August 21, 2019

Acting Secretary Patrick Pizzella
US Department of Labor
200 Constitution Ave.
Washington, DC 20210

Dear Acting Secretary Pizzella,

On June 25, 2019, the United States Department of Labor (USDOL) posted a notice of proposed rulemaking (NPR) regarding revisions to Title 29 CFR Part 29, the federal regulations governing the operation of registered apprenticeship. The stated purpose of the proposed revisions is to establish a process for the recognition of Standards Recognition Entities (SREs), that would be responsible for recognizing or approving Industry-Recognized Apprenticeship Programs (Industry Programs or IRAPs) for employers and organizations. IRAPs would differ from current registered apprenticeship programs in that they would be approved by private organizations, SREs, and would not have the same degree of structure or oversight of registered apprenticeship programs that are approved by state agencies or USDOL under the current regulations.

America’s system of apprenticeships is a historically strong model for developing and training skilled workers and getting people into middle class jobs. The very best elements of apprenticeship include partnerships between industry and labor, rigorous standards for skill attainment, earning while learning, and direct entry into the labor force at a good wage with real upward mobility.

These strengths can and should be replicated in new fields customized to reflect specific industry needs, through adaptive partnerships between industry, labor, and government across the country. Fields such as broadband, high technology,
health care, and social services all show promise – or are already examples – of application and customization of the registered apprenticeship model outside of the building and construction trades where it has thrived.

The new IRAP proposed rules unfortunately do not offer to replicate or expand the best elements of apprenticeship, but rather undermine this well-established, proven system by removing the quality assurance mechanisms that hold accreditors accountable for poor program outcomes. Creating an entirely new apprenticeship recognition system will cause confusion with overlapping jurisdiction and vastly differing levels of certification quality. By removing third party accreditation of programs, these new proposed standards open the door to fly-by-night training operations and undermine protections for workers, employers and even whole industries who depend on a qualified workforce.

Following the creation of the first Registered Apprenticeship law in Wisconsin in 1911 (next followed by Oregon in 1931), the United States Congress passed the National Apprenticeship Act (known as the "Fitzgerald Act") in 1937, establishing federal Registered Apprenticeship. Along with the Fair Labor Standards Act, and the National Industrial Recovery Act of 1933, it can be fairly argued that the Fitzgerald Act was part of a broader movement to enhance economic productivity and protect workers’ rights as the country headed out of the Great Depression. As stated in the preamble to the Act:

“To enable the [U.S.] Department of Labor to formulate and promote the furtherance of labor standards necessary to safeguard the welfare of apprentices and to cooperate with the States in the promotion of such standards.

Be it enacted by the senate and House of representatives of the United States of America in Congress assembled, That the Secretary of Labor is hereby authorized and directed to formulate and promote the furtherance of labor standards necessary to safeguard the welfare of apprentices, to extend the application of such standards by encouraging the inclusion thereof in contracts of apprenticeship, to bring together employers and labor for the formulation of programs of apprenticeship, to cooperate with State agencies engaged in the formulation and promotion of standards of
apprenticeship, and to cooperate with the National Youth Administration and with the Office of Education of the Department of the Interior in accordance with the section 6 of the Act of February 23, 1917 (29 Stat. 932), as assembled by the Executive Order Numbered 6166, June 10, 1933, issued pursuant to an Act of June 30, 1932 (47 Stat. 414) as amended."

The NPR appears to give short shrift to the obligation to “safeguard the welfare of apprentices and to cooperate with the States”. In fact, states will have no role at all to play in the approval of SREs or IRAPs. More disconcerting is that protections for apprentices such as progressive wage increases, journey worker supervision and independent oversight that are paramount to registered apprenticeship are wholly absent from IRAPs as proposed in the NPR.

Registered apprenticeship program sponsors are subject to registration with and oversight from a state or federal apprenticeship agency. That agency, independent of the sponsor, must decide whether the proposed programs meet a specific set of regulatory requirements covering components such as program length, balance of on-the-job versus classroom instruction, the quality of classroom instruction and the certification of instructors, the diversity of the apprenticeship applicant pool and the apprentices’ wages and working conditions.

Under the proposed NPR, entities could seek formal recognition from USDOL as SREs through a new, vaguely defined system of program accreditation. USDOL would recognize “Standards Recognition Entities” and grant them authority to determine whether a program meets a set of “hallmarks” of high-quality apprenticeship. These “hallmarks” appear to be similar to the strict regulatory requirements that are mandated by registered apprenticeship programs, such as the requirement that apprentices be paid or that classroom instructors hold teaching certifications, but the proposed hallmarks in the NPR are not as stringent, are much less comprehensive and, appear to lack any clear enforcement mechanism.

The relaxation of many of the regulatory requirements in the proposed rule seems to eliminate the safeguards for apprentices embedded in the regulations for registered programs. The wages paid need not be on a progressive scale as the apprentice advances through the program; mandatory supervision requirements
are eliminated; no instructor education requirements are established; and no nationally recognized certificate is issued to the apprentice. Since there are no nationally recognized, occupationally uniform standards that an IRAP has to conform to, each “industry” and each SRE may have different program outcomes depending upon the desires of the SRE. While the registered apprenticeship completion certificate is nationally recognized and portable, the utility of the IRAP certification may vary by employer or region of the country given the inherent lack of programs uniformity.

This lack of uniformity is disconcerting, particularly when an SRE can potentially create and approve its own IRAP. The potential of the IRAP serving the needs of the SRE, as opposed to the needs of a particular industry is not a hypothetical problem. As proposed, there would appear to be no problem with an SRE approving its own IRAP and charging “apprentices” a fee to participate in the program with no promise of anything other than a minimum wage job. Whether the credential issued at the end of the program held any weight with employers would depend on the degree to which employers embraced the outcomes of the proposed IRAP.

The NPR does not explain how SREs will monitor the programs they approve or how SREs will be held accountable for programs that do not achieve positive results for apprentices. The NPR proposes a deregulation scheme aimed at eliminating one of the greatest strengths of the registered apprenticeship system — approval and program oversight by independent registration agencies — in return for essentially allowing an insular approval system without independent oversight. The NPR offers the proposition that the greatest barrier to growing registered apprenticeship is the very thing that has ensured the current system’s success: a clear set of requirements around program structure and protections for apprentices and their employers.

The Oregon Bureau of Labor and Industries recognizes that the registered apprenticeship system is in need of modernization. For example, some industries that have traditionally used the term “apprenticeship” still face a presumption that the jobs associated with apprenticeship are physically demanding, dirty or unsafe. The program approval process could be streamlined. Greater diversity and inclusion in apprenticeship is an ongoing and critical issue. These are problems that can be resolved without diminishing the actual operation and efficacy of the
registered apprenticeship model. Nothing in the NPR does anything to address the aforementioned issues that the registered apprenticeship system faces. The NPR proposed a watered-down apprenticeship system with fewer protections for the apprentices and even more confusion about how “apprenticeship” operates, without addressing misperceptions about the apprenticeship model, the lack of congruency with our K-12 education system or streamlining program approvals.

The NPR provides no involvement of state registration agencies in the approval, implementation or evaluation of SREs or IPAPs. It proposes a duplicative system with fewer protections for apprentices and employers. This duplication negatively impacts the current system and its relationships with community colleges, workforce development, and secondary education partners. As the Commissioner of the Bureau of Labor and Industries responsible for apprenticeship certification in Oregon, I strongly oppose the approval or use of IRAPs as they are detrimental to a successful and cohesive system of registered apprenticeship and nationally uniform training standards. As proposed, the NPR removes the independent oversight and evaluation of registration agencies that contributes to the outstanding results produced by the current apprenticeship system.

Such a radical change would be particularly impactful to the construction industry which employs approximately 60% of all apprentices nationally. Construction is thriving under the registered apprenticeship model and the NPR would threaten that vitality by offering an alternative program with no uniform national guidelines, less academic rigor and fewer protections for apprentices.

The NPR does not indicate whether IRAP participants would be eligible for Veterans Benefit funding, federal student aid or support under the Workforce Investment Opportunity Act. However, it is safe to assume that USDOL would want to have IRAPs deemed legally equivalent to registered apprenticeship programs in order to avail itself of the same funding streams. All State workforce partners need to be aware and monitor the status of IRAPs for federal funding purposes, as they may eliminate funding streams for current initiatives that are proving successful. While the NPR intimates that construction occupation programs cannot be approved as IRAPs, this language is not clearly stated in the document, opening the door for IRAPs to undermine Davis-Bacon and little Davis-Bacon laws. At a minimum, the NPR should include clear language stating that
IRAPs will not be recognized for construction occupations and that IRAP participants may not be paid a sub prevailing wage on public works projects.

Thank you for your consideration of these comments.

Sincerely,

[Signature]

Val Hoyle
Oregon Labor Commissioner