



DEPARTMENT OF LABOR

29 CFR Part 29

[Docket No. ETA-2021-0007]

RIN 1205–AC06

Apprenticeship Programs, Labor Standards for Registration

AGENCY: Employment and Training Administration, Labor.

ACTION: Proposed rule; request for comments.

SUMMARY: The U.S. Department of Labor (DOL or the Department) proposes to rescind its regulation regarding Standards Recognition Entities (SREs) of Industry-Recognized Apprenticeship Programs (IRAPs). Specifically, the proposed rule would rescind the regulatory framework for the Department’s recognition of SREs and SREs’ role in recognizing IRAPs, and make necessary conforming changes to the Department’s registered apprenticeship regulations.

DATES: To be ensured consideration, comments must be received on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit written comments electronically by the following method:

- *Federal eRulemaking Portal:* <https://www.regulations.gov>. Follow the instructions on the website for submitting comments. Label all submissions with docket number ETA-2021-0007 and RIN 1205–AC06.

Instructions. Include docket number ETA-2021-0007 in your comments as well as RIN 1205–AC06.

You may submit comments, identified by docket number ETA–2021–0007 and RIN 1205-AC06, by using the Federal eRulemaking portal: <https://www.regulations.gov>.

Follow the website instructions for submitting comments (under “Help” > “How to use Regulations.gov”).

Please be advised that the Department will post all comments received that relate to this proposed rule on <https://www.regulations.gov> without making any change to the comments or redacting any information. The <https://www.regulations.gov> website is the Federal eRulemaking portal, and all comments posted there are available and accessible to the public. Therefore, the Department recommends that commenters remove personal information, such as Social Security numbers, personal addresses, telephone numbers, and email addresses, included in their comments, as such information may become easily available to the public via the <https://www.regulations.gov> website. It is the responsibility of the commenter to safeguard personal information.

FOR FURTHER INFORMATION CONTACT: Heidi Casta, Acting Administrator, Office of Policy Development and Research, U.S. Department of Labor, 200 Constitution Avenue NW, Room N-5641, Washington, DC 20210, Telephone: (202) 693-3700 (voice) (this is not a toll-free number) or 1-800-326-2577 (TDD).

SUPPLEMENTARY INFORMATION:

I. Background

The National Apprenticeship Act of 1937 (NAA), 29 U.S.C. 50, authorizes the Secretary of Labor (Secretary) to: (1) formulate and promote the use of labor standards necessary to safeguard the welfare of apprentices and to encourage their inclusion in apprenticeship contracts; (2) bring together employers and labor for the formulation of programs of apprenticeship; and (3) cooperate with State agencies engaged in the formulation and promotion of standards of apprenticeship. 29 U.S.C. 50. The Department promulgated regulations to implement the NAA at 29 CFR part 30 (equal employment opportunity in apprenticeship) in 1963 and part 29 (labor standards for the registration of apprenticeship programs) in 1977. The part 30 regulations prohibit discrimination in

registered apprenticeship based on race, color, religion, national origin, sex, sexual orientation, age (40 or older), genetic information, and disability, and they require sponsors of registered apprenticeship programs (RAPs) to take affirmative action to provide equal opportunity in such programs. The part 29 regulations set forth labor standards safeguarding the welfare of apprentices, including: prescribing policies and procedures concerning the registration, cancellation, and deregistration of apprenticeship programs; recognizing State Apprenticeship Agencies (SAAs) as Registration Agencies; and matters relating thereto. The Department significantly updated 29 CFR part 29 in 2008 to “increase flexibility, enhance program quality and accountability, and promote apprenticeship opportunity in the 21st century, while continuing to safeguard the welfare of apprentices” (73 FR 64402, Oct. 29, 2008), and updated 29 CFR part 30 in 2016 “to modernize equal employment opportunity regulations” (81 FR 92026, Dec. 19, 2016). These regulations provide the framework for the registered apprenticeship system.

On June 15, 2017, President Trump issued Executive Order (E.O.) 13801, “Expanding Apprenticeships in America” (82 FR 28229), which directed the Secretary to consider issuing regulations that promote the development of IRAPs by third parties. Section 8(b)(iii) of E.O. 13801 also established a Task Force on Apprenticeship Expansion (Task Force) to identify strategies and proposals to promote apprenticeships, to include “the most effective strategies for creating industry-recognized apprenticeships.” Based on E.O. 13801 and the Task Force’s recommendations, the Department issued a new rule entitled “Apprenticeship Programs, Labor Standards for Registration, Amendment of Regulations” (IRAP rule), codified at 29 CFR part 29, subpart B, which established the IRAP system. 85 FR 14294 (Mar. 11, 2020).

The IRAP rule established a process for DOL’s Office of Apprenticeship (OA) Administrator (Administrator) to recognize qualified third-party entities, known as SREs, which would, in turn, evaluate and recognize IRAPs. The IRAP rule set forth the

requirements for third-party entities applying for Departmental recognition as SREs. It also identified certain requirements apprenticeship programs must meet in order to obtain recognition from SREs as IRAPs. The IRAP rule was published on March 11, 2020, and went into effect on May 11, 2020. As of the date of this proposed rule, the Department has recognized 27 SREs, which have, in turn, recognized 175 IRAPs, with 165 of these programs recognized by a single SRE.

On February 17, 2021, President Biden issued E.O. 14016, “Revocation of Executive Order 13801” (86 FR 11089), which in section 2 directed Federal agencies to “promptly consider taking steps to rescind any orders, rules, regulations, guidelines, or policies” implementing E.O. 13801.

Pursuant to E.O. 14016, on February 17, 2021, the Department announced it would be undertaking a review of the IRAP system and as a result suspended the acceptance of new applications to become a recognized SRE and suspended making final determinations for organizations that had already submitted an application to become a recognized SRE.¹ The Department advised that all SREs already approved by the Department and all IRAPs recognized by an SRE could continue to perform their functions as described in the regulation, to include the recognition of new IRAPs.

The Department’s review of the IRAP system and proposed rescission of the IRAP rule has been informed by the Administration’s priority to create jobs “to be filled by diverse, local, well-trained workers who have a choice to join a union” through strengthening RAPs.² The Department is focused on rebuilding the middle class, connecting a diverse workforce to family-sustaining jobs, and playing an active role in

¹ <https://www.dol.gov/newsroom/releases/eta/eta20210217>.

² White House, “Fact Sheet: Biden Administration to Take Steps to Bolster Registered Apprenticeships” (Feb. 17, 2021), available at <https://www.whitehouse.gov/briefing-room/statements-releases/2021/02/17/fact-sheet-biden-administration-to-take-steps-to-bolster-registered-apprenticeships/>.

the rebuilding of the workforce to address the effects of the 2019 Coronavirus Disease pandemic in a manner consistent with its mission to “foster, promote, and develop the welfare of the wage earners, job seekers, and retirees of the United States; improve working conditions; advance opportunities for profitable employment; and assure work-related benefits and rights.”³ As such, the Department plays an important role in ensuring workers are paid a fair wage, provided a safe workplace, and provided the tools and training necessary to access equitable economic opportunity and success. This mission is always important, but even more so as the country emerges and begins to recover from the 2019 Coronavirus Disease pandemic.⁴ The pandemic has led to millions of workers becoming unemployed, and it has exposed vulnerabilities and fissures in our economy as a result of systemic racism and economic inequality, of which the burdens were felt greatest by low-wage earners and communities of color. The Department views the registered apprenticeship system—a system that has benefited thousands of workers and employers throughout its existence—as a far more effective system than IRAPs for delivering on DOL’s mission to help workers access family-sustaining jobs, protect the safety and welfare of apprentices, and reach out to underserved communities.

The IRAP rule, conversely, does not align with the Administration’s and Department’s priorities for several reasons, as discussed in further detail below. Among them is that IRAPs have fewer quality training and worker protection standards than RAPs and, contrary to the conclusions in the IRAP rule, the Department no longer

³ <https://www.dol.gov/general/aboutdol>.

⁴ The IRAP rule was published on March 11, 2020, which is the same day that the World Health Organization declared COVID-19 a pandemic and 2 days before the President declared a national emergency concerning the COVID-19 pandemic. See World Health Organization Director General’s opening remarks at the media briefing on COVID-19 (Mar. 11, 2020), available at <https://www.who.int/director-general/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020>; Proclamation 9994, Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak, 85 FR 15337 (Mar. 13, 2020). The declaration of a national emergency continues as of the date of the publication of this proposed rule. Continuation of the National Emergency Concerning the Coronavirus Disease 2019 (COVID-19) Pandemic, 86 FR 11599 (Feb. 24, 2021).

considers it appropriate or necessary to create an additional apprenticeship model, particularly one that does not guarantee the same protections for apprentices. The IRAP rule also threatens to undermine the robust and successful registered apprenticeship system by creating a duplicative system that lacks sufficient oversight and quality necessary to ensure the Department endorses programs meeting the needs of the American workforce and economy. Although the IRAP rule was premised on the idea that parallel apprenticeship systems were preferable as a means to better grow apprenticeship generally, upon further consideration and review the Department thinks that the existence of two parallel systems overseen by the Department is an inefficient and ineffective use of its resources.

In the IRAP rule, IRAPs were touted as a more flexible, industry-driven model that would enable expansion of apprenticeship into new industries and occupations. However, as explained in greater detail below, the Department has reconsidered this conclusion and now thinks that the IRAP rule is redundant and not necessary to broaden the scope of apprenticeship coverage by industry. In addition, upon review the Department now thinks that the IRAP rule does not provide adequate focus on worker needs and protections, does not ensure adequate program quality standards, does not provide sufficient equal employment opportunity protections for apprentices, and does not provide a proven pathway to family-sustaining jobs.

The Department therefore believes that focusing its efforts and resources on expanding the registered apprenticeship system will more effectively meet the needs of industry and workers alike, and has concluded that the best path forward is to rescind the IRAP rule and focus on further strengthening the successful registered apprenticeship system.

II. The Registered Apprenticeship System is Highly Successful for Industry

For over 80 years, the registered apprenticeship system has met the demands from industry to provide quality work-based training. RAPs combine paid on-the-job learning (OJL) with related instruction to progressively increase workers' skill levels and wages. With this "earn and learn" model, apprentices are employed and earn wages from the first day on the job. Industries that have adopted RAPs as part of their work-based learning models have cited the standards, skillsets, and retention offered by skilled workers associated with RAPs as advantageous to their bottom line. In one survey, nearly three-fourths of surveyed employers stated that registered apprenticeships drove increased worker productivity.⁵ RAPs are a flexible training strategy that can be customized to meet the needs of any business, including allowing employers to partner with workforce partners and educators to develop and apply industry standards to training programs, thereby increasing the quality and productivity of the workforce.

A skilled workforce is foundational to a strong economy, and registered apprenticeship provides a proven avenue by which to deliver much needed talent development to various industry sectors, including as the economy recovers from the disruption cause by the COVID-19 pandemic. Employers have continued to turn to registered apprenticeship to hire and train new employees, with over 221,000 new registered apprentices over the past year across several industries, including cybersecurity, healthcare, advanced manufacturing, transportation, energy, and information technology (IT).⁶

⁵ Urban Institute Research Report, "The Benefits and Challenges of Registered Apprenticeship: The Sponsors' Perspective" (June 12, 2009), available at <https://www.urban.org/research/publication/benefits-and-challenges-registered-apprenticeship-sponsors-perspective>.

⁶ The 25 federally administered States and 18 federally recognized SAAs use the Employment and Training Administration's Registered Apprenticeship Partners Information Database System (RAPIDS) to provide individual apprentice and sponsor data. These data represent registered apprenticeship national results for Fiscal Year (FY) 2020 (Oct. 1, 2019–Sept. 30, 2020), as reported by these entities, and are available at <https://www.dol.gov/agencies/eta/apprenticeship/about/statistics/2020>.

This growth is not an anomaly. Since its establishment, the registered apprenticeship system has, with few exceptions, shown strong growth. The past 5 years saw the creation of over 13,500 new RAPs. In 2020 alone, there were nearly 26,000 RAPs active across the nation, and 3,143 new apprenticeship programs were established nationwide, representing 73-percent growth from 2009 levels.⁷ Despite the COVID-19 pandemic, 2020 represents the third-highest year of new RAP development over the past decade. As a result of these programs, more than 221,000 new workers became apprentices in 2020. In total, there were over 636,000 apprentices across the Nation who were obtaining skills while earning the wages they need to build financial security, and over 80,000 apprentices have successfully completed their program and received a certificate of completion recognized by industries across the Nation.⁸ Apprentices who have successfully completed their program and received their certificate of completion have high career retention rates, with over 94 percent of graduates retaining employment.⁹ The continued, sustained growth of registered apprenticeship demonstrates it remains a trusted and successful framework that industry can leverage to develop and retain a skilled workforce.

The Department expects this broad-based growth to continue as the registered apprenticeship system is an important part of the Administration's workforce development strategy, including its COVID-19 recovery strategy in which registered apprenticeship can provide a bridge to businesses to an economic recovery. Thus, registered apprenticeship has been, and will continue to be, an important long-term education and talent development strategy for all workers, and in turn for industry.

⁷ OA 2020 Data and Statistics, available at <https://www.dol.gov/agencies/eta/apprenticeship/about/statistics/2020>.

⁸ OA 2020 Data and Statistics, available at <https://www.dol.gov/agencies/eta/apprenticeship/about/statistics/2020>.

⁹ OA Career Seeker Fact Sheet (Sept. 2020), available at https://www.apprenticeship.gov/sites/default/files/Career_Seeker_Fact_Sheet.pdf.

III. The Registered Apprenticeship System is Highly Successful for Workers

In addition to the demonstrated success of the registered apprenticeship system as a workforce training model for industry, it has proven to be highly successful and beneficial to workers because of its emphasis on both high-quality training and apprentice safety and welfare. Registered apprenticeship is designed to ensure high-quality training through mentorship, OJL, and related instruction while also prioritizing safety, wage progression, and equal employment opportunity for apprentices. Registered apprenticeships follow federally approved industry standards for workplaces, and programs must abide by set ratios for supervision to further enhance safety in the program. During training, apprentices are guaranteed progressive wage increases, and research shows that Registered Apprenticeship program completers earn over \$300,000 (including benefits) more over their lifetimes as compared with individuals who do not complete a registered apprenticeship.¹⁰ Further, the Department has taken significant steps to increase the participation of women and individuals from underrepresented groups through the robust requirements in 29 CFR part 30. With registered apprenticeship, there is also an added level of accountability because the Department can exercise its enforcement authority to intervene and ensure employers provide industry-established prevailing wages, ensure stringent safety standards are in place, and monitor program quality to protect workers.

In contrast, the IRAP model was designed in a way that does not incorporate these same benefits and protections. IRAPs do not ensure that programs uniformly produce a

¹⁰ See, e.g., Mathematica Policy Research, “An Effectiveness Assessment and Cost-Benefit Analysis of Registered Apprenticeship in 10 States: Final Report” (July 25, 2012), https://wdr.doleta.gov/research/FullText_Documents/ETAOP_2012_10.pdf. The study cautions against interpreting its results, which do not control for unobservable skill or motivation, as having conclusively identified the effects of registered apprenticeships on earnings. Moreover, the estimates do not represent increments between registered apprenticeships and IRAPs (the latter not having been implemented at the time the study was conducted).

high quality of training recognized across the Nation, are not designed to promote and advance diversity in the apprenticeship system, and do not include the same apprentice safety and welfare requirements as the RAP model. The IRAP model was designed as a hands-off approach, requiring SREs to play the primary role in program monitoring and intervention. The Department no longer views this as a reasonable or effective alternative to the standards and oversight that are the hallmarks of the registered apprenticeship system. While SREs are responsible for establishing and enforcing the individual standards of the programs under their purview, each SRE may have differing standards and views on acceptable levels for performance. For example, IRAPs' lack of uniform requirements regarding a progressively increasing wage, enhanced safety standards, and affirmative action goals mean there is no uniformity across different IRAPs and SREs. This is fundamentally inconsistent with the Department's goal of expanding quality apprenticeships in a manner that both ensures a high level of quality while also retaining industry input and flexibility to adapt the apprenticeship model to different industries and occupations. RAPs—which can be, and have been, adapted to different occupations and are recognized for their high quality and effective worker protections—have proven effective in striking an appropriate balance between the structure necessary to ensure high-quality training and the flexibility necessary to adapt the apprenticeship model to different industries and occupations. Further, the Department's ability to intervene to address disparities in quality and worker protections across IRAPs is limited because the Department does not have the ability to directly monitor or oversee IRAPs, and such disparities may cause confusion for apprentices and promote inequitable outcomes among program participants.

A. Registered Apprenticeships Uniformly Provide More Rigorous, Higher Quality Training

As described further below, registered apprenticeships must adhere to rigorous training requirements, to include OJL and related instruction. When compared to registered apprenticeships, IRAPs do not have the same standards for minimum skill level or competency baselines in their respective occupations.

1. On-the-Job Learning

A structured OJL model is a hallmark of a high-quality apprenticeship program, as this framework provides standardized evaluation of apprentice proficiency using a time-based model, competency-based model, or a hybrid of both, with benchmarks that ensure mastery in the apprentice's respective occupation and flexibility in the approach used that ensures apprenticeships can be developed and customized to a variety of occupations. Registered apprenticeships generally require a minimum of 2,000 hours (or 1 year) of OJL for time-based and hybrid programs. Registered apprenticeships can also be measured against skills-based competencies, and the amount of OJL typically amounts to 1 year but may take more or less time depending on the individual. The standardized approach to OJL employed in registered apprenticeships ensures apprentices have the necessary time, within a structured framework, to apply their skills and training in practice and apprentices meet minimum skill level or competency baselines before entering the workforce. Further, registered apprenticeships are assessed based, in part, on whether OJL is available for all phases of an apprentice's training. Because OJL is a critical component for the apprentice's learning experience, the Department considers a structured mentorship requirement as a strength for high-quality apprenticeship programs. Registered apprenticeships pair apprentices with experienced employees (also referred to as Journeyworkers) who have already mastered the skills and competencies associated with the occupation such that these individuals can mentor apprentices with on-the-job guidance and direction that ensures safety and quality training.

In contrast, IRAPs are not required to have a robust, structured OJL model. Instead, IRAPs need only follow the written training plan established by the SRE—a plan that has no requirements other than that it be formulated using consensus-based competency standards. Because not all IRAPs provide the same structured, standardized framework for OJL as RAPs, the quality of training can vary across SREs and, in turn, IRAPs. As a result, apprentices participating in IRAPs may lack access to rigorous, structured OJL—a critical component of a high-quality apprenticeship program because it equips registered apprentices to enter the workforce. Although the training provisions of the IRAP rule were based on the assumption that SREs are in the best position to establish OJL frameworks, the Department now views this lack of uniformity in OJL as inconsistent with the goal of growing a highly skilled workforce through apprenticeship as it could too easily lead to apprenticeship programs that do not provide sufficient training to apprentices. The Department thinks that the existing OJL models available under the registered apprenticeship system—which can be adapted to different occupations and are recognized for their high quality and effective worker protections—have proven effective in striking an appropriate balance between the structure necessary to ensure high-quality training and the flexibility necessary to adapt the apprenticeship model to different industries and occupations.

2. Related Instruction

As important as OJL is the related instruction¹¹ component of an apprenticeship program. By requiring related instruction as part of registered apprenticeship, the Department ensures employers are equipping apprentices with the theoretical and

¹¹ “Related instruction” is an organized and systematic form of instruction designed to provide the apprentice with the knowledge of the theoretical and technical subjects related to the apprentice’s occupation. Such instruction may be given in a classroom, through occupational or industrial courses, or by correspondence courses of equivalent value, electronic media, or other forms of self-study approved by the Registration Agency. 29 CFR 29.2.

technical knowledge in subjects related to their respective occupations. This is essential to a high-quality apprenticeship program, and it is the Department's priority that minimum related instruction standards are integrated into the apprenticeship programs it recognizes. A minimum of 144 hours of related instruction is recommended for registered apprenticeships, and recognizing the benefit of robust related instruction, most registered apprenticeships exceed the 144-hour recommendation. This approach ensures apprentices uniformly receive meaningful and substantive knowledge in their respective occupations, creating a well-rounded training experience that provides the educational foundation necessary for success in practical settings, while also retaining flexibility based on different industries and occupations that may require varying amounts of related instruction.

In contrast, the IRAP requirements lack standards on minimum related instruction hours, and do not articulate how SREs monitor or evaluate related instruction. As a matter of design, apprentices in an IRAP may lack access to this key component of a high-quality apprenticeship program and apprentices and the program therefore may not provide sufficient educational experiences for the foundational knowledge that is necessary in their occupations. In the IRAP rule, the Department viewed SREs as best-placed to develop the standards and frameworks on related instruction, but it no longer finds this approach consistent with the goal of expanding high-quality apprenticeships. Instead the Department finds that the conspicuous absence of minimum standards and an articulated approach to evaluation for related instruction in IRAPs means the Department cannot uniformly ensure apprentices in those programs receive the theoretical and technical knowledge necessary in their respective occupations, which is a hallmark of a high-quality apprenticeship program and necessary to developing a highly skilled workforce. Accordingly, the Department cannot ensure IRAPs are providing the quality

of related instruction necessary to ensure apprentices are competent in these occupations, which conflicts with the Department’s goal of expanding high-quality apprenticeships.

B. Registered Apprenticeships Provide Better Safety and Welfare Protections

The importance of apprentice safety and welfare cannot be overstated. As discussed further below, the registered apprenticeship system includes requirements related to safety, equal employment, progressive wages, and other worker protections that provide apprentices with meaningful employment opportunities while also guaranteeing rights and protections on the job.

In contrast, the requirements of the IRAP rule fall short in these areas. As discussed further below, the requirements include basic compliance with existing laws but do not create additional obligations that focus on safeguarding the welfare of apprentices, especially with respect to progressively increasing wages, safety requirements, and equal employment opportunity (EEO). The IRAP rule also dilutes the Department’s role in overseeing apprenticeships, tasking SREs with this oversight role instead and retaining only a minimal role in overseeing the SREs.

1. Workplace Safety

Enhanced safety standards are an essential element of a successful apprenticeship program. While the additional requirements of RAPs are designed to keep apprentices safe, this does not mean each RAP requires the same training or same safety precautions—these are workplace- and industry-specific requirements within the framework of the registered apprenticeship system.

RAPs require several safety protections designed to both teach apprentices how to work safely within their occupation and create safe workplaces for apprentices. RAPs must specify a numeric ratio of apprentices to Journeyworkers “consistent with proper supervision, training, safety, and continuity of employment.” 29 CFR 29.5(b)(7). They must also have “[a]dequate and safe equipment and facilities for training and

supervision” in addition to “safety training for apprentices on the job and in related instruction.” 29 CFR 29.5(b)(9). Though broad, these safety requirements focus on both physical workplace safety and safety through training and mentorship. Further, they are meant to protect the safety of apprentices in each RAP by being tailored to the specific conditions in which those apprentices will be working and learning.

In contrast, IRAPs are not necessarily covered by enhanced safety standards beyond generally applicable Federal, State, and local safety laws and regulations and any additional safety requirements of the SRE. While a SRE may require an IRAP to have stricter, more tailored safety standards than required by applicable law, this discretionary requirement is insufficient to protect the safety of apprentices who, by definition, are being trained on the job and therefore would benefit from additional workplace protections, particularly for less skilled workers training in occupations that pose a higher risk of injury or death. Although the safety provisions of the IRAP rule were based on the assumptions that SREs would be able to better determine the safety standards relevant to their IRAPs and that compliance with generally applicable workplace safety standards was a sufficient baseline requirement, the Department now disagrees with leaving such a determination to the SRE, especially without the important safety parameters requirements of the registered apprenticeship system. The registered apprenticeship regulations require a ratio of apprentices to journeyworkers, safe equipment and facilities for training and supervision, and the provision of safety training on the job and in related instruction. However, the registered apprenticeship regulations do not prescribe how to meet these requirements, leaving sufficient flexibility for implementation. This ensures a process for taking into consideration both industry needs and apprentice safety that is not present in the IRAP rule. The Department views this as the more appropriate approach given that apprentices are learning on the job and therefore benefit from enhanced training and protections.

2. *Progressive Wages*

It is a priority of the Department to grow opportunities to help workers access family-sustaining jobs. Registered apprenticeship's earn-as-you-learn model accomplishes this priority by providing for progressively increasing wages for apprentices as they progress in their apprenticeship experience, learning, and skills. In registered apprenticeship, the graduated scale of wages and any compensation for related instruction is set forth in the apprenticeship agreement required for each apprentice. Not only is this type of wage progression guaranteed per the terms of the apprenticeship agreement, but it also serves as an important incentive to attract apprentices and sets them on a path to potential lifetime earnings (including benefits) that, according to research, exceed by more than \$300,000 those who do not complete a registered apprenticeship.¹²

In contrast, there is no such guaranteed wage progression for apprentices of IRAPs—an apprentice could be earning the same wages over the course of the apprenticeship, and any wage progression is solely at the discretion of the IRAP. Because the IRAP regulation is silent on one of the most valuable features of apprenticeship to apprentices, there is no requirement for SREs to play any role in an IRAP's wage-setting, other than to affirm compliance with applicable laws, such as minimum wage. Although the IRAP rule is premised upon the assumption that market forces and apprentice choice will drive wage decisions, the Department notes that RAP wages are also influenced by market forces and apprentice choice, including an apprentice's option to enroll in a RAP where a progressive wage is required. The important difference is the prioritization of

¹² See, e.g., Mathematica Policy Research, "An Effectiveness Assessment and Cost-Benefit Analysis of Registered Apprenticeship in 10 States: Final Report" (July 25, 2012), https://wdr.doleta.gov/research/FullText_Documents/ETAOP_2012_10.pdf. The study cautions against interpreting its results, which do not control for unobservable skill or motivation, as having conclusively identified the effects of registered apprenticeships on earnings. Moreover, the estimates do not represent increments between registered apprenticeships and IRAPs (the latter not having been implemented at the time the study was conducted).

wage increases commensurate with skill increases, which is in line with the Department's priorities to help workers access family-sustaining jobs and the idea that apprentices should be paid a wage commensurate with the skills they have attained.

3. Equal Employment Opportunity

The Department views equity and equal opportunity as essential to the success of an apprenticeship program, and it notes its responsibility under E.O. 13985, "Advancing Racial Equity and Support for Underserved Communities Through the Federal Government," 86 FR 7009 (Jan. 20, 2021), to advance equity, civil rights, racial justice, and equal opportunity. Such a responsibility necessitates action, intentional infusion of equity into workforce development programs, and critical thinking about how to reduce barriers to workforce entry. The registered apprenticeship system's 29 CFR part 30 regulations acknowledge that mere passive nondiscrimination is insufficient and require affirmative steps to promote diversity and equity in apprenticeship. 29 CFR 30.3, 30.4. Accordingly, the registered apprenticeship system has structured and specific requirements regarding equal opportunity, anti-harassment, affirmative action, utilization analyses and goals, targeted recruitment, outreach and retention, compliance, and enforcement. Through the equal opportunity regulations at 29 CFR part 30, the registered apprenticeship system provides enhanced opportunities for apprentices to access and succeed in RAPs and gives sponsors tools to reduce barriers to equal opportunity within their programs.

In contrast, the IRAP model simply requires programs to affirm their adherence to applicable Federal, State, and local laws and regulations pertaining to EEO. 29 CFR 29.22(a)(4). Requiring IRAPs to do the bare minimum, especially when a model framework for EEO in apprenticeship is already in place in 29 CFR part 30, is a disservice to apprentices and apprenticeship programs, and contrary to the goals of the

Department to promote equity in apprenticeship. Although the SREs do have minimal additional responsibilities to develop policies requiring IRAP adherence to EEO law, facilitating such adherence, and reflecting comprehensive outreach strategies to reach diverse populations that may participate in IRAPs, the IRAP rule lacks specific requirements and provides no framework for equity principles or goals. 29 CFR 29.22(i). The requirements of the IRAP model fail to ensure meaningful action will be taken to expand equal employment opportunity in apprenticeship.

4. Worker Empowerment

The Department generally thinks the relationship between workers and employers must be balanced so workers have a voice in ensuring fair and safe work conditions. For registered apprentices, there are many avenues to realize worker empowerment. The apprenticeship agreement plays a crucial role in articulating the standards of apprenticeship and the terms and conditions of employment. The registered apprenticeship agreement must contain specific terms, including a statement of the occupation for which the apprentice is training, the duration of the apprenticeship, the number of hours in the program to include related instruction hours, the schedule of work processes, the graduated scale of wages to be paid, the standards of the apprenticeship program, and an EEO statement. 29 CFR 29.7. The registered apprenticeship agreement must also contain information about dispute resolution should a controversy or difference arise out of the agreement, *id.*, and must be accepted and recorded either by OA or an SAA. 29 CFR 29.2. The requirement that registered apprenticeship agreements include specific terms ensures the apprentices have knowledge of their rights and responsibilities and empowers them to be informed participants in the employment relationship.

Although IRAPs also contain a written apprenticeship agreement requirement, each IRAP may determine which terms and conditions to include as long as the agreement is consistent with the SRE's requirements. Each SRE may determine its own

requirements as it sees fit, potentially creating a wide variety in apprenticeship agreements across SREs and no requirement for a uniform set of terms and conditions for apprentices. There is also no requirement to submit the agreement to be accepted or recorded by the SRE. Without parameters, this requirement contains little more than an honor system to ensure apprentices have meaningful information about the terms and conditions of their apprenticeship and how they can voice their concerns.

One of the key justifications of the 2020 rule was that the IRAP model would help address a purported “skills gap” in the labor market. While providing training to job seekers is a key component to addressing any “skills gaps” or “skills mismatches,” evidence suggests that training alone is not the answer. Employer investments in workforce development, competitive and rising wages to attract and retain workers, commitments to opportunity and diversity, and worker empowerment are key factors to addressing industry labor needs.^{13,14} The well-established RAP model—with its role in and focus on employer investment in training, specific equal employment opportunity recruitment requirements and protections for apprentices, as well as its requirement that a progressive wage (beyond the minimum wage) be paid to apprentices during their apprenticeship reflecting their acquisition of occupational and workplace competencies, and worker empowerment and safety provisions—provides a more promising and effective framework for addressing and closing persistent inefficiencies in the labor market.

¹³ Annelies Goger and Luther Jackson, “The labor market doesn’t have a ‘skills gap’—it has an opportunity gap,” Sept. 9, 2020, <https://www.brookings.edu/blog/the-avenue/2020/09/09/the-labor-market-doesnt-have-a-skills-gap-it-has-an-opportunity-gap/>

¹⁴ Kate Bahn, “‘Skills gap’ arguments overlook collective bargaining and low minimum wages,” May 9, 2019, <https://equitablegrowth.org/skills-gap-arguments-overlook-collective-bargaining-and-low-minimum-wages/>

Conversely, the very deficiencies inherent to the IRAP model discussed above—workplace safety, progressive wages, equal employment opportunity, and worker empowerment—severely reduce the ability of IRAPs to address any current or future labor shortages that might exist. Job quality is key to recruiting, training, and retaining workers in a specific occupation or industry.^{15,16} Thus, the lack of requirements for IRAPs to address these critical issues limits their ability to help fulfill labor market demands.

IV. The IRAP System is Redundant of the Registered Apprenticeship System

One of the main justifications behind the development of IRAPs was the necessity to grow and expand apprenticeship into industries and occupations that have traditionally not used the registered apprenticeship system because of the insufficient flexibility in program requirements within RAPs to meet the varying needs of different industries and the administrative burden posed by these requirements. However, the premise that registered apprenticeship is too inflexible to meet the needs of industry is fundamentally flawed and contrary to the above-mentioned demonstrated success of registered apprenticeship for industry and workers and its continued growth in expanding into new industries and occupations. Although registered apprenticeship has historically been associated with the construction sector, it has successfully been adopted across a diverse range of industry sectors, with significant growth in recent years.

The Department has used a variety of strategies to drive registered apprenticeship growth beyond those industries historically associated with registered apprenticeship.

¹⁵ Livia Y. Lam, “A Multiple Measures Approach to Workforce Equity: How Improving Job Quality in Workforce Accountability Can Help Close Equity Gaps,” Center for American Progress, October 20, 2020, at: <https://www.americanprogress.org/issues/economy/reports/2020/10/20/491998/multiple-measures-approach-workforce-equity/>

¹⁶ Society for Human Resource Management (SHRM), “Managing for Employee Retention,” 2017, at: <https://www.shrm.org/resourcesandtools/tools-and-samples/toolkits/pages/managingforemployeeretention.aspx>

One strategy driving this expansion and growth is the Industry Intermediaries concept, where the Department has used contracted entities with specific industry expertise to further the Department's efforts to expand registered apprenticeship opportunities in high-growth sectors. From 2016 to 2020, Department-contracted Industry Intermediaries created 271 new RAPs in 232 high-demand occupations for a total of 867 employers. Of the occupations developed under these contracts, 37 percent were in the manufacturing sector, 15 percent were in the healthcare sector, and 15 percent were in the transportation sector.¹⁷

Another strategy that has helped expand registered apprenticeship is the Department's 2015 American Apprenticeship Initiative (AAI), which aimed to register new apprentices in high-growth and high-tech industries, such as health care, IT, and advanced manufacturing, especially from populations traditionally underrepresented in apprenticeship, including women and people of color. AAI grantees, which included labor unions, industry associations, local workforce boards and nonprofit organizations, have successfully expanded the RAP model into new industries and extended to more diverse populations. As of June 2020, the 44 AAI grantees initiated 2,019 new programs and registered 24,675 apprentices, of which 14,486 were from underrepresented populations.¹⁸ This use of targeted investments and intermediaries to extend registered apprenticeship to new industry sectors and occupations, as well as underrepresented populations, undermines the rationale for the IRAP system and underscores the redundant and duplicative aspect of the IRAP model.

¹⁷ National Industry and Equity Apprenticeship Intermediaries Fact Sheet, "Advancing Registered Apprenticeship for Business and Workers in the U.S." (Jan. 19, 2021), available at <https://www.apprenticeship.gov/sites/default/files/Industry-and-Equity-Intermediary-Accomplishment-Fact-Sheet.pdf>.

¹⁸ National Governors' Association, "Registered Apprenticeship Reimagined: Lessons Learned From the American Apprenticeship Initiative" (Nov. 9, 2020), available at <https://www.nga.org/center/publications/registered-apprenticeship-reimagined>.

More broadly, the expansion of registered apprenticeship into “non-traditional” industry sectors where IRAPs are operating and for which SREs have been certified demonstrates that the IRAP effort is superfluous and not a good use of government resources that could support the proven activities already underway. Based on Federal program data from 2019 and 2020, which were unavailable at the time the IRAP rule was issued, the health care and social assistance industry sector saw an 18-percent rise in the number of active RAPs.¹⁹ Similarly, the information industry sector saw a 31-percent increase in the number of active RAPs during this same period, while the manufacturing industry sector saw a 14-percent increase in the number of active RAPs, as well. Within the same time frame, equally impressive growth has taken place in the following industry sectors not historically associated with the registered apprenticeship system: accommodation and food services (31 percent); arts, entertainment and recreation (45 percent); finance and insurance (39 percent); professional, scientific and technical services (41 percent) and transportation and warehousing (19 percent).²⁰ Based on the most recent data, and in conjunction with historical data about registered apprenticeship’s steady growth, the Department is departing from the IRAP rule’s assertion that IRAPs are necessary for expansion of apprenticeship into non-traditional occupations. Instead, the Department is convinced that the registered apprenticeship system is capable of effectively and efficiently expanding into non-traditional occupations, while at the same time maintaining high-quality labor standards. This expansion demonstrates that the design of the registered apprenticeship system is capable of adapting successfully to a wide range of industry needs and that registered apprenticeship’s requirements on

¹⁹ OA Data and Statistics, available at <https://www.dol.gov/agencies/eta/apprenticeship/about/statistics/2020>.

²⁰ Federal Data: Apprenticeship Statistics by Industry for FY 2019 and FY 2020, available at <https://www.dol.gov/agencies/eta/apprenticeship/about/statistics/2019> and <https://www.dol.gov/agencies/eta/apprenticeship/about/statistics/2020>.

industry set forth important parameters for the successful growth of apprenticeship programs without being overly burdensome.

The Department's actual experience administering the IRAP system highlights the duplicative nature of the two systems. There is clear overlap between the occupations that SREs were approved to recognize IRAPs in and the occupations the Department has determined are appropriate for the registered apprenticeship system. A majority of the occupations in the IRAP system are occupations that have already been deemed as apprenticeable under the registered apprenticeship system. Similarly, the top five occupations in the IRAP system (machinist; maintenance workers, machinery; manufacturing production technicians; information security analysts; and web developers) all are currently regarded as apprenticeable occupations and used within the registered apprenticeship system. Moreover, comparing the approved occupations for IRAP SREs with currently apprenticeable occupations in registered apprenticeship shows a majority of the top 20 occupations recognized by industry for training under the IRAP model have been determined suitable under the registered apprenticeship system.²¹ The concurrent recognition of these occupations as both IRAPs and registered apprenticeship occupations is likely to lead to confusion and disparate outcomes, particularly as it allows a single entity to simultaneously operate as an SRE or IRAP and sponsor a RAP, with the IRAP allowed to provide lower quality training and fewer worker protections. This result is unquestionably a poor use of government resources because it imposes duplicative costs to the government to support a redundant program that may not be advancing the Department's mission and goals for apprenticeship. Furthermore, it is likely to sow

²¹ OA Registered Apprenticeship Occupations, available at <https://www.apprenticeship.gov/apprenticeship-occupations>; OA Recognized Standards Recognition Entities, available at <https://www.apprenticeship.gov/employers/industry-recognized-apprenticeship-program/approved-standards-recognition-entities>.

confusion among prospective apprentices and employers, who will struggle to understand how they should interact with these duplicative systems.

V. The Effect of the Department's Proposed Rescission of the IRAP Rule

As discussed above, the Department has determined that the establishment of a duplicative and parallel IRAP system will not ensure access to high-quality job skills and training to American workers, while at the same time safeguarding the welfare of apprentices. Accordingly, the Department believes that the IRAP system is not a prudent use of Government resources, would diminish the quality and coherence of American apprenticeship efforts, and would not allow the Department to ensure that employers, prospective apprentices, or the general public are effectively served. The Department also determined that amending the IRAP rule would not solve any of these issues. As discussed in detail above, registered apprenticeship provides for apprentice safety and welfare and continues to grow apprenticeship opportunities without sacrificing crucial requirements for quality or worker protections. Amending the IRAP rule to align with the Department's goals and priorities so that it possesses more of the qualities of the registered apprenticeship system would not serve the interests of employers and apprentices given that they already have access to the registered apprenticeship system. Further, the Department can better utilize its resources and provide better service to the public by supporting and strengthening one robust apprenticeship system that has been designed to incorporate the needs of both industry and the workforce and has a demonstrated record of successfully doing so.

The Department acknowledges this proposal would, if finalized, immediately affect current SREs, IRAPs, and any apprentices participating in IRAPs. The Department understands SREs devoted resources to developing their applications and infrastructure necessary to effectively operate for a period of 5 years, and IRAPs and their apprentices may have been drawn to the program given the indication of approval from the

Department. However, the Department thinks the impact of this proposal is limited given the total number of SREs and IRAPs. Over the 9-month period between May 2020, when the IRAP rule became effective, and February 2021, when the Department paused the consideration of SRE applications, the Department received a total of 45 SRE applications, including from two organizations that resubmitted applications. Of these applications, the Department ultimately recognized 27 SREs.²² In turn, as of September 30, 2021, the recognized SREs have only recognized a reported 175 IRAPs, with the vast majority recognized by a single SRE.²³ With respect to the potential impact of this proposed rule on apprentices that are or may become enrolled in IRAPs, because apprenticeship programs may operate even without DOL recognition, IRAP apprentices would not be precluded under this proposal from continuing their participation in such training programs. Alternatively, apprentices enrolled in IRAPs may elect instead to enroll in a RAP that provides training for their desired occupation; in such instances, they may qualify for advanced standing or credit in those registered programs.

The Department considered other options with respect to the currently recognized SREs or IRAPs, including a proposed “sunset” period during which SREs and IRAPs would operate for a set number of years before the Department ceased its recognition, and recasting IRAPs as Certified Work-Based Learning. However, in light of the concerns discussed above, the Department believes that rescinding the regulation, including the immediate cessation of recognition for currently recognized SREs or IRAPs, is the best approach.

²² Applications Received by the Department of Labor for Standards Recognition Entities. Approved SREs published at <https://www.apprenticeship.gov/employers/industry-recognized-apprenticeship-program/approved-standards-recognition-entities>.

²³ According to the IRAP Program and Performance Reporting System, as of September 30, 2021, of the 175 IRAPs approved, 165 were recognized by the same SRE.

If this proposal is finalized, the Department will provide technical assistance and support to SREs or IRAPs who are interested in becoming program sponsors or intermediaries under the registered apprenticeship system. Similarly, as a component of the Department's technical assistance to SREs, the Department will provide SREs with information and resources the SREs can share with any IRAP apprentices who may seek placement in a RAP.

Although the Department recognizes that immediate rescission of the rule, if finalized, will likely have minimal impact, the Department seeks comments on how to address the effects of the proposed immediate cessation of recognition on SREs, IRAPs, and IRAP apprentices, including comments on the alternatives considered, but ultimately not adopted, by the Department.

VI. Regulatory Analysis and Review

A. Executive Orders 12866 (Regulatory Planning and Review) and 13563 (Improving Regulation and Regulatory Review)

Under E.O. 12866, the Office of Management and Budget's (OMB) Office of Information and Regulatory Affairs determines whether a regulatory action is significant and, therefore, subject to the requirements of the E.O. and review by OMB. See 58 FR 51735 (Oct. 4, 1993). Section 3(f) of E.O. 12866 defines a "significant regulatory action" as an action that is likely to result in a rule that: (1) has an annual effect on the economy of \$100 million or more, or adversely affects in a material way a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also referred to as economically significant); (2) creates serious inconsistency or otherwise interferes with an action taken or planned by another agency; (3) materially alters the budgetary impacts of entitlement grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) raises novel legal or policy issues arising out of legal mandates, the President's priorities, or the

principles set forth in the E.O. *Id.* This proposed rule is an economically significant regulatory action under section 3(f) of E.O. 12866.

E.O. 13563 directs agencies to propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs; the regulation is tailored to impose the least burden on society, consistent with achieving the regulatory objectives; and in choosing among alternative regulatory approaches, the agency has selected those approaches that maximize net benefits. E.O. 13563 recognizes that some benefits are difficult to quantify and provides that, where appropriate and permitted by law, agencies may consider and discuss qualitatively values that are difficult or impossible to quantify, including equity, human dignity, fairness, and distributive impacts.

1. Preliminary Economic Analysis

E.O. 14016, “Revocation of Executive Order 13801,” instructed the Director of OMB and the heads of executive departments and agencies to “promptly consider taking steps to rescind any orders, rules, regulations, guidelines, or policies, or portions thereof, implementing or enforcing” E.O. 13801. Accordingly, the Department identified for review the IRAP rule published on March 11, 2020. The Department is issuing this proposed rule because the Department has determined that a single apprenticeship system, namely, the registered apprenticeship system, would provide clearer messaging and more consistent outcomes than two parallel apprenticeship systems that would likely lead to disparate outcomes and incur duplicative costs.

In accordance with the regulatory analysis guidance articulated in OMB Circular A-4 and consistent with the Department’s practices in previous rulemakings, this regulatory analysis focuses on the likely consequences of the proposed rule. The Department anticipates that the proposed rule would result in cost savings for SREs and IRAPs since they would no longer need to comply with the provisions of the March 2020 rule.

The Department has estimated the cost savings of the proposed rule relative to the existing baseline (i.e., 27 SREs and 175 IRAPs). The analysis covers 10 years to ensure it captures the major cost savings that are likely to accrue over time. The Department expresses the quantifiable impacts in 2020 dollars and uses discount rates of 3 and 7 percent, pursuant to OMB Circular A-4. The Department also considered an alternative baseline in which the Department's February 17th suspension of consideration of SRE applications was temporary and would be removed. That analysis is discussed qualitatively in the Total Cost Savings section below.

a. Number of SREs, IRAPs, and Apprentices

To calculate the annual cost savings, the Department first needed to estimate the number of SREs and IRAPs over the 10-year analysis period. The Department used the number of SREs (27) and the number of IRAPs (175) as of September 30, 2021, for this analysis.

The Department does not have data on the number of apprentices per IRAP because that information is not due from SREs until 45 days after the end of FY 2021, which will be November 15, 2021. One calculation in the March 2020 rule was based on the number of apprentices: IRAPs' preparation and signing of written apprenticeship agreements, which was estimated at 10 minutes per apprentice. Given the lack of data on the number of apprentices, this cost savings estimate should be emphasized as preliminary: if there are three apprentices per IRAP, which is the median number per RAP, and signing the written apprenticeship agreement requires 10 minutes per apprentice, then $175 \text{ IRAPs} \times 3 \text{ apprentices} \times 10 \text{ minutes} \times \$121.08 \text{ hourly compensation}$ adds \$10,806 per year, which would increase the cost savings estimate from \$9.1 million (explained below) to \$9.2 million over 10 years.

b. Compensation Rates

The compensation rates used to quantify the cost savings of the proposed rule are based on the compensation rates in the IRAP rule published on March 11, 2020. The Department updated the compensation rates with 2020 data. The Department anticipates that the bulk of the workload for private sector workers would have been performed by employees in occupations similar to those associated with the following Standard Occupational Classification (SOC) codes: SOC 11–3131 (Training and Development Managers) and SOC 43–0000 (Office and Administrative Support Occupations).

According to the U.S. Bureau of Labor Statistics (BLS), the mean hourly wage rate for Training and Development Managers in May 2020 was \$60.54.²⁴ For this analysis, the Department used a fringe benefits rate of 46 percent²⁵ and an overhead rate of 54 percent,²⁶ resulting in a fully loaded hourly compensation rate for Training and Development Managers of \$121.08 [= \$60.54 + (\$60.54 × 0.46) + (\$60.54 × 0.54)].

According to BLS, the mean hourly wage rate for Office and Administrative Support Occupations in May 2020 was \$20.38.²⁷ The Department used a fringe benefits rate of 46 percent and an overhead rate of 54 percent, resulting in a fully loaded hourly compensation rate for Office and Administrative Support Occupations of \$40.76 [= \$20.38 + (\$20.38 × 0.46) + (\$20.38 × 0.54)].

²⁴ BLS, “Occupational Employment and Wages, May 2020,” available at <https://www.bls.gov/oes/current/oes113131.htm>.

²⁵ BLS, “Employer Costs for Employee Compensation” (ECEC), available at <https://www.bls.gov/ncs/data.htm>. Wages and salaries averaged \$26.22 per hour worked in 2020, while benefit costs averaged \$11.99, which is a benefits rate of 46 percent.

²⁶ U.S. Department of Health and Human Services (HHS), “Guidelines for Regulatory Impact Analysis” (2016), available at https://aspe.hhs.gov/system/files/pdf/242926/HHS_RIAGuidance.pdf. In its guidelines, HHS states, as “an interim default, while HHS conducts more research, analysts should assume overhead costs (including benefits) are equal to 100 percent of pre-tax wages.” HHS explains that 100 percent is roughly the midpoint between 46 and 150 percent, with 46 percent based on ECEC data that suggest benefits average 46 percent of wages and salaries, and 150 percent based on the private sector “rule of thumb” that fringe benefits plus overhead equal 150 percent of wages. To isolate the overhead costs from HHS’s 100-percent assumption, the Department subtracted the 46-percent benefits rate that HHS references, resulting in an overhead rate of approximately 54 percent.

²⁷ BLS, “Occupational Employment and Wages, May 2020,” available at <https://www.bls.gov/oes/current/oes430000.htm>.

The Department estimated the compensation rate for a Program Analyst in OA using the midpoint (Step 5) for Grade 13 of the General Schedule, which is \$55.75 in the Washington, D.C., locality area.²⁸ The Department used a fringe benefits rate of 69 percent²⁹ and an overhead rate of 54 percent, resulting in a fully loaded hourly compensation rate for Program Analysts of \$124.32 [= \$55.75 + (\$55.75 × 0.69) + (\$55.75 × 0.54)].

c. Time Estimates

The hourly time burdens used to quantify the cost savings of the proposed rule are based on the Department's time estimates in the IRAP rule published on March 11, 2020. The following time burdens are annual estimates.

Cost Savings Components for SREs

- Notifying the Administrator of any major change to processes or programs: 10 hours (50 percent of SREs)
- Informing the Administrator of IRAP recognition, suspension, or derecognition: 30 minutes
- Provision of data or information to the Administrator: 2 hours (10 percent of SREs)
- Provision of written attestation to the Administrator: 10 minutes per IRAP
- Disclosure of the credentials that apprentices will earn: 30 minutes
- Quality control of IRAPs: 4 hours per IRAP
- Submission of performance data to the Administrator: 4 hours per IRAP

²⁸ Office of Personnel Management, "General Schedule (GS) Locality Pay Tables," available at https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2020/DCB_h.pdf.
²⁹ Congressional Budget Office, "Comparing the Compensation of Federal and Private-Sector Employees, 2011 to 2015" (Apr. 25, 2017), available at <https://www.cbo.gov/publication/52637>. The wages of Federal workers averaged \$38.30 per hour over the study period, while the benefits averaged \$26.50 per hour, which is a benefits rate of 69 percent.

- Making publicly available IRAP performance data: 2 hours per IRAP
- Recordkeeping: 20 hours per IRAP

Cost Savings Components for IRAPs

- Submission of performance data to the SRE: 25 hours

Cost Savings Components for the Federal Government

- Compliance assistance reviews of SREs: 10 hours per SRE (5 percent of SREs)
- Maintenance of online application form and internal review system: \$125,000
- Maintenance of online resource for performance measures: \$245,909
- Maintenance of online resource for list of SREs and IRAPs: \$18,000

d. Total Cost Savings

Exhibit 1 shows the total estimated cost savings of the proposed rule over 10 years (2022–2031) at discount rates of 3 percent and 7 percent.³⁰ The proposed rule is expected to have first-year cost savings of \$1.3 million in 2020 dollars. Over the 10-year analysis period, the annualized cost savings are estimated at \$1.3 million at a discount rate of 7 percent in 2020 dollars. In total, over the first 10 years, the proposed rule is estimated to result in cost savings of \$9.1 million at a discount rate of 7 percent in 2020 dollars.

Exhibit 1: Estimated Cost Savings (2020 dollars)	
	Cost Savings
First Year Total	\$1,298,733
Annualized, 3% discount rate, 10 years	\$1,298,733
Annualized, 7% discount rate, 10 years	\$1,298,733
Total, 3% discount rate, 10 years	\$11,078,458
Total, 7% discount rate, 10 years	\$9,121,759

³⁰ The 2022 start year accounts for the time involved in the Administrative Procedure Act rulemaking process, with the final rule expected to be published in 2022.

The Department also contemplated including an alternative baseline that assumed the Department's February 17th suspension of consideration of SRE applications would be removed. If the suspension were to be removed, there could be additional SREs and IRAPs in future years. OMB Circular A-4 defines a no action baseline as "what the world will be like if the proposed rule is not adopted." If the world did not include this proposed rule, but included the removal of the February 17th suspension as well as decision making by potential SREs in the manner anticipated in the 2020 rule, it is possible that there would be more than 27 SREs and 175 IRAPs in each year of the analysis period. Given the potential temporary nature of the February 17th suspension, some members of the public may believe there will be an opportunity to participate in the program again in the absence of this proposed rule. Under such a scenario, 27 SREs and 175 IRAPs may be only fractions of the numbers of SREs and IRAPs that would come into existence, and perhaps those numbers would continue to grow throughout the analysis period. As such, this proposed rule would then prevent some of the eventual effects of the 2020 rule.

The Department is unable, however, to provide a quantitative analysis of this alternative baseline. The Department does not have a way to accurately estimate the number of SREs or IRAPs that would be established in the absence of this proposed rule and the removal of the February 17th suspension. Specifically, the Department is unable to estimate a reasonable growth rate for SREs over the analysis period or a realistic number of IRAPs per SRE each year. Without these two key data points, a quantitative analysis is not possible.

The Department believes that the numbers of SREs and IRAPs estimated in the 2020 rule are not an appropriate source for quantifying an alternative baseline in this proposed rule. Over the 9-month period between May 2020, when the IRAP rule became effective, and February 2021, when the Department paused the consideration of SRE

applications, data indicate that participation was far lower than what was projected in the 2020 rule. To begin with, the number of SRE applications was far fewer than the number anticipated in the 2020 rule. For the 2020 rule, the Department used the number of entities that submitted grant applications under AAI grant program in FY 2016 as a guidepost for estimating the number of SRE applications. It now seems that this guidepost was unrealistic because millions of dollars were awarded to each successful AAI grant application whereas similar grant funds were not available to SREs. The lack of Federal funding may largely explain the low number of SREs (27) and IRAPs (175) compared to the numbers anticipated in the 2020 rule (203 SREs and 2,030 IRAPS in Year 1).

While the estimated number of SRE applications in the 2020 rule was based on the number of entities that submitted AAI grant applications, the estimated number of IRAPs was not based on a specific source of data because the IRAP system was a new concept in the United States. Accordingly, the Department does not have a guidepost to realistically estimate the number of IRAPs for an alternative baseline that assumes the absence of this proposed rule and the removal of the February 17th suspension.

The Department invites comments on the potential number of SREs and IRAPs in the absence of this proposed rule and the removal of the February 17th suspension. Without a reasonable way to estimate these numbers and quantify the cost savings, benefits, and transfer payments, the Department acknowledges that this proposed rule may have an annual effect on the economy of \$100 million or more; therefore, this rule has been designated as an economically significant regulatory action under section 3(f) of E.O. 12866.

e. Nonquantifiable Effects

The Department proposes rescinding the IRAP rule and, instead, refocusing efforts on expanding the registered apprenticeship system. As explained in the previous

sections, the registered apprenticeship system is highly successful for industry. Industries that have adopted RAPs have cited the standards, skillsets, and retention offered by skilled workers associated with RAPs as advantageous to their bottom line. In one survey, nearly three-fourths of surveyed employers stated that registered apprenticeships drove increased worker productivity.³¹ A skilled workforce is foundational to a strong economy, and registered apprenticeship provides a proven avenue by which to deliver talent development to various industry sectors.

In addition to the demonstrated success of registered apprenticeship as a workforce training model for industry, it has proven to be highly beneficial to workers because of its emphasis on high-quality training as well as apprentice safety and welfare. During training, apprentices are guaranteed wage increases, and research shows that registered apprenticeship completers earn over \$300,000 (including benefits) more over their lifetimes as compared with individuals who do not complete a RAP.³²

Registered apprenticeship has successfully been adopted across a diverse range of sectors, with significant growth in recent years. The expansion of registered apprenticeship into “non-traditional” sectors indicates that the IRAP effort may be superfluous and not a good use of government resources that could support the proven activities of the registered apprenticeship system.

2. Regulatory Alternatives

³¹ Urban Institute Research Report, “The Benefits and Challenges of Registered Apprenticeship: The Sponsors’ Perspective” (June 12, 2009), available at <https://www.urban.org/research/publication/benefits-and-challenges-registered-apprenticeship-sponsors-perspective>.

³² See, e.g., Mathematica Policy Research, “An Effectiveness Assessment and Cost-Benefit Analysis of Registered Apprenticeship in 10 States: Final Report” (July 25, 2012), https://wdr.doleta.gov/research/FullText_Documents/ETAOP_2012_10.pdf. This report categorizes reduced payments of unemployment insurance, welfare, and food stamps as benefits (separate from productivity increases) associated with registered apprenticeships; however, for purposes of E.O. 12866 analysis, adding these effects would constitute double-counting and they should instead be presented as an assessment of who, other than workers themselves, receives some portion of productivity benefits. Moreover, as noted earlier in this regulatory preamble, the report does not speak to the relative effects of RAPs and IRAPs.

OMB Circular A-4 directs agencies to analyze alternatives if such alternatives best satisfy the philosophy and principles of E.O. 12866. Accordingly, the Department considered two regulatory alternatives. Under the first alternative, the Department would allow the SREs and any related IRAPs to operate with the Department's recognition for a transitional period not to exceed the previously approved 5-year period. As noted above, the approach of permitting the continued recognition of SREs and any related IRAPs would continue to temporarily retain a parallel system that does not ensure sufficient protections for apprentices, would diminish Departmental resources available for expansion of registered apprenticeship, and would generate confusion among both entities interested in establishing apprenticeship programs and the potential apprentices in such programs. This alternative would result in lower cost savings over the 10-year analysis period than the cost savings presented in Exhibit 1 because SREs and IRAPs would be obligated to follow the provisions of the IRAP rule published on March 11, 2020, for a longer period of time. Therefore, the costs of the March 2020 rule would accumulate for a longer duration and the cost savings would be delayed.

Under the second alternative, the Department would recast IRAPs as Certified Work-Based Learning. The Department considers the most effective and efficient use of its resources is to oversee a national system of registered apprenticeship that is more protective of the welfare of apprentices and that has demonstrated its capacity to grow and adapt across a range of industries and sectors. Similarly, recasting IRAPs as a type of Certified Work-Based Learning would not address the concerns identified in the discussions above regarding an indirect and insufficient oversight role for the Department in IRAPs. This alternative would also result in lower cost savings over the 10-year analysis period than the cost savings presented in Exhibit 1 because SREs and IRAPs would incur costs under the revised program. The Department cannot estimate the costs without details about the provisions of such a program. The Department invites

comments on these or other possible alternatives with the goal of ensuring a thorough consideration and discussion at the final rule stage.

B. Regulatory Flexibility Act, Small Business Regulatory Enforcement Fairness Act of 1996, and Executive Order 13272 (Proper Consideration of Small Entities in Agency Rulemaking)

In accordance with the Regulatory Flexibility Act, 5 U.S.C. ch. 6 (as amended), the Department examined the regulatory requirements of the proposed rule to determine whether they would have a significant economic impact on a substantial number of small entities. As explained in the E.O. 12866 preliminary economic analysis above, the proposed rule is expected to lead to cost savings for IRAPs because these entities would no longer be required to comply with the provisions of the IRAP rule published on March 11, 2020. Cost savings for IRAPs would primarily arise from no longer needing to submit performance data to the SRE. In the March 2020 rule, the Department estimated that it would take IRAPs approximately 25 hours per year to collect and provide the relevant data. To estimate the cost savings per IRAP under this proposed rule, the Department multiplied 25 hours by the hourly compensation rate for Training and Development Managers (\$121.08 per hour). The first-year cost savings per IRAP is estimated at \$2,829 at a discount rate of 7 percent. The annualized cost savings per IRAP is estimated at \$3,027 at a discount rate of 7 percent.

As of September 30, 2021, the number of IRAPs recognized by SREs stands at 175. Of the 175 IRAPs, 165 are in the health care industry; specifically, the vast majority of the 165 IRAPs are associated with hospitals and medical centers. As shown in Exhibit 2, the first-year and annualized cost savings for IRAPs in the hospitals subsector are not expected to have a significant economic impact (3 percent or more) on small entities of any size.

Exhibit 2: Hospitals (NAICS 622)									
Small Business Size Standard: \$8.0 million – \$41.5 million									
	Number of Firms*	Number of Firms as Percent of Small Firms in Industry	Total Number of Employees*	Annual Receipts*	Average Receipts per Firm	First Year Cost Savings per Firm with 7% Discounting	First Year Cost Savings per Firm as Percent of Receipts	Annualized Cost Savings per Firm with 7% Discounting	Annualized Cost Savings per Firm as Percent of Receipts
Firms with receipts below \$100,000	23	1.6%	0	\$0	\$0	\$2,829	N/A	\$3,027	N/A
Firms with receipts of \$100,000 to \$499,999	35	2.4%	145	\$8,838,000	\$252,514	\$2,829	1.1%	\$3,027	1.2%
Firms with receipts of \$500,000 to \$999,999	20	1.4%	136	\$14,654,000	\$732,700	\$2,829	0.4%	\$3,027	0.4%
Firms with receipts of \$1,000,000 to \$2,499,999	19	1.3%	515	\$30,189,000	\$1,588,895	\$2,829	0.2%	\$3,027	0.2%
Firms with receipts of \$2,500,000 to \$4,999,999	65	4.4%	3,616	\$251,405,000	\$3,867,769	\$2,829	0.1%	\$3,027	0.1%
Firms with receipts of \$5,000,000 to \$7,499,999	100	6.8%	7,135	\$598,696,000	\$5,986,960	\$2,829	0.0%	\$3,027	0.1%
Firms with receipts of \$7,500,000 to \$9,999,999	125	8.5%	12,010	\$1,076,343,000	\$8,610,744	\$2,829	0.0%	\$3,027	0.0%
Firms with receipts of \$10,000,000 to \$14,999,999	218	14.8%	28,209	\$2,599,739,000	\$11,925,408	\$2,829	0.0%	\$3,027	0.0%
Firms with receipts of \$15,000,000 to \$19,999,999	213	14.5%	36,660	\$3,593,092,000	\$16,868,977	\$2,829	0.0%	\$3,027	0.0%
Firms with receipts of \$20,000,000 to \$24,999,999	171	11.6%	36,287	\$3,640,858,000	\$21,291,567	\$2,829	0.0%	\$3,027	0.0%
Firms with receipts of \$25,000,000 to \$29,999,999	133	9.0%	31,171	\$3,507,932,000	\$26,375,429	\$2,829	0.0%	\$3,027	0.0%
Firms with receipts of \$30,000,000 to \$34,999,999	120	8.2%	31,175	\$3,675,365,000	\$30,628,042	\$2,829	0.0%	\$3,027	0.0%
Firms with receipts of \$35,000,000 to \$39,999,999	97	6.6%	30,001	\$3,547,170,000	\$36,568,763	\$2,829	0.0%	\$3,027	0.0%
Firms with receipts of \$40,000,000 to \$49,999,999	132	9.0%	48,369	\$5,577,594,000	\$42,254,500	\$2,829	0.0%	\$3,027	0.0%

* Source: U.S. Census Bureau, Statistics of U.S. Businesses, <https://www.census.gov/data/tables/2017/econ/susb/2017-susb-annual.html>.

Similarly, the proposed rule would result in cost savings for SREs. The cost savings would arise from SREs no longer needing to perform the activities listed in the E.O. 12866 preliminary economic analysis above: notifying the Administrator of any major change to processes or programs; informing the Administrator of IRAP recognition, suspension, or derecognition; provision of data or information to the Administrator; provision of written attestation to the Administrator; disclosure of the credentials that apprentices will earn; quality control of IRAPs; submission of performance data to the Administrator; making publicly available IRAP performance data; and recordkeeping. The first-year cost savings per SRE is estimated at \$13,099 at a discount rate of 7 percent. The annualized cost savings per SRE is estimated at \$14,016 at a discount rate of 7 percent.

As of the date of this proposed rule, the Department has recognized 27 SREs. Only 5 of the 27 SREs have recognized IRAPs, and of those 5 SREs, only 1 so far has indicated that it has IRAP apprentices. This particular SRE is unlikely to be considered a small entity based on its annual revenue,³³ which exceeds the Small Business

³³ IRS Form 990 filing data available from the Internal Revenue Service, “Tax Exempt Organization Search,” <https://apps.irs.gov/app/eos>.

Administration's Small Business Size Standard of \$16.5 million for professional organizations (North American Industry Classification System code 813920).³⁴

Accordingly, the Department certifies that the proposed rule would not have a significant economic impact on a substantial number of small entities. Moreover, any economic impact experienced by IRAPs or SREs would be cost savings.

C. Paperwork Reduction Act

As explained in the "Background" section above, the Department is proposing to rescind subpart B, "Standards Recognition Entities of Industry-Recognized Apprenticeship Programs," from title 29 CFR part 29, the regulatory framework for the Department's recognition of SREs and SREs' role in recognizing IRAPs.

As part of the implementation and rollout of the IRAP rule the Department developed and received OMB approval for two information collection requests (ICRs), an application form and a performance report. The first active ICR is entitled "Industry-Recognized Apprenticeship Program Standards Recognition Entity Regulation and Application" (OMB Control Number 1205-0536) and includes an annual approved burden of 141,819 responses and 285,310 hours. There is no additional cost burden. The second active ICR is entitled "IRAP Program and Performance Report for Standards Recognition Entities" (OMB Control Number 1205-0545) and includes an annual approved burden of 12,447 responses and 111,118 hours. There is no additional cost burden.

If a final rule rescinds subpart B, on the effective date of the regulation, the Department will withdraw its recognition of SREs and any SRE-recognized apprenticeship program would no longer be an IRAP as described in subpart B. The

³⁴ U.S. Small Business Administration, "Table of Small Business Size Standards" (Aug. 19, 2019), available at <https://www.sba.gov/document/support--table-size-standards>.

Department will no longer use the “Industry-Recognized Apprenticeship Program Standards Recognition Entity Regulation and Application” ICR and the “IRAP Program and Performance Report for Standards Recognition Entities” ICR.

Upon publication of a final rule, DOL will submit requests to discontinue both OMB Control Number 1205-0536 and OMB Control Number 1205-0545, eliminating all paperwork burden associated with the ICRs.

D. Executive Order 13132: Federalism

This proposed rule, if finalized, does not have federalism implications because it does not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, E.O. 13132, Federalism, requires no further agency action or analysis.

E. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1532, requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed agency rule that may result in \$100 million or more in expenditures (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector.

This proposed rule, if finalized, does not exceed the \$100-million expenditure in any one year when adjusted for inflation, and this rulemaking does not contain such a mandate. The requirements of title II of UMRA, therefore, do not apply, and the Department has not prepared a statement under the Act.

F. Executive Order 13175 (Indian Tribal Governments)

The Department has reviewed this proposed rule in accordance with E.O. 13175 and has determined that it does not have tribal implications. The proposed rule does not have substantial direct effects on one or more Indian tribes, on the relationship

between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

List of Subjects in 29 CFR Part 29

Apprenticeability criteria, Apprentice agreements and complaints, Apprenticeship programs, Program standards, Registration and deregistration, Sponsor eligibility, State apprenticeship agency recognition and derecognition.

For the reasons stated in the preamble, the Department proposes to amend 29 CFR part 29 as follows:

PART 29—LABOR STANDARDS FOR THE REGISTRATION OF APPRENTICESHIP PROGRAMS

1. The authority citation for part 29 is revised to read as follows:

Authority: 29 U.S.C. 50; 40 U.S.C. 3145; 5 U.S.C. 301; 5 U.S.C. App. P. 534.

Subpart A – [Amended]

2. Remove the designation of subpart A and the associated heading.

3. Amend § 29.1 by:

a. Revising the section heading; and

b. In paragraph (b), removing the word “subpart” and adding the word “part” in its place.

The revision reads as follows:

§ 29.1 Purpose and scope.

§ 29.2 [Amended]

4. Amend § 29.2 by:

a. In the introductory text, removing the word “subpart” and adding the word “part” in its place;

b. In the definitions of *Apprenticeship program* and *Registration agency*, removing the citation “29 CFR part 29 subpart A, and part 30” and adding the citation “this part and 29 CFR part 30” in its place; and

c. In the definition of *Technical assistance*, removing the word “subpart” and adding the word “part” in its place.

§ 29.13 [Amended]

5. Amend § 29.13 by:

a. In paragraph (a)(1), removing the citation “29 CFR part 29 subpart A, and part 30” and adding the citation “this part and 29 CFR part 30” in its place;

b. In paragraph (b)(1), removing the citation “29 CFR part 29 subpart A” and adding “this part” in its place;

c. In paragraphs (c) and (e) introductory text, removing the word “subpart” and adding the word “part” in its place; and

d. In paragraph (e)(4), removing the citation “part 29 subpart A” and adding “this part” in its place.

§ 29.14 [Amended]

6. Amend § 29.14 by:

a. In the introductory text, removing the citation “part 29 subpart A, and part 30” and adding the citation “this part and 29 CFR part 30” in its place; and

b. In paragraphs (e)(1) and (i), removing the word “subpart” and adding the word “part” in its place.

§§ 29.3, 29.6, 29.10, and 29.11 [Amended]

7. In addition to the amendments set forth above, in 29 CFR part 29, remove the word “subpart” and add in its place the word “part” in the following places:

a. Section 29.3(b)(1), (g) introductory text, and (h);

b. Section 29.6(b)(2);

c. Section 29.10(a)(2); and

d. Section 29.11 introductory text.

Subpart B—[Removed]

8. Remove subpart B, consisting of §§ 29.20 through 29.31.

Angela Hanks,

Acting Assistant Secretary for Employment and Training, Labor.

[FR Doc. 2021-24786 Filed: 11/12/2021 8:45 am; Publication Date: 11/15/2021]