



DEPARTMENT OF JUSTICE
GENERAL COUNSEL DIVISION

MEMORANDUM

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DATE: September 26, 2025

TO: Oregon State Apprenticeship and Training Council

CC: Jody Robbins, Director
Apprenticeship and Training Division
Bureau of Labor and Industries

FROM: Johanna Riemenschneider, Assistant Attorney General
Business Activities Section

SUBJECT: *Council Authority to Deny New Committee Application*

QUESTION PRESENTED AND SHORT ANSWER

1. *When does the Council have authority to deny an application for approval of a new apprenticeship training program?*

The Oregon State Apprenticeship and Training Council (Council) may deny approval of a new apprenticeship training program that the Council or the Bureau of Labor and Industries' Apprenticeship and Training Division (Division) finds does not meet the technical review criteria listed in OAR 839-011-0084(3). In addition, the Council may deny the application if there are grounds for denial under a rule section or statute other than OAR 839-011-0084(3) and denial is supported by the available information.

DISCUSSION

1. *The Council has authority to deny an application for approval of a new apprenticeship training program when it finds the application does not meet an applicable legal standard for approval, given the information available.*

The powers and duties of the Council and the Division are set forth in ORS 660.120. These authorities include authorization for the Council and the Division to adopt administrative rules for purposes of the enforcement and administration of ORS 660.002 to 660.210.¹ Such authority includes authority to establish program policy consistent with statutory guidance and the establishment of committees to operate apprenticeship programs and approval of program standards. To address the approval of new apprenticeship programs or standards, BOLI and the

Council have adopted OAR 839-011-0084. As this rule incorporates a number of requirements for the approval of applications, we first review the Council's authority under this rule.

A. Language of OAR 839-011-0084.

The rule provides, in relevant part:

(1) Additional committees or standards in an area already served by an existing committee in the same trade, craft or occupation shall be established in the same manner as any other local committee.

(2) All employers and their qualified employees shall be afforded the opportunity to participate, on a non-discriminatory basis, in existing programs.

(3) The Council and the Apprenticeship and Training Division of the Bureau of Labor and Industries will approve the creation of a new local committee or new standards for an existing committee only if the applicant for the new program or new standards can first demonstrate to the Council and the Division, by a preponderance of evidence, that the application is in conformity with the following requirements: [subsections (a)-(h)].

(4) All objections to the approval of a new committee or new standards shall be submitted to the Council in writing at the meeting where the application is being considered for approval, specifically detailing any objections to the application. Council may rule on the application and objections thereto at that time or grant the applicant 30 days after the Council meeting to submit a written rebuttal to the objections to the Director. Council shall direct the Director to investigate and evaluate the objections and rebuttal and to provide a report to Council within 45 days of receipt of the rebuttal statement. At the next Council meeting after the initial submission, Council shall either approve or deny the application and provide a specific written explanation for its actions.

B. Council authority to deny an application under OAR 839-011-0084(3).

OAR 839-011-0084(3) requires the Council and the Division to approve an application if the applicant "can first demonstrate to the Council and the Division, by a preponderance of evidence, that the application is in conformity with" the requirements listed in this rule, commonly referred to as the "technical review" requirements. The plain language of this rule requires both the Council and the Division each make a determination that the applicant has demonstrated conformity with the technical review requirements. This does not require both bodies to separately investigate an applicant. The Council may consider and rely upon the information it receives from the Division concerning a particular application. Therefore, when either the Council or the Division finds that an applicant does not demonstrate compliance with the technical review requirements, the Council may deny approval of the application.

The first phrase of OAR 839-011-0084(3) appears to contemplate approval of any program that both the Council and Division find meets the technical review requirements: “The Council and the [Division] *will* approve...” (emphasis added). However, by pure logical reading of the rule, that outcome (approval) is not necessarily required because the second phrase of the rule goes on to restrict the approval to circumstances where technical review is satisfactory: “The Council and the [Division] *will* approve [a new program] *only if* the new program” demonstrates that it satisfies the technical review requirements.

Thus, if an applicant *does not* meet the technical requirements, the text of section (3) provides that the Council and Division are definitively prohibited from approving the application. But the rule does not expressly state whether the Council or Division may deny an application for reasons other than its failure to conform to the technical review requirements listed in OAR 839-011-0084(3). It may be interpreted to allow for denial of a program application in other instances.

OAR 839-011-0084(3) sets forth a list of requirements for applicants to meet — the technical review requirements listed in subsections (3)(a) through (3)(h). These identify required documentation from the applicant as well as some substantive requirements, such as the submission of an administration plan.ⁱⁱ Some of these requirements set complete expectations in and of themselves. Others, however, do not foreclose consideration of other applicable laws.

For example, OAR 839-011-0084(3)(a) states, “[t]he applicant shall submit documentation showing committee composition pursuant to ORS chapter 660.135, .145.” This subsection requires the applicant to submit documentation of committee composition and also requires that the documentation be “pursuant to ORS chapter 660.135, .145”. Each referenced statute contains some standards for committee composition, but they also defer to “procedures established by the council.”ⁱⁱⁱ Further requirements for committee formation and member selection are set forth in OAR 839-011-0072 and OAR 839-011-0074. An application that includes documentation of committee composition may meet the technical requirements of OAR 839-011-0084(3)(a), but deficiencies in the new committee’s compliance with OAR 839-011-0072 and OAR 839-011-0074 may also be grounds for denial of the program application.

In addition, some requirements for approval exist outside of the requirements listed in OAR 839-011-0084(3). Subsection (2) of this same rule, provides, “[a]ll employers and their qualified employees shall be afforded the opportunity to participate, on a non-discriminatory basis, in existing programs.” And, subsection (1) requires new committees to be established in the same manner as other committees. The Council would have grounds to deny an application if it included program material that was inconsistent with the non-discrimination requirement in subsection (2). And, compliance with all of the requirements in applicable statutes does not appear to be expressly incorporated by reference. For example, OAR 860-011-0084(3)(a) incorporates a requirement for “committee composition” under ORS 660.135, but the statute contains other requirements for committee applications. *See* ORS 660.135(1).

Based on the above, we conclude that the Council may deny an application that does not meet the technical review requirements in OAR 839-011-0084(3) upon its review of the

application. The Council may also deny an application that meets the technical review requirements listed in OAR 839-011-0084(3) if grounds for denial exist under another statute or rule.

C. Denial of an application under separate authority from OAR 839-011-0084(3).

As discussed above, the Council may find grounds for denial of an application under separate authority from OAR 839-011-0084(3). Such grounds may exist in the applicable statutes or rules for the formation of new committees or in the requirements for operation of an existing committee. We review some of these laws below, though this list is not exhaustive.

Requirements for the formation and composition of new committees to operate apprenticeship programs are discussed in ORS 660.135, ORS 660.145, and ORS 660.155. Committee formation and composition requirements are further addressed in OAR 839-011-0072 and OAR 839-011-0074. Some of these fall outside the scope of OAR 839-011-0084(3) but may be grounds for denial of an application. For example, we note above that OAR 839-011-0084(3) refers only to the committee composition standards in ORS 660.135 and ORS 660.145. ORS 660.135(1) also authorizes the Council to “approve as many local joint committees as are necessary to serve the needs of the various apprenticeable occupations.” Information submitted to meet the technical review requirements of OAR 839-011-0084(3) may well inform a decision under this standard. *See* OAR 839-011-0084(3)(h) (“applicant shall submit a plan to recruit, evaluate and select apprentice/trainee applicants throughout the proposed geographic area, including an application form that meets Council requirements.”). But if, on review of an application, the Council determined that the applicant will not serve any apprenticeable occupation, that would be a decision based on statutory grounds, rather than on a finding of non-compliance with OAR 839-011-0084(3)(h).

OAR 839-011-0084(1) requires new committees to be established in the same manner as other committees. Existing committees are subject to a number of operating requirements, including ORS 660.126 (apprenticeship standards), ORS 660.137 (program duties), ORS 660.139 (indenture limitations), ORS 660.142 (pay rates), ORS 660.147 (minimum registration) ORS 660.157 (course of study). These duties are further specified in the Division 11 administrative rules. Some of these standards are not expressly incorporated as requirements in the technical review provisions of OAR 839-011-0084(3).^{iv} But many are addressed in the technical review requirements.^v If there is an operational requirement that is not addressed in OAR 839-011-0084(3), and the Council finds on its review of the application that an applicant cannot fulfill that standard, it may be grounds for denial of the application.

CONCLUSION

We conclude that the Council may deny approval of a new apprenticeship training committee when it or the Division finds the applicant does not meet the technical review criteria listed in OAR 839-011-0084(3). In addition, the Council may deny the application if there are grounds for denial under a rule section or statute other than OAR 839-011-0084(3) and denial is supported by the available information. OAR 839-011-0084(3) sets out an extensive list of

requirements that must be met before a new apprenticeship program may be approved but we also recognize that the rule does not incorporate every possible basis for denying an application. Additional application standards may exist in a statute or rule outside of OAR 839-011-0084(3), and the Council may deny an application on those separate grounds when denial is appropriate given the available information.

This memorandum, in accordance with ORS 180.060(2), is prepared solely for the Council's use and benefit. It cannot be relied upon as advice by anyone other than a state officer, except as authorized under ORS 180.060(3).

ⁱ ORS 660.120(3), (4).

ⁱⁱ See OAR 839-011-0084(3)(a), (3)(c).

ⁱⁱⁱ See ORS 660.135(2), ORS 660.145.

^{iv} See e.g. OAR 839-011-0084(2).

^v See, e.g. OAR 839-011-0084(3)(b) (requiring submission of standards in a format approved by the Council) and see OAR 839-011-0084(3)(f) (requiring submission of training curriculum).