree to particular terms that ensure the employer recovers the value of that investment. Regarding non-compete agreements, the issue of prohibitions on such agreements is being explored within another federal agency rulemaking. That rule has yet to be finalized, therefore the

inclusion of this provision here is premature in the regulatory process as the public has not had adequate opportunity for notice and comment on that rulemaking. Furthermore, the outcome of that rulemaking may be in direct tension with the provision here or otherwise create unnecessary confusion. With broader rulemaking on non-compete provisions under consideration at a different agency, we recommend that the rules on apprenticeship should defer to that rule process rather than adopt its own. We strongly recommend deletion of these provisions. *See 29.9(d) and 29.9(e).*

PRESERVING FLEXIBILITY

Promoting flexibility in wage progression. Throughout the proposed rule, there are a variety of provisions which seek to dictate operational approaches for employer sponsors and participating employers in group apprenticeship. These requirements add cost to apprenticeships and will likely deter employer participation in apprenticeship programs. But they also envision a uniformity of practice within a single employer and among employers within a group apprenticeship that may not in fact exist. The rules on wage progression, for example, suggest a single standard in an apprenticeship program which then limits the flexibility of how apprenticeships operate in different labor markets and among different employers. We recommend a reversion to the wording of the current rule in this case. *See 29.8(a)(17).*

Allowing for flexibility in expectations for journey worker mentoring roles. We believe the expectations set in the rules for the qualifications of apprentice trainers are overly prescriptive. We believe they will serve to dissuade employers from participating in apprenticeship and are not well suited to every workplace or context. Furthermore, the proposed threatens to undermine operational integrity of an apprentice's worksite should, for example, the mentor with anti-harassment training be out sick. Finally, the rules for this section raise questions about additional processes and costs related to certification, monitoring, and reporting. We recommend that these provisions be struck. *See 29.12.*

Maintaining flexibility for apprenticeships to use competency-based approaches. Many employers are attracted to competency-based approaches to apprenticeship. Indeed, most new apprenticeship registrations use this approach. We call on the department to clarify that competency-based apprenticeship programs remain permissible in the proposed rule. *See 29.8(a)(4).*

Allowing for flexibility related to EEO implementation plans. While we share the Department's commitment to equity and inclusion in apprenticeship, the proposed rules' elaboration of new processes and expectations raises workability questions and may discourage employer participation in apprenticeship from employers who have their own EEO approaches. We recommend a less directive approach to EEO plans in program registration requirements that requires the discussion of an EEO plan and a complaints process but allows employers the ability to better leverage their existing diversity, equity, and inclusion efforts without requiring parallel EEO compliance processes for apprentices. *See 29.10(a)(8).*

Allowing for flexibility in the use of end point assessments. While some apprenticeship programs will make good use of the End Point Assessment as it is proposed, we believe the Department has layered another expectation on apprenticeship programs without any off-setting reduction in regulatory burden. Until the Department can stipulate these offsets, we believe the End Point Assessment should be voluntary. *See 29.16.*

Promoting flexibility in apprenticeship for high school and college students. Many of the companies in the Jobs and Careers Coalition regularly engage with high schools and colleges as part of our apprenticeship efforts. While we appreciate the desire of the Department to create stronger mechanisms for engaging these populations, we do not feel the CTE Apprenticeship offers a compelling option. Specifically, the highly regulated quality of the proposal, the focus on skill building for industries rather than occupations, and the fact that a CTE Apprenticeship graduate would not have attained journey-worker status all point to a program which will have difficulty finding a foothold with employers. We urge the Department to strike the CTE Apprenticeship provision from the proposed rule and work closely with industry partners to explore an array of school-based approaches, particular approaches that engage students in a more direct pathway to journeyworker status. *See 29.24.*

We appreciate the Department's call for comments and feedback in the publication of the proposed rule. We'd like to offer one final comment. In the weeks since the proposed rule has been published, we have already begun tracking how even the prospect of the new rule is leading to reconsideration of apprenticeship development and expansion plans. We believe adoption of the proposed rule as published will lead many to conclude that the costs and burdens of registered apprenticeship are simply not worth it. Our coalition and the employers we represent have no question about the value of apprenticeship-like earn-and-learn training, but few will voluntarily sign up for burdensome and expensive over-regulation. We urge the Department to reassess these proposed rules and adopt a more flexible, less burdensome approach.

Sincerely,

American Road & Transportation Builders Association
ASE Education Foundation
Associated Builders and Contractors
Associated Equipment Distributors
Associated General Contractors of America
Association of Nutrition & Foodservice Professionals
Greater Houston Partnership
Independent Electrical Contractors
Industrial Fasteners Institute
National Association of Home Builders
National Roofing Contractors Association
Opportunity America
Worley