



March 18, 2024

VIA ELECTRONIC SUBMISSION

John V. Ladd  
Administrator  
Office of Apprenticeship  
Employment and Training Administration  
U.S. Department of Labor  
200 Constitution Avenue, NW, Room N-5641  
Washington, DC 20110

**Re: National Apprenticeship System Enhancements**

Dear Administrator Ladd:

On January 17, 2024, the U.S. Department of Labor Employment and Training Administration (DOL) published a comprehensive rule that seeks to modernize the regulations for the government-registered apprenticeship program.<sup>1</sup> This letter constitutes the Office of Advocacy's (Advocacy) public comments on the proposed rule.

Advocacy is concerned that the DOL underestimates the economic impact of this rule on small businesses in its initial regulatory flexibility analysis (IRFA). Small sponsors and employers will have a difficult time complying with the new costs and administrative burdens in this proposal, such as operational changes, recordkeeping requirements, and legal disclosures.<sup>2</sup> This rule will also discourage new small businesses from participating in this program, creating a barrier to entry to lucrative government funding opportunities. Advocacy recommends that the DOL reassess the compliance costs from this rule in a supplemental initial regulatory flexibility analysis and consider significant alternatives that would minimize the economic impact of this rule for small firms.

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<sup>1</sup> National Apprenticeship System Enhancements, 89 Fed. Reg. 3118 (Jan. 17, 2024) [hereinafter 2024 Proposed Rule].

<sup>2</sup> Letter from the U.S. House of Representatives, Comm. on Small Bus., to Julie Su, Acting Sec'y, Dep't of Lab. (Feb. 15, 2024), [https://smallbusiness.house.gov/uploadedfiles/02.15.2024\\_-\\_letter\\_to\\_dol\\_re\\_apprenticeship\\_system.pdf](https://smallbusiness.house.gov/uploadedfiles/02.15.2024_-_letter_to_dol_re_apprenticeship_system.pdf).

## **I. Background**

### **A. The Office of Advocacy**

Congress established the Office of Advocacy under Pub. L. 94-305 to represent the views of small entities before federal agencies and Congress. Advocacy is an independent office within the U.S. Small Business Administration (SBA) that seeks to ensure small business concerns are heard in the federal regulatory process. Advocacy also works to ensure that regulations do not unduly inhibit the ability of small entities to compete, innovate, or comply with federal laws. The views expressed by Advocacy do not necessarily reflect the views of the SBA or the Administration.

The Regulatory Flexibility Act (RFA),<sup>3</sup> as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA),<sup>4</sup> gives small entities a voice in the rulemaking process. For all rules that are expected to have a significant economic impact on a substantial number of small entities, the RFA requires federal agencies to assess the impact of the proposed rule on small entities and to consider less burdensome alternatives.<sup>5</sup> If a rule will not have a significant economic impact on a substantial number of small entities, agencies may certify the rule.<sup>6</sup> The agency must provide a statement of factual basis that adequately supports its certification.<sup>7</sup>

The Small Business Jobs Act of 2010 requires agencies to give every appropriate consideration to comments provided by Advocacy.<sup>8</sup> The agency must include a response to these written comments in any explanation or discussion accompanying the final rule's publication in the Federal Register, unless the agency certifies that the public interest is not served by doing so.<sup>9</sup>

Advocacy's comments are consistent with Congressional intent underlying the RFA, that "[w]hen adopting regulations to protect the health, safety, and economic welfare of the nation, federal agencies should seek to achieve statutory goals as effectively and efficiently as possible without imposing unnecessary burdens on the public."<sup>10</sup>

### **B. The Proposed Rule**

For nearly a century, the DOL's registered apprenticeship program has been an effective workforce development model that has helped employers recruit, train, and retain highly skilled workers in highly skilled occupations. An apprenticeship combines on-the-job training with related classroom instruction to help apprentices master a skilled occupation.<sup>11</sup> There are three main types of apprenticeships: a group non-union apprenticeship, a group union apprenticeship,

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<sup>3</sup> Pub. L. No. 96-354, 94 Stat. 1164 (1980) (codified at 5 U.S.C. §§ 601-612).

<sup>4</sup> Pub. L. No. 104-121, tit. II, 110 Stat. 857 (1996) (codified in scattered sections of 5 U.S.C. §§ 601-612).

<sup>5</sup> 5 U.S.C. § 603.

<sup>6</sup> *Id.* § 605(b).

<sup>7</sup> *Id.*

<sup>8</sup> Small Business Jobs Act of 2010, Pub. L. No. 111-240, §1601, 214 Stat. 2551 (codified at 5 U.S.C. § 604).

<sup>9</sup> *Id.*

<sup>10</sup> Regulatory Flexibility Act, Pub. L. No. 96-354, 94 Stat. 1164 (1980) (codified at 5 U.S.C. §§ 601-612).

<sup>11</sup> 2024 Proposed Rule, *supra* note 1, at 3,120.

and an individual company apprenticeship. Small business can participate as an employer in a group’s apprenticeship program. Small businesses can run their own apprenticeship program and become both a sponsor and an employer.

On January 17, 2024, the DOL released a proposed rule to revise regulations for the registered apprenticeship program.<sup>12</sup> On February 16, 2024, Advocacy held a virtual Small Business Roundtable on this proposed rule. DOL officials and over 180 participants, including sponsors and employers representing a wide variety of industries, community colleges, various levels of government, labor organizations, and nonprofits were in attendance.<sup>13</sup>

Roundtable participants were most concerned with the burdensome provisions for sponsors and employers listed in the tables below regarding the proposed rule’s general operational requirements, recordkeeping requirements, and information disclosures.<sup>14</sup> The following comments are reflective of the issues raised by small businesses and examined by Advocacy.

**Table 1: Select New Requirements for Sponsors and Employers**

<b>Provision</b>	<b>Description</b>
Hours Requirements	The NPRM requires 2,000 hours of on-the-job training and 144 hours of related (classroom) training. The proposal eliminates competency-based and hybrid-based models. <sup>15</sup>
Qualifications for Trainers	The NPRM requires journeyworkers/trainers to complete anti-harassment and teaching training. They must be a faculty member at a post-secondary institution, meet state certification requirements as a vocational-technical instructor, or be a subject matter expert. <sup>16</sup>
Occupations Suitable	The NPRM requires that the Administrator evaluate whether occupations are suitable for apprenticeships and requires a 30-day comment period for applications, a 90-day Administrator adjudication, and a 5-year review of existing suitable occupations. <sup>17</sup>

<sup>12</sup> *Id.* at 3,118.

<sup>13</sup> The Office of Advocacy roundtable included representatives from the following industries: agriculture, automotive, aviation, broadband, construction, consulting, electrical, energy, equine, finance, hospitality, hotel, manufacturing, restaurant, pipeline, solar, software, staffing, technology, telecommunications, transportation, trucking, and utilities.

<sup>14</sup> See also Apprenticeships for Am. & Prism Grp., *AFA Burden Analysis: National Apprenticeship System Enhancements NPRM* (Feb. 2024), <https://static1.squarespace.com/static/65241e13ec88622a6bc21a85/t/65bd0f1a24b873580361a294/1706888987788/AFA+Burden+Analysis+Final+Draft.pdf>.

<sup>15</sup> 2024 Proposed Rule, *supra* note 1, at 3,278, 29.8(a)(4)(i)-(ii) (Standards of apprenticeships. The rule requires a term of on-the-job-training can be no less than 2,000 hours in duration, and a minimum average of 144 hours of related instruction for every 2,000 hours of on-the-job training).

<sup>16</sup> *Id.* at 3,282, 29.12(a)-(c) (Qualifications of apprentice trainers and providers of related instruction).

<sup>17</sup> *Id.* at 3,277, 29.7(d) (Occupations suitable for registered apprenticeship).

**Table 2: Select New Recordkeeping Requirements for Sponsors and Employers**

<b>Provision</b>	<b>Description</b>
Employment Decisions	Sponsors and employers are responsible for maintaining records for 5 years on all employment decisions, including hiring, promotion, demotion, transfer, layoff, etc. <sup>18</sup>
Operations Records	Records are required for all aspects of the operation of the program such as agreements, standards, training, complaints, etc. Sponsors and employers must allow access to these records by the Registration Agency. <sup>19</sup>
Wage Reporting	Sponsors and employers must report wage and fringe benefits. The program must have the minimum wage standards, a graduated wage scale, at least one wage step increase, and the final wage must be at least 75 percent of the journey worker wage. <sup>20</sup>
End-point assessment	The NPRM requires an end-point assessment. <sup>21</sup>
Equal Employment	The NPRM requires the program sponsors to report their recruiting and outreach efforts, officials, and training which is related to their Equal Employment Opportunity (EEO) requirements. <sup>22</sup> This requires a new written equitable recruitment and retention plan, specifically focused on underserved communities. <sup>23</sup>

**Table 3: Selected Financial and Legal Disclosures for Sponsors and Employers**

<b>Provision</b>	<b>Description</b>
Financial disclosure	Sponsors must possess the financial capability and other resources necessary to operate the proposed program. <sup>24</sup>
Labor violation Disclosure	Sponsors <sup>25</sup> and employers <sup>26</sup> must disclose all federal, state, or local government agency final determinations relating to occupational safety/health, labor standards, financial mismanagement, EEOC, or laws on workplace practices or misconduct.
Non-compete and non-disclosures	Sponsors and employers cannot include a non-compete provision restricting the ability to compete directly with the program sponsor or employer to seek employment with another employer prior to completion of program, <sup>27</sup> or a non-disclosure agreement regarding their confidential business information or trade secrets. <sup>28</sup>

<sup>18</sup> *Id.* at 3,284, 29.18 (a)(1) (Recordkeeping by registered programs).

<sup>19</sup> *Id.* at 3,284, 29.18 (a)(2)(i)-(ix).

<sup>20</sup> *Id.* at 3,278, 29.8(a)(17) (Standards for apprenticeship).

<sup>21</sup> *Id.* at 3,278, 29.8(a)(11).

<sup>22</sup> *Id.* at 3,278, 29.8(a)(3).

<sup>23</sup> *Id.* at 3,280, 29.10 (a)(4) (Program registration).

<sup>24</sup> *Id.* at 3,280, 29.10 (a)(5).

<sup>25</sup> *Id.* at 3,280, 29.10 (a)(6) (Program registration (sponsors)).

<sup>26</sup> *Id.* at 3,278, 29.8 (b) (Standards of apprenticeship- Requirements for employers in instances where a registered apprenticeship program provides training to apprentices who are employed by participating employers in a group program, sponsors must obtain these types of disclosures from employers).

<sup>27</sup> *Id.* at 3,279, 29.9(d) (Apprenticeship agreements).

<sup>28</sup> *Id.* at 3,279, 29.9(e) (Apprenticeship agreements).

## II. The DOL's IRFA Does Not Comply with the Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA), an agency must prepare an initial regulatory flexibility analysis (IRFA) if it determines that a proposal may impose a significant economic impact on a substantial number of entities.

An IRFA must contain the following elements:

- (1) A description of the reasons why the regulatory action is being considered;
- (2) The objectives and legal basis for the proposed rule;
- (3) A description and estimated number of small entities to which the rule will apply;
- (4) A description and estimate of compliance requirements, including an estimate of the classes of small entities that will be subject to the rule;
- (5) Identification of duplication, overlap, and conflict with other rules; and
- (6) A description of significant alternatives to the rule.<sup>29</sup>

The DOL prepared an IRFA for this proposed rule.<sup>30</sup> Advocacy believes that the DOL's IRFA is deficient because it does not properly inform the public about the impact of this rule on small entities. The IRFA fails to analyze the number of small entities affected by this rule and underestimates the compliance costs of the rule. Advocacy recommends the DOL reassess the compliance costs from this rule in a supplemental initial regulatory flexibility analysis. As part of that supplemental analysis, the DOL should consider significant alternatives that would accomplish the objectives of the statute while minimizing the economic impacts to small entities as required by the RFA.

### A. The DOL Does Not Present Enough Data in an IRFA on the Number of Small Entities Affected by this Rule

Advocacy is concerned that the DOL's IRFA does not properly inform the public about the number of small businesses affected by this rule. The RFA requires agencies to identify the industries of small entities affected by the proposed rule, utilizing small business size standards set by SBA by industry in the North American Industrial Classification System (NAICS).<sup>31</sup>

Using historical data, the DOL projects that there will be 26,492 program sponsors and 40,533 participating employers the first year after this rule is finalized.<sup>32</sup> For FY 2024, the DOL lists the number of active apprentices by industry on its website: 220,173 (34.35 percent) in construction, 143,581 (22.4 percent) in public administration, 73,14 (11.41 percent) in educational services, and 28,155 (4.39 percent) in manufacturing.<sup>33</sup>

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<sup>29</sup> 5 U.S.C. § 603.

<sup>30</sup> 2024 Proposed Rule, *supra* note 1, at 3,148.

<sup>31</sup> 5 U.S.C. § 603.

<sup>32</sup> 2024 Proposed Rule, *supra* note 1, at 3,249.

<sup>33</sup> APPRENTICESHIPSUSA, *Data and Statistics, Interactive Apprenticeship Data*, <https://www.apprenticeship.gov/data-and-statistics> (last visited Mar. 15, 2024). DOL's data and statistics page for the registered apprenticeship program lists active apprentices, and breaks down this data by categories like gender, race, and industry. These are industry percentages of the pool of active apprentices in FY2024.

However, the DOL does not show the industrial breakdown of affected small entities to understand the impact of the rule. Instead, the DOL provides data on the population of all firms across the U.S. economy. The DOL needs to explain how data on all small firms relates to the population of affected sponsors.

The DOL assumes that “sponsors will have the same size distribution [in revenue] as the firms in each of the 19 major industry sectors represented in registered apprenticeship.”<sup>34</sup> The DOL should not make this assumption without supporting justification. The impact of the rule on small entities is typically based on a comparison of the annual costs of the rule to the annual revenues of the business. Unless the agency performs a small business impact analysis using detailed size groups, the rule will lack a full understanding of their regulatory proposals on small entities. This analysis is also necessary to evaluate regulatory alternatives contemplated by the agency according to the RFA to minimize the costs of the rule for small entities.<sup>35</sup> Advocacy recommends the DOL complete this analysis of the numbers of affected small sponsors and employers in a supplemental initial regulatory flexibility analysis.

## **B. The Department’s IRFA Underestimates Other Compliance Costs and Paperwork Burdens**

Advocacy believes the DOL’s IRFA is deficient because it underestimates the economic impact of the rule on small sponsors and small employers. Small entities will not be able to provide meaningful comments to the agency based on an inadequate analysis. The DOL estimated \$343.69 in costs for small employers, which is comprised of two hours of regulatory familiarization (\$206.19) and one hour of recordkeeping costs (\$137.50).<sup>36</sup> The DOL estimated first-year costs for small sponsors at \$3,659, or four hours of regulatory familiarization (\$412) and \$3,247 for the recordkeeping and other compliance costs of this rule.<sup>37</sup>

Participants at Advocacy’s roundtable commented that the DOL has underestimated the compliance costs to read and understand this rule, as the provisions were difficult to read and not accessible for business owners. The proposed rule is a lengthy document at 779 pages, and 181,159 words.<sup>38</sup> If the average adult can read about 200 words per minute, then it would take

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<sup>34</sup> 2024 Proposed Rule, *supra* note 1, at 3,249.

<sup>35</sup> Michael J. McManus, *Examining Small Business Impacts in the Regulatory Development Process: The Drawbacks of Averaging*, 6 (Aug. 30, 2018), <https://advocacy.sba.gov/2018/08/30/examining-small-business-impacts-in-the-regulatory-development-process-the-drawbacks-of-aver/>.

<sup>36</sup> 2024 Proposed Rule, *supra* note 1, at 3,250.

<sup>37</sup> *Id.* at 3249-50, Exhibit 18 (Estimated Cost to Registered Apprenticeship Program Sponsors). DOL estimates the following first-year costs for sponsors: rule familiarization (\$412), on-the-job-training document (\$1031), wage analysis and career development profile (\$206 per sponsor), data collection and reporting (\$111), program registration (\$103), program registration (\$103), program standards adoption agreement (\$103), end-point assessment (\$103), program reviews (\$842), recordkeeping (\$138 per employer).

<sup>38</sup> Press Release, Congresswoman Virginia Foxx, Foxx on DOL’s Latest Apprenticeship Power Grab (Dec. 15, 2023), <https://edworkforce.house.gov/news/documentsingle.aspx?DocumentID=409907>; 2024 Proposed Rule, *supra* note 1, at 3,249. The original document posted on DOL’s website had 779 pages. This document has been reformatted for the *Federal Register*.

over 15 hours to review this regulation.<sup>39</sup> Small sponsors and employers may have to hire outside staff to understand and implement this rule, as they often have limited to no human resources personnel, legal counsel, or financial personnel on staff. Small sponsors believe they will have to hire dedicated staff members to comply with this rule.

Advocacy is very concerned that the DOL has underestimated the compliance and paperwork costs from the numerous requirements, at approximately \$100 total or one hour for employers and \$3,000 for sponsors for first-year costs.<sup>40</sup> Small business also can run their own apprenticeship program, and these companies will be required to complete and pay for both the sponsor and the employer mandates.

Advocacy has detailed the numerous cumbersome requirements for sponsors and employers in Tables 1-3, which include operational requirements, recordkeeping requirements, and required financial and legal disclosures. The recordkeeping provisions focus on data collection, documentation, and transparency in every aspect of this program operations, including agreements, standards, training, complaints, and unreimbursed costs. The proposal also requires sponsors and employers to track apprentices and every employment decision (including hiring, placement, and progress).

An Associated Builders and Contractors (ABC) small business sponsor estimated it would cost \$20,000 to \$25,000 in the first year just to familiarize itself with the rule across key sponsor personnel and attorneys. Another ABC small business sponsor said it would require at least one full-time employee roughly \$100,000 to ensure compliance. A small manufacturing company with 45 apprentices at Advocacy's roundtable commented that it would take two workers and thousands of dollars to comply with the requirements of this rule.

The rule requires sponsors and employers to report wage and fringe benefits. The DOL is also requiring that the wage scale be graduated, have at least one incremental wage step increase, and that the final wage must be at least 75 percent of the journey worker wage paid by the employer for that occupation.<sup>41</sup> The DOL acknowledges that participating employers may incur compliance costs for these increased wages for apprentices, but does not attempt to quantify the possible payments associated with these wage increases.<sup>42</sup>

Advocacy recommends the DOL reassess compliance costs of this rulemaking for sponsors and employers in a supplemental initial regulatory flexibility analysis and publish this expanded economic analysis in the Federal Register for public comment.

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<sup>39</sup> Ann Wylie, *How to Determine Average Reading Time*, Public Relations Society of America (Sept. 2020), <https://www.prsa.org/article/how-to-determine-average-reading-time#:~:text=During%20the%20editing%20process%2C%20divide,reading%20time%20for%20your%20piece.&text=So%20if%20your%20piece%20is,take%20two%20minutes%20to%20read>. This article states that a reader's average reading speed is about 200 words per minute.

<sup>40</sup> See *supra* note 38.

<sup>41</sup> 2024 Proposed Rule, *supra* note 1, 3,278 at 29.8(a)(17).

<sup>42</sup> *Id.* at 3245. DOL acknowledges that these changes could result in nonquantifiable transfer payments from participating employers to apprentices.

### **C. DOL Should Consider Less Burdensome Alternatives that Would Still Accomplish the Agency’s Objectives**

Under the RFA, an IRFA must contain a description of any significant alternatives to the proposed rule which accomplish the stated objectives of the applicable statutes.<sup>43</sup> The Department’s IRFA discusses two regulatory alternatives. The first regulatory alternative is that end-point reviews should not be required but would only be conducted for cause. The second regulatory alternative is that the requirement for a five-year program review of occupational suitability not be required but would only be conducted for cause. The DOL evaluated the costs of these provisions properly but did not adopt these alternatives.<sup>44</sup> Small businesses commented that these provisions are costly and not clear. For example, the proposed rule does not clarify who will build and complete this end-point assessment of the apprentice nor what this end assessment will measure. An apprentice obtaining the required skills and/or hours should meet the standards of the program. Advocacy recommends the DOL consider adopting these alternatives after reviewing public feedback on these provisions.

After the DOL completes a more thorough supplemental IRFA on the impacts of this rule for small employers and sponsors, the agency can better analyze less burdensome significant regulatory alternatives that would also meet the agency objectives. Advocacy recommends the DOL analyze and streamline other burdensome provisions, as recommended in this letter and by other small businesses in the comment period.

### **III. Small Business Concerns**

#### **A. The Proposed Rule’s Compliance Costs and Burdens May Discourage Small Businesses from Participating in Registered Apprenticeship Programs**

The DOL’s registered apprenticeship program is an important workforce development tool for small businesses because there is a critical labor shortage for skilled workers. A recent report found that 91 percent of small business owners with job openings reported few or no qualified applicants for open positions they were willing to fill.<sup>45</sup>

Roundtable participants were concerned that the proposed rule’s cumbersome requirements would alienate and discourage small businesses from participating in this program. In a February 2024 survey of small businesses by the Associated Builders and Contractors, 98 percent of respondents said the proposed rule would make it less likely to keep and/or attract small businesses to the registered apprenticeship program.<sup>46</sup> An agricultural cooperative sponsor with a

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<sup>43</sup> 5 U.S.C. § 603(c).

<sup>44</sup> 2024 Proposed Rule, *supra* note 1, at 3,264 & 3,265.

<sup>45</sup> Nat’l Fed’n of Indep. Bus., *NFIB Jobs Report: Small Business Employment Slows in February* (Feb. 29, 2024), <https://www.nfib.com/foundations/research-center/monthly-reports/jobs-report/>.

<sup>46</sup> Press Release, Associated Builders & Contractors, *ABC Survey: Biden’s Proposed Apprenticeship Rule will Strongly Discourage Construction Apprenticeship Program Participation* (Feb. 27, 2024), <https://www.abc.org/News-Media/News-Releases/abc-survey-bidens-proposed-apprenticeship-rule-will-strongly-discourage-construction-apprenticeship-program-participation>.



new apprenticeship program stated that these tracking requirements would disincentivize farmers from participating in this program, as it would take many hours with no measurable value to employers.

## **B. The Proposed Rule May Create a Barrier to Entry to Government Funding**

Small businesses able to participate in the DOL's registered apprenticeship programs can also receive federal, state, and local funding. For example, the Inflation Reduction Act adds registered apprenticeship requirements for the construction of qualified clean energy projects to qualify for increased tax credit and deduction amounts.<sup>47</sup> Roundtable participants were concerned that the proposed rule's added costs and burdens will create a barrier to entry to lucrative funding sources for training and workforce development, and access to taxpayer-funded government projects.

The DOL's registered apprenticeship program is a voluntary program, and employers can also choose to make their own non-registered apprenticeship program. Advocacy spoke to representatives from the agriculture, transportation, manufacturing, and other industries who stated that they currently have non-registered apprenticeship programs for training, but the potential requirements under this proposed rule deter them from starting or from bridging to a registered apprenticeship program. For example, Advocacy spoke to a representative from the tool/machining and metal forming industry who indicated that they have many non-registered apprenticeship programs. They would prefer their programs be registered and supported by an industry-recognized apprenticeship partner. However, this rule will create barriers to entry for prospective employees and deter employers from registering their apprentices.

## **IV. Small Business Recommendations**

### **A. The Proposed Rule's Compliance and Paperwork Requirements Should be Streamlined**

The DOL seeks to update the apprenticeship program, but the proposed rules do not eliminate a single employer or sponsor requirement from the current regulations.<sup>48</sup> Advocacy recommends the DOL streamline and reconsider the most burdensome recordkeeping requirements detailed under Table 2.<sup>49</sup>

This rule requires sponsors and employers to track and record all aspects of the apprenticeship program, from every employment decision and operational document. The DOL should consider whether these requirements are already being tracked by the current process, whether these

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<sup>47</sup> Rebecca Rainey, *New Apprenticeship Proposal Draws Warning on Scope of Overhaul*, Bloomberg Law (Dec. 27, 2023), <https://news.bloomberglaw.com/daily-labor-report/new-apprenticeship-proposal-draws-warning-on-scope-of-overhaul>.

<sup>48</sup> Apprenticeships for Am., *Advancing Apprenticeship: Opportunities and Challenges in the National Apprenticeship System Enhancements Proposed Rules* (Feb. 2024), [https://apprenticeshipsforamerica.quorum.us/action\\_center/](https://apprenticeshipsforamerica.quorum.us/action_center/), [hereinafter 2024 AFA Report].

<sup>49</sup> *Id.* at 21 (AFA Findings and Recommendations, Strengthening Employer and Sponsor Engagement, Reducing Paperwork and Streamlining Processes).

requirements are necessary, and whether they should only be created if there is cause against a sponsor or employer.<sup>50</sup> The DOL should also specify the access of records of participating employers that must be made through the sponsor to help minimize the regulatory burden on small businesses.

Roundtable participants commented that the DOL does not have to create an elaborate complaint process because the program already has a complaints process. The DOL already has existing regulations for Equal Employment Opportunity (EEO) in the registered apprenticeship program, which focus on nondiscrimination in employment and recruitment to populations traditionally underrepresented such as women, individuals with disabilities, and others.<sup>51</sup> DOL should continue this program, not alter it to increase recordkeeping burdens or require an overly directive equitable recruitment program. Sponsors and employers can create their own strategies and plans to address these objectives and requirements. Representatives from the restaurant and lodging industries commented that a large portion of their apprentices are incumbent workers, and the focus on recruitment reporting was not as necessary for their industry.

### **B. The Proposed Rule's Operational Requirements Should Provide Flexibility**

Advocacy is concerned that the DOL's burdensome operational requirements are too stringent and will discourage innovative and non-traditional companies from participating in registered apprenticeship programs. The rule's requirements also create a barrier to entry for small businesses in new fields that seek to obtain government funding.

Advocacy recommends the DOL reconsider the provision that requires a set 2,000 hours of on-the-job training for all apprenticeships. This provision eliminates other types of apprenticeships, where the term of an apprenticeship could be based on a competency model (acquisition of certain skills and knowledge) or a hybrid model (combination of skills and time).<sup>52</sup> Roundtable participants commented that this time-based provision of 2,000 hours will not work in all industries, as it takes different amounts of time to master skills in different occupations. This provision may also discourage employers and potential apprentices from participating in the program, as it adds extra costs and hours of unnecessary training. Small businesses commented that a competency-based approach is a better recruitment tool, as apprentices can accelerate through the program based on the completion of skills and obtain increased wages more quickly. Advocacy spoke to representatives from the hotel and restaurant industries and learned that their apprenticeships use a competency-based model where each apprentice completes their program at various periods of time. For example, a lodging manager could conclude a program in a 6-month period.

Advocacy recommends the DOL reconsider the burdensome provision that would require the DOL Administrator to evaluate whether certain occupations are suitable for a registered apprenticeship program, as this provision would deter new industries from participating. This

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<sup>50</sup> See *supra* Tables 1 & 2.

<sup>51</sup> APPRENTICESHIPUSA, *Learn About Equal Employment Opportunity*, <https://www.apprenticeship.gov/eo/sponsors/learn-about-eeo> (last visited Mar. 14, 2024).

<sup>52</sup> 2024 Proposed Rule, *supra* note 1, at 3,278, 29.8(a)(4)(i)-(ii).

provision requires an open comment period of 30 days, a determination by the Administrator in 90 days, and a 5-year review of existing suitable occupations.<sup>53</sup> DOL officials can already adjudicate the suitability of an occupation when the apprenticeship documents are submitted for review. Small sponsors noted that they already do extensive interviews and surveys with their industry and potential participating employers when creating an apprenticeship, and therefore a comment period to the public is unnecessary.

Advocacy also recommends the DOL reconsider the provisions that would add rigid qualification requirements, change journeyworker and apprentice ratios, and add training requirements for journeyworkers or trainers of apprentices.<sup>54</sup> Roundtable participants stated these requirements will exacerbate the current shortage of journeyworkers and trainers available to guide apprentices.

### **C. The Proposed Rule's Disclosure Provisions Should Be Removed**

Advocacy is concerned that the DOL's proposed rule contains disclosure provisions that may discourage small business from participating as sponsors and employers in the registered apprenticeship programs.

The proposed rule requires prospective sponsors to disclose any company or employee labor violations that have been determined by a federal, state, or local government agency.<sup>55</sup> Small businesses commented that they may be reluctant or restricted from providing this information, and this provision is burdensome. Advocacy recommends that DOL limit the legal disclosures to any labor violations related to an apprenticeship program, such as a non-registered apprenticeship program. Advocacy also recommends the DOL remove the provision that requires prospective sponsors to disclose their financial capability, as it is overly broad, subjective, and may dissuade small businesses from participating in this program.<sup>56</sup> Although these disclosures are requirements for sponsors, they will also affect employers who run their own apprenticeship program. Advocacy also recommends the DOL reconsider provisions restricting non-compete agreements and non-disclosure agreements. Small businesses commented that they may not invest in training these workers if they are able to leave during the program period or reveal intellectual property.

### **V. Conclusion**

Advocacy is concerned that the DOL underestimates the economic impact of this rule on small businesses in its IRFA. Small sponsors and employers will have a difficult time complying with the new costs and administrative burdens in this new proposal, such as operational changes, recordkeeping requirements, and legal disclosures.<sup>57</sup> This rule will also discourage new small businesses from participating in this program, creating a barrier to entry to lucrative government

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<sup>53</sup> *Id.*, at 3,277, 29.7(d).

<sup>54</sup> *Id.* at 3,282, 29.12(a)-(c).

<sup>55</sup> *See supra* notes 25-26.

<sup>56</sup> 2024 Proposed Rule, *supra* note 1, at 3,278, 29.10 (a)(5).

<sup>57</sup> Letter from the U.S. House of Representatives, *supra* note 2.

funding opportunities. Advocacy recommends that the DOL reassess the compliance costs from this rule in a supplemental initial regulatory flexibility analysis and consider significant alternatives that would minimize the economic impact of this rule for small firms.

If you have any questions or require additional information, please contact me or Assistant Chief Counsel Janis Reyes at (202) 798-5798 or by email at [Janis.Reyes@sba.gov](mailto:Janis.Reyes@sba.gov).

Sincerely,

/s/

Major L. Clark, III  
Deputy Chief Counsel  
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/s/

Janis C. Reyes  
Assistant Chief Counsel  
Office of Advocacy  
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Copy to: The Honorable Richard L. Revesz, Administrator  
Office of Information and Regulatory Affairs  
Office of Management and Budget