

Industry Would Govern Apprenticeships In Labor Department Plan

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- Less government oversight in apprenticeship process top White House priority
- Inclusion of construction industry not addressed in leaked draft

The Labor Department wants to overhaul the nation's apprenticeship training system by handing industry groups and employers significant latitude to design and certify their own federally assisted programs with minimal government oversight, according to a draft proposal obtained by Bloomberg Law.

The draft regulation, which has not been made public and is still undergoing edits as it awaits final White House approval, would establish a new certification process for what will be known as Industry-Recognized Apprenticeship Programs. IRAP is intended to streamline and expand the earn-as-you-learn system by removing bureaucratic barriers that exist in the Labor Department's longstanding registered apprenticeship process.

President Donald Trump pushed the apprenticeship initiative early on, with an executive order in June 2017. Regulations to implement the order have stalled for nearly two years as health care, restaurant, and hotel industry groups all have eagerly awaited the nuts and bolts on how they can tailor their training programs to meet the new requirements.

The draft document is likely to feed concerns that business groups will be able to launch new training programs with minimal government oversight. The initial details will begin to frame the expected scrutiny from congressional Democrats and worker groups that awaits the proposal's official release.

An ambiguous group of "Standards Recognition Entities"—not government agencies—would have the power to approve or reject new apprenticeship program applicants under the draft plan. These entities would be empowered to certify their own in-house apprenticeship programs as long as they ensure impartiality, the draft states. The document does not address possible conflicts of interest for entities that judge their own IRAP applications.

The draft rule also does not resolve a fierce debate—one that pits DOL leaders against the White House and businesses versus union lobbyists—about whether the construction industry should be excluded from the new apprenticeship program. Construction unions that already operate many of the industry's apprenticeships want to continue to funnel workers through those programs. Industry groups want to expand the options for ensuring that construction workers are properly trained.

The department previously said construction would be excluded given that the industry already accounts for 50 percent of the existing federal Registered Apprenticeship system, which establishes stricter government-enforced standards. The Registered Apprenticeship program will remain in place alongside the more business-friendly IRAP.

Whether construction will remain outside the IRAP in the final proposal is unclear. Specific industries covered or excluded from IRAP were not included in the draft proposal, which is dated April 25.

The Labor Department declined to comment while the draft is under White House regulatory office review.

Standards Recognition Entities

Early details of IRAP were criticized by industry and labor groups as being too vague on government oversight, potential conflicts of interest, and the welfare of apprentices. The IRAP draft doesn't appear to respond to most of those complaints.

Parameters for the third-party program certifiers, or SREs, would largely remove the Labor Department from the certification equation, according to the draft. To become an SRE, an organization would only have to show the department in its application that it has expertise "in setting sector standards."

Trade and industry groups, educational institutions, state and local government agencies, non-profit organizations, unions, joint labor-management organizations, or a consortium or partnership of any of these entities are all eligible to become SREs. They can also create and certify their own apprenticeship programs, under the draft proposal.

The draft states that an SRE "must either not recognize its own apprenticeship program(s), or it must provide for impartiality, and mitigate any potential conflicts of interest, via specific policies, processes, procedures, and/or structures." The document does not indicate how the department plans to enforce the SRE impartiality requirement.

SREs also would not be required to report to the Labor Department any information regarding a program's success rate. Instead, a certifier must simply make available contact information for each program, the total number of apprentices annually enrolled in each program, how many apprentices complete the program each year, and the annual completion rate.

The Labor Department doesn't detail how this information must be provided to the public.

The department also makes clear in the draft proposal that an SRE will not be considered a "joint employer" of workers for organizations that develop and operate new apprenticeship programs. The Trump administration has recently taken steps to restrict such liability under federal labor and employment laws among contractually related businesses.

Construction Battle Still Fluid

Building trades unions fear allowing employers to establish their own standards, with limited oversight, excludes labor from establishing job training standards in an industry that needs the strongest standards of safety and work quality. Non-union construction groups feel that registered apprenticeships and unions get an unfair upper hand for federal projects and want to see all sectors included in IRAP.

Sources familiar with debate says the topic is still unresolved, despite heavy lobbying from both sides of the issue.

Labor Secretary Alexander Acosta has championed the exclusion of builders, according to sources familiar with talks on the rule proposal. Acosta has sided with the building trades unions, while the builders have the support of factions in the White House. That includes acting chief of staff Mick Mulvaney and members of the Domestic Policy Council, sources said.

How the debate is resolved could be the latest indication of the White House's role in resolving rulemaking disputes. Mulvaney has recently taken a larger role in regulatory activity out of the Labor Department. He recently instituted an appeals system in which impasses between White House staff and DOL agency heads gets elevated to Mulvaney for a final yes or no vote, Bloomberg Law reported May 28. It's not clear if the construction fight will be resolved under that process.

Construction industry representatives will have a chance to make a formal pitch for inclusion on June 6. That's when the Associated Builders and Contractors is scheduled to discuss the proposal with members of the administration at the White House Office of Information and Regulatory Affairs.

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