



March 18, 2024

Brent Parton, Principal Deputy Assistant Secretary  
U.S. Department of Labor  
Employment and Training Administration  
200 Constitution Avenue NW  
Room N-5641  
Washington, DC 20210

***Re: National Apprenticeship System Enhancements, Proposed Rule No. ETA–2023–0004; Regulatory Identification Number (RIN) 1205–AC13***

Mr. Parton:

The Florida Departments of Commerce (FloridaCommerce) and Education (FDOE), and Florida Attorney General Ashley Moody, jointly submit this comment urging the U.S. Department of Labor to abandon its misguided and ill-advised revisions to regulations governing registered apprenticeship programs as proposed in ETA–2023– 0004/RIN 1205–AC13. The Biden Administration’s proposed changes will interfere with and impede the ongoing successes achieved in apprenticeship programs throughout the State of Florida and more importantly, cause significant harm to the very individuals apprenticeship programs benefit most.

#### Background

Under the leadership of Governor Ron DeSantis, Florida has invested over \$8.5 billion in state dollars in workforce education programs, making Florida number one in the nation for attracting and developing a skilled workforce. During that time, the State of Florida has experienced exponential growth and tremendous success in career and technical education (CTE).

Specifically, Florida has:

- Awarded more 366,000 rapid credentials since 2018-19;
- Experienced a nearly 11% increase in postsecondary CTE enrollments, including a 27% increase in the Florida College System (FCS) postsecondary CTE enrollment; and
- Seen record enrollment in K-12 CTE programs, where there are nearly 800,000 K-12 students engaged in high-quality CTE coursework.

Under Governor DeSantis, Florida has experienced remarkable growth in apprenticeship programs, including:

- A 45% increase in registered apprentices;

- A 32.89% increase in registered apprenticeship programs;
- A 40.93% increase in combined apprenticeship and pre-apprenticeship programs; and
- A remarkable 110.53% increase in apprenticeable occupations.

This success underscores Governor DeSantis' leadership in enabling the employer-driven apprenticeship model to thrive in the marketplace, unencumbered by unnecessary division or compartmentalization.

Florida has prioritized workforce education because all students, regardless of race or sex, must acquire the knowledge and skills to find meaningful work and enjoy productive careers. We know that workforce education programs provide economic opportunities for our graduates. Additionally, a knowledgeable and skilled workforce is essential to Florida's economic growth—and our economy is reaping the benefits. As recently announced, Florida's economic data continues to indicate economic stability and confidence among Florida's workforce. The state's labor force grew by 2.2 percent (+243,000) over-the-year in January 2024, which is faster than the national over-the-year rate of 0.8 percent, including 16,000 net new workforce participants in January 2024.

Florida's policies are working, and they are benefiting individuals *and* employers; our graduates are obtaining the skills and knowledge they need to obtain meaningful careers and businesses and employers are flourishing, experiencing growth and exceeding expectations.

#### Proposed Rule

On January 17, 2024, the U.S. Department of Labor (DOL) issued the proposed rule, which aims to scale and insert frameworks for Diversity, Equity, Inclusion, and Accessibility (DEIA) in registered apprenticeship programs. Whether intentional or imprudent, this will imbed conditions within workplaces that will undermine the effectiveness of the employer-driven apprenticeship model.

Florida has achieved its successes by prioritizing skill development, implementing high-quality and rigorous workforce education programs, and ensuring alignment across its systems: across certificate or degree programs offered at the K-12 and postsecondary levels, with professional level industry certifications, and with high-growth, high-demand and high-wage employment opportunities. Our approach has emboldened Floridians and culminated in the creation of multiple pathways that lead to high-demand and high-wage jobs.

A contributing factor to Florida's success has been the policies put into place by Governor DeSantis that prohibit radically divisive, extremist, and inherently flawed theories that classify, limit, and constrain individuals *based on* their race or sex. In Florida, we do not allow schools or employers to implement divisive and discriminatory policies based on classifications that have no bearing on one's character or abilities. We view our students and workers as unique individuals, undefined by their characteristics and we treat them as such.

However, the Biden Administration’s rule encourages programmatic decisions based solely on race, sex, and other characteristics *over* economic success factors that empower and equip workers and cause industry to flourish. Instead of creating the conditions for individuals to experience economic independence, the proposed regulation will weaken workforce education programs and deprive workers of the opportunity to gain skills that lead to meaningful careers. The rule forces states to make decisions based on the characteristics of its workforce; it places equity politics over program quality. The proposed rule requires states to develop workforce policies based on identity politics instead of preparing workers for occupations and equipping them with the hard skills necessary to succeed in any job.

This approach harms workers who need jobs the most to ensure long-term financial freedom and independence. The proposal will deprive individuals who are members of special populations from opportunities to gain job-related skills and pursue high-wage careers. The proposed rule will result in a less qualified workforce, which will further cripple businesses that are already struggling to recruit and retain qualified workers. In short, the proposed rule will significantly impede opportunities for the individuals it should most intend to advance and stifle economic growth in the process.

### Specific Policy Concerns

The proposed rule will undermine the successes achieved in Florida's apprenticeship programs since Governor DeSantis took office. Below, we outline specific concerns and potential adverse effects on apprenticeships:

#### **I. Embedding DEIA Frameworks in Apprenticeship Programs**

- **Equity Indices and Workplace Success:** The proposed rule introduces “Equity Indices” as a measure of workplace success, disregarding traditional metrics like job performance and outcomes. By prioritizing equity politics over merit-based achievements, the rule risks undermining the effectiveness and fairness of apprenticeship programs, potentially leading to unintended consequences and inequalities among apprentices.
  - As noted in the Notice of Proposed Rule Making (NPRM), DOL proposes to impose demographic data tracking indices relating to “equity in program access, exit, and completions” which are intended “to inform and drive improvements toward greater equity.” Florida opposes this expanded collection and the use of “demographic information to ensure that programs are operating equitably.” (*Federal Register: Vol. 89, No. 11 / Wednesday, January 17, 2024 / Proposed Rules, Page 3212.*)
- **Bureaucratic Overreach:** Embedding DEIA frameworks in apprenticeship programs represents significant bureaucratic overreach, imposing unnecessary and damaging conditions on workplaces.
  - Proposed § 29.3(f) would establish the administrative role of OA to promote DEIA in apprenticeship, including for those from underserved communities.

*(Federal Register: Vol. 89, No. 11 / Wednesday, January 17, 2024 / Proposed Rules, Page 3140.)*

- Proposed § 29.3(f) would significantly modify OA’s role in enforcing “equal opportunity” provisions for apprentices and applicants for apprenticeship in registered apprenticeship programs. The DOL’s veiled attempt to redefine “equal opportunity” and replace the agency’s historical and traditional civil rights enforcement with “equity” constitutes a significant departure from the statute’s original scope.
- **Politicization and Redefinition of Terms:** The proposed rule attempts to politicize apprenticeship programs by equating “equity” with “quality” and “accountability.” The DOL’s proposal to shift the focus of apprenticeship programs to “equity” advances identity politics, most evident in aggressive attempts to redefine (for political purposes) the term “underserved communities.” This approach not only politicizes apprenticeship initiatives but also risks undermining their effectiveness and fairness by imposing subjective criteria and politically divisive agendas.
  - Proposed § 29.2 defines “underserved communities” to mean persons from historically marginalized communities or populations, including geographic communities, that have been adversely affected by persistent discrimination, inequality, or poverty, including but not limited to: women; persons of color (including Black, Latino, Indigenous and Native American persons, and Asian Americans, Native Hawaiians, and Pacific Islanders); individuals with disabilities; persons adhering to particular religious beliefs or practices; veterans and military spouses; lesbian, gay, bisexual, transgender, queer, gender nonconforming, and nonbinary persons; and individuals with barriers to employment, as defined in WIOA sec. 3(24). *(Federal Register: Vol. 89, No. 11 / Wednesday, January 17, 2024 / Proposed Rules, Page 3276.)*

## II. Potential Harm to Florida’s Apprenticeship Success

- **State Apprenticeship Agencies (SAA) Strategic Plan Requirements:** The proposed SAA Strategic Plan Requirements would compel SAAs to submit a strategic plan every four years for OA approval to retain SAA status. This exceeds the DOL’s authority and poses a significant bureaucratic overreach, as strategic elements are subjected to OA’s subjective review, even in instances where the SAA is not receiving federal funding. This would result in the OA influencing the allocation of state-funded staffing and resources towards operational planning elements outlined in the strategic plan requirements. Moreover, there is uncertainty regarding whether OA states will be held to the same standard, which raises concerns about fairness in the oversight process.
  - Proposed § 29.2 would add a definition for “State Apprenticeship Plan” due to its inclusion in proposed § 29.27 as a mandatory submission from a State government agency seeking to obtain or maintain recognition as an SAA. Establishing a definition of “State Apprenticeship Plan” is necessary to

provide clear differentiation from other required plans in this part and 29 CFR part 30. This definition would also clarify that a plan covers a State government agency's recognition for 4 years as an SAA. (*Federal Register: Vol. 89, No. 11 / Wednesday, January 17, 2024 / Proposed Rules, Page 3138.*)

- This is unnecessary and should be removed completely. Since the FDOE is Florida's SAA and also the State Education Agency (SEA), it is responsible for the development, implementation and monitoring of the Perkins V State Plan, which requires considerable time and effort. Additionally, the FDOE provides input on the WIOA State Plan prepared by Florida Commerce. Writing another bureaucratic state plan would divert resources from investing in technical assistance to apprentices, program sponsors and employers.
- **End-Point Assessments:** The proposed rule requires all programs to administer an end-point assessment to evaluate apprentices' acquisition of knowledge, skills, and competencies relevant to their occupation. However, uncertainties arise regarding who determines the acceptability of these assessments, leading to concerns about fairness and consistency across programs. Furthermore, these assessments will negatively impact completion rates.
  - Proposed § 29.8(a)(11) would address the utilization of end-point assessments the program uses to determine if an apprentice is fully proficient in the occupation and eligible to complete their registered apprenticeship program. Proposed § 29.16 would require stipulating the administration of an endpoint assessment to apprentices at the conclusion of their apprenticeship term and proposed § 29.18 would require the maintenance of appropriate apprentice progress records by the sponsor or participating employer. As explained more fully at proposed § 29.16, an endpoint assessment would serve to validate that the apprentice was successful in acquiring the skills and competencies necessary for proficiency in the covered occupation. These requirements are unnecessary and should be removed completely. Program sponsors may choose to include an end-point assessment where available, if appropriate and necessary. As currently written, this element will prohibit employers from participating in registered apprenticeship in occupations for which there is no appropriate end-point assessment. (*Federal Register: Vol. 89, No. 11 / Wednesday, January 17, 2024 / Proposed Rules, Page 3157.*)
- **Suitability Determinations for Occupations:** The proposed rule granting OA exclusive authority over determinations of occupational suitability, previously known as "apprenticeability," raises concerns regarding the process of determining apprenticeship eligibility for various occupations. OA approval of occupations for apprenticeability has historically been a lengthy process, and Florida's ability to approve and create state-level occupations in a short time period has enabled our state to rapidly expand registered apprenticeship. Florida must maintain the ability to create state-level apprenticeship opportunities to meet unique demands. The

uncertainty surrounding who decides which occupations are apprenticeable adds complexity and challenges to implementing the proposed rule.

- We consider it critical that suitability determinations be made by OA to maintain consistency across the National Apprenticeship System so that different States do not make substantially different suitability determinations. (*Federal Register: Vol. 89, No. 11 / Wednesday, January 17, 2024 / Proposed Rules, Page 3148.*) SAAs must be permitted to recommend apprenticeable occupations without interference or limitation.

### Specific Legal Concerns

As alluded to above, the proposed rule contains numerous legal deficiencies and is unlikely to withstand judicial scrutiny. Below are just a few of the legal problems we have identified with the rule.

#### **I. Violates the Equal Protection Clause and Federal Civil Rights Laws**

- The proposed rule’s focus on race and other protected classes likely violates the Equal Protection Clause as well as federal civil rights statutes. As the Supreme Court explained only last year, “[e]liminating racial discrimination means eliminating all of it.” *Students for Fair Admissions v. President & Fellows of Harvard Coll.*, 600 U.S. 181, 206 (2023). The Court went on to reaffirm that “racial classifications” are “pernicious.” *Id.* at 217 (quoting *Gratz v. Bollinger*, 539 U.S. 244, 270 (2003)). And as the Court has explained in other cases, even when “diversity” objectives are framed as merely aspirational, they are still problematic because “[t]he prudent employer will be careful to ensure that its programs are discussed in euphemistic terms, but will be equally careful to ensure that . . . quotas are met.” *Watson v. Fort Worth Bank & Tr.*, 487 U.S. 977, 933 (1988). In fact, given the *Harvard* decision last year, it is hard to understand why DOL is trying to *increase* consideration of race when it should be moving in the opposite direction.

#### **II. Likely Violates the Spending Clause of the U.S. Constitution**

- The proposed rule likely violates the Spending Clause. Among other reasons, “Congress must speak ‘unambiguously’ and ‘with clear voice’ when it imposes conditions on federal funds.” *West Virginia v. Dep’t of Treasury*, 59 F.4th 1124, 1140-41 (11th Cir. 2023) (quoting *Pennhurst State Sch. & Hosp. v. Halderman*, 451 U.S. 1, 17 (1981)). Here, the proposed rule seeks to impose new requirements without identifying a “clear statement” in the authorizing legislation. See *Adams v. Sch. Bd. of St. Johns Cnty.*, 57 F.4th 791, 815-16 (11th Cir. 2022) (en banc). Moreover, because the proposed rule likely violates the Equal Protection Clause, it will also violate the Spending Clause as an unconstitutional funding condition. See *South Dakota v. Dole*, 483 U.S. 203, 210 (1987) (explaining that the spending power “may not be used to induce the States to engage in activities that would themselves be unconstitutional”).

### III. Proposed Regulatory Action is Inconsistent with the Administrative Procedure Act

- Under the Administrative Procedure Act (APA), an agency action must be “reasonable and reasonably explained.” *FCC v. Prometheus Radio Project*, 141 S. Ct. 1150, 1158 (2021). Given the many policy problems with the proposed rule identified above, the final rule would need to consider and address each of the problems identified above, including the significant reliance interest of States like Florida. *See DHS v. Regents of the Univ. of Cal.*, 140 S. Ct. 1891, 1913 (2020).

### IV. Proposed Regulatory Action Exceeds DOL’s Authority

- A rule violates the APA if it exceeds the agency’s authority. *See* 5 U.S.C. § 706(2)(A), (C). Here, the rule exceeds the core objectives of apprenticeship programs and encroaches on the autonomy of employers and apprenticeship sponsors. Moreover, DOL identifies no statutory grant of authority that would justify such a radical departure from prior practice. *Cf. Utility Air Reg. Grp. v. EPA*, 573 U.S. 302, 324 (2014) (explaining that “[w]hen an agency claims to discover in a long-extant statute an unheralded power to regulate,” courts typically “greet its announcement with a measure of skepticism”).

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On behalf of the State of Florida, we urge the DOL to withdraw the proposed changes to the apprenticeship regulations, as they threaten the successes attained in Florida's apprenticeship programs. This rule raises substantial concerns, including issues of bureaucratic overreach, the DOL exceeding its statutory authority, redefining and repurposing “equal opportunity” to fit the DOL’s current political agenda, and imposing requirements that adversely impact apprenticeship initiatives particularly in its approach to promoting divisive DEIA policies.

We vigorously oppose this rule because it will stifle and impede the incredible success and growth we are experiencing in the State of Florida and harm the individuals who benefit most from our workforce education programs. Preserving the integrity of apprenticeship programs in Florida is paramount and abandoning these proposals is vital to ensure Florida can continue operating its apprenticeship model effectively and successfully, without undue and illegitimate federal interference.

Sincerely,



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Attorney General  
State of Florida



J. Alex Kelly  
Secretary  
FloridaCommerce



Manny Diaz, Jr.  
Commissioner  
Department of Education