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February 27, 2019

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The Honorable R. Alexander Acosta
Secretary
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, D.C. 20210

Dear Secretary Acosta:

We write to request additional information about the U.S. Department of Labor's (Department) plans for proposed rulemaking, subregulatory guidance, and information collection requests regarding "Industry-Recognized Apprenticeship Programs" (IRAPs) and the development of IRAP "accreditors."

On July 27, 2018, the Employment and Training Administration issued a Training and Employment Notice (TEN), entitled "Creating Industry-Recognized Apprenticeship Programs to Expand Opportunity in America."¹ This TEN described the Department's intention to employ third parties to certify IRAPs, which the Department re-affirmed in the September 20, 2018 information collection request (ICR), entitled "Industry-Recognized Apprenticeship Programs Accrediting Entity Information" and the December 27, 2018 ICR entitled "Industry-Recognized Apprenticeship Programs Accrediting Entity Information." Comments submitted in response to the September 2018 ICR raised questions about why the Department is creating a system that includes the potential for conflicts of interest among entities serving as accreditors of IRAPs.²

In the TEN and each of the ICRs, the *National Apprenticeship Act* is cited as the Department's legal justification for taking the actions around the formation of IRAPs and the creation of IRAP accreditors, however, the *National Apprenticeship Act* provides:

"The Secretary of Labor is authorized and directed to formulate and promote the furtherance of labor standards necessary to safeguard the welfare of apprentices, to

¹ Training and Employment Notice 3-18, Creating Industry-Recognized Apprenticeship Programs to Expand Opportunity in America, Employment and Training Administration (July 27, 2018), https://wdr.doleta.gov/directives/attach/TEN/TEN_3-18.pdf

² Industry-Recognized Apprenticeship Programs Accrediting Entity Information. OMB Control No. 1205-0NEW. (December 2018).

extend the application of such standards by encouraging the inclusion thereof in contracts of apprenticeship, to bring together employers and labor for the formulation of programs of apprenticeship, to cooperate with State agencies engaged in the formulation and promotion of standards of apprenticeship, and to cooperate with the Secretary of Education.”³

As evidenced by the plain text of the *National Apprenticeship Act*, Congress delegated to the *Secretary* alone the authority to formulate and promote labor standards to safeguard the welfare of apprentices. It is not clear how the Department’s proposal to outsource this function to private, nongovernmental entities is consistent with Congress’ intent or with the Secretary’s statutory authority. The *National Apprenticeship Act* does empower the Department to “bring together employers and labor *for the formulation of programs* of apprenticeships.”⁴ However, that is not what the Department proposes. Rather, it proposes to delegate to private, nongovernmental actors the authority “to *establish standards*, establish certification intervals determined by those industries, evaluate and certify programs focused on outcomes and process, report results, and maintain records.”⁵

In order to understand the Department’s justification and authority for its current course of action, we request the following information and documents:

- 1) A detailed explanation and any written documentation of the Department’s rationale for how the delegation of the formation and promotion of labor standards to third-parties is consistent with the authority granted to the Department under the *National Apprenticeship Act*;
- 2) A detailed explanation and any written documentation of any formal or informal consultation between the Department and other federal agencies, including the U.S. Department of Education, about the development and publication of the IRAP accreditation proposal. In your response to this request, please be sure to address the following:
 - a. Any agency recommendations that led to the development of this IRAP accreditation proposal;
 - b. Information, correspondence, and documents responsive to this request pertaining to 29 CFR Part 29 (Labor Standards for the Registration of Apprenticeship Programs) and 34 CFR 602.12 (Accrediting Experience);
 - c. Information, correspondence, and documents responsive to this request pertaining to how the Department’s process for recognizing IRAP accrediting entities, as proposed, would interact with current regulations under 34 CFR 602.12 and proposed revisions to 34 CFR 602.12 that would expand federal recognition to

³ 29 U.S.C. § 50. (emphasis added)

⁴ *Ibid* (emphasis added).

⁵ Training and Employment Notice 3-18, Creating Industry-Recognized Apprenticeship Programs to Expand Opportunity in America, Employment and Training Administration (July 27, 2018), https://wdr.doleta.gov/directives/attach/TEN/TEN_3-18.pdf (emphasis added)

- new and untested accrediting entities, including those that do not have at least two years of experience⁶;
- d. Information, correspondence, and documents responsive to this request pertaining to the Department's interpretation of the authority of accrediting entities recognized by the Department under IRAP, as proposed, to approve and deny institutional or programmatic eligibility under title IV of the *Higher Education Act*;
- 3) Copies of any contracts, or modifications to existing contracts, between the Department and any outside entities regarding the development of IRAPs, including contracts for any exploratory or marketing purposes;
 - 4) Copies of any marketing materials that have been developed for the IRAPs;
 - 5) A detailed description of any past or upcoming meetings or working groups between the Department and outside entities about the development of IRAPs since the conclusion of the Apprenticeship Task Force. Please include the dates of the meetings and a list of all participants. Please include details on whether these meetings or working groups were established and convened according to the *Federal Advisory Committee Act (FACA)*.
 - a. If these meetings or working groups were not established and convened according to the FACA, please provide a detailed explanation and any written documentation for the Department's decision to bypass FACA;
 - 6) Any intra-agency communication about the development of the IRAP program and any proposed regulatory changes to 29 CFR Part 29 and 29 CFR Part 30 (Equal Employment Opportunity in Apprenticeship);
 - 7) A detailed explanation and any written documentation for the Department's decision to request comments on Accrediting Entity Information and the Industry-Recognized Apprenticeship Programs Accrediting Entity Information prior to issuing proposed regulations amending 29 CFR Part 29;
 - 8) A detailed explanation and any written documentation of how the comments in response to the September 20, 2018 ICR and the December 27, 2018 ICR will be incorporated into any proposed changes to 29 CFR Part 29 or 29 CFR Part 30;
 - 9) A detailed explanation and any written documentation of any planned actions regarding IRAP implementation, including a timeline for such actions;
 - 10) A detailed explanation for the Secretary's determination that "the immediate establishment of industry-recognized apprenticeship programs is a matter of vital national

⁶ See proposed revisions in 34 CFR 602.12. <https://www2.ed.gov/policy/highered/reg/hearulemaking/2018/index.html>

interest,”⁷ including any related data on the expected outcomes for employers and IRAP participants in comparison to outcomes for registered apprenticeship programs;

- 11) A detailed explanation and any written documentation for the Department’s decision to not establish IRAPs as a pilot project as recommended by the Apprenticeship Task Force;
- 12) The Department’s definitions for the following terms used throughout the TEN and ICR: “accreditor,” “certification,” “conflict of interest,” “impartiality,” “national portability,” “high-quality classroom or related instruction,” “industry-recognized credential,” and “related bodies,” as well as the source of the Department’s definitions; and
- 13) A detailed explanation of the Department’s plans for funding IRAPs, including information on whether funds appropriated for Registered Apprenticeships are being used or will be used in any manner or form to support the development, operation or implementation of IRAPs.
 - a. If any appropriated funds are being used in support of IRAPs or IRAP accreditors, please provide a detailed explanation and legal justification for diverting congressionally appropriated funds to this statutorily unauthorized newly established program.

Please provide the requested information and documents by March 13, 2019. In addition we request a briefing from the Department on these matters as soon as possible, but no later than March 20, 2019.

Thank you for your attention to this request. Please contact Eunice Ikene with the House Committee on Education and Labor at eunice.ikene@mail.house.gov with any questions. Please send all official correspondence relating to this request to tylease.fitzgerald@mail.house.gov.

Sincerely,

ROBERT C. “BOBBY” SCOTT
Chairman

SUSAN A. DAVIS
Chairwoman
Subcommittee on Higher Education and
Workforce Investment

⁷ “Agency Information Collection Activities; Comment Request; Data Collections from Industry-Recognized Apprenticeship Program Accreditors,” 83 FR 47643 (September 20, 2018).

Honorable R. Alexander Acosta
February 27, 2019
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Cc: The Honorable Betsy DeVos
Secretary
U.S. Department of Education
400 Maryland Avenue, SW
Washington, D.C. 20202

Diane Auer Jones
Principal Deputy Under Secretary
U.S. Department of Education
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