

# Final Rule on Industry-Recognized Apprenticeship Programs

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## Final Rule on Industry-Recognized Apprenticeship Programs

In March 2020, the Department of Labor (DOL) published a final rule establishing policies related to its Industry-Recognized Apprenticeship Programs (IRAPs). The rule established criteria and procedures for DOL to approve Standards Recognition Entities (SREs), which have the authority to recognize IRAPs. The standards that SREs will apply to IRAPs are established in the rule. The rule defines an IRAP as a workforce training program that includes a paid-work component and an educational or instructional component and results in an industry-recognized credential.

The final rule was established under the authority of the National Apprenticeship Act (NAA). The rule supplements previously established regulations related to apprenticeship. It has no direct effect on the existing registered apprenticeship system.

The rule establishes procedures for DOL to approve SREs as qualified to recognize IRAPs. Entities that can become SREs include (but are not limited to) trade, industry, and employer groups; corporations; educational institutions; state and local government agencies; nonprofit organizations; and unions. In their applications, SREs must establish their expertise and ability to set standards in their specified occupations and industries. SREs must also establish impartiality on several fronts, including mitigating any conflicts of interest. The rule specifies that DOL shall recognize any SRE that applies and meets the regulatory criteria.

Once approved, an SRE may recognize IRAPs that comply with the standards established in the rule. The standards for IRAPs include a paid-work component, an instructional component, written training plans and apprenticeship agreements, various disclosures to the apprentice, and reporting requirements to DOL.

Recognition as an SRE does not entitle an entity to federal funding. Similarly, IRAPs do not necessarily receive federal funds. IRAPs may qualify for federal funds through various existing federal programs that support workforce development, although unlike registered apprenticeship status, their status as IRAPs does not provide categorical eligibility for certain types of federal aid.

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## Introduction and Background

On March 11, 2020, the Department of Labor (DOL) published a final rule in the *Federal Register* to establish a process for recognizing new Standards Recognition Entities (SREs) that have the authority to approve Industry-Recognized Apprenticeship Programs (IRAPs).<sup>1</sup> The requirements that SREs may apply to IRAPs are established in the rule.

The rule does not have a direct impact on DOL's existing registered apprenticeship system, in which governmental agencies approve apprenticeship programs as being in compliance with federal standards. Instead, the new system of SREs and IRAPs may operate as an alternative system, co-existing with the established registered apprenticeship system.

This report focuses on the final rule and provides limited information on the broader federal approach to apprenticeship. A more detailed description of established federal efforts related to registered apprenticeship is available in CRS Report R45171, *Registered Apprenticeship: Federal Role and Recent Federal Efforts*.

## Legislative Background and the Registered Apprenticeship System

The National Apprenticeship Act (NAA), enacted in 1937, is a relatively brief statute that directs DOL to “safeguard the welfare of apprentices” and “bring together employers and labor for the formulation of programs of apprenticeship.”<sup>2</sup> To carry out this law, DOL established regulations that set standards for apprenticeship programs and procedures for registration agencies to register individual apprenticeship programs that are in conformity with those standards (“registered apprenticeships”). Regulations also establish oversight responsibilities and procedures for registration agencies.<sup>3</sup> The newly established IRAP regulations supplement the previously established registered apprenticeship regulations. A brief comparison of the two systems is provided at the end of this report.

The emphasis of the NAA and associated regulations is on creating administrative systems that will support the objectives of the law. The NAA does not authorize grants or other appropriations to provide direct financial support for apprentices or apprenticeship sponsors.

## Prior Actions Related to Industry-Recognized Apprenticeship Programs

The final rule is the latest in a series of ongoing efforts by the Trump Administration to increase the role of private industry in setting and implementing standards in the federal apprenticeship system. In June 2017, President Trump issued Executive Order (EO) 13801, “Expanding Apprenticeships in America.”<sup>4</sup> The EO directed DOL to “consider proposing regulations” that

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<sup>1</sup> The full notice was published as pages 14294-14392 in Vol. 85, No. 48 of the *Federal Register* (hereinafter, “*Federal Register* notice”). See <https://www.govinfo.gov/content/pkg/FR-2020-03-11/pdf/2020-03605.pdf>.

<sup>2</sup> 29 U.S.C. 50 et seq.

<sup>3</sup> 29 C.F.R. 29-30.

<sup>4</sup> For full text of EO 13801, see <https://www.govinfo.gov/content/pkg/FR-2017-06-20/pdf/2017-13012.pdf>.

“reflect an assessment of whether” to modify the registration process to increase the role of nongovernment entities.

The EO also directs DOL to convene a task force “to identify strategies and proposals to promote apprenticeships, especially in sectors where apprenticeship programs are insufficient.” The first meeting of the task force was in October 2017 and its final report was issued in May 2018. The recommendations in the final report included the broad contours of an IRAP system.<sup>5</sup>

DOL published a proposed rule related to IRAPs on July 25, 2019. The proposed rule specified that comments had to be submitted by August 26, 2019.

## **Description of the Final Rule**

Under the final rule, the Office of Apprenticeship (OA) within DOL<sup>6</sup> may approve SREs that meet specified requirements. The rule further establishes a process by which SREs may consider individual apprenticeship programs in the context of standards established by the rule and formally recognize individual IRAPs that are in conformity with those standards.

The final rule defines IRAPs as “high-quality apprenticeship programs, wherein an individual obtains workplace-relevant knowledge and progressively advancing skills, that include a paid-work component and an educational or instructional component, and that result in an industry-recognized credential.”<sup>7</sup>

## **Standards Recognition Entities (SREs)**

Under the final rule, DOL-approved SREs are responsible for approving programs that are in compliance with federal requirements. The rule specifies the types of entities that can become SREs:

- trade, industry, and employer groups or associations;
- corporations and other organized entities;
- educational institutions, such as universities or community colleges;
- state and local government agencies or entities;
- nonprofit organizations;
- unions;
- joint labor-management organizations;
- certification and accreditation bodies or entities for a profession or industry; or
- a consortium or partnership of entities such as those listed above.<sup>8</sup>

To apply to be an SRE, an entity (or consortium thereof) must submit an application to DOL. The application must demonstrate that the entity has sufficient expertise in the applicable industries or

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<sup>5</sup> See recommendations 14-26 of the final report, available at <https://www.dol.gov/apprenticeship/docs/task-force-apprenticeship-expansion-report.pdf>.

<sup>6</sup> The text of the final rule assigns numerous administrative responsibilities to the administrator, which is the chief official of DOL’s Office of Apprenticeship. In the interest of simplicity and readability, this report will typically refer to “DOL” when the regulations refer to “the administrator” or an individual designated by the administrator.

<sup>7</sup> 29 C.F.R. 29.20(b).

<sup>8</sup> 29 C.F.R. 29.20(a)(1).

occupational areas and that it has the capacity and resources to operate in its intended geographic area for a five-year period.

In its application, a prospective SRE must establish policies and procedures that demonstrate impartiality on several fronts. The SRE must actively mitigate any actual or potential conflict of interest, including those that may arise from an SRE recognizing its own apprenticeship programs and those related to the SRE's provision of service to actual or potential IRAPs.<sup>9</sup>

The regulations specify that DOL will recognize an SRE if it is qualified.<sup>10</sup> If DOL does not approve the application, it must specify the reasons for denial and what remedies must be made for the application to be approved.

If DOL approves an SRE's application, the SRE will be recognized for five years. After five years, the SRE must submit an application for re-recognition. An SRE is required to notify DOL if it makes major changes that "materially affect the SRE's ability to function in its recognition capacity" or if it seeks to recognize programs in additional industries, occupational areas, or geographic areas.<sup>11</sup>

## **Requirements for IRAPs**

Under the final rule, an SRE may only recognize an IRAP if the program meets 10 requirements.<sup>12</sup>

1. The program must train apprentices for employment in jobs that require specialized knowledge and experience and involve the performance of complex tasks.
2. The program has a written training plan that is consistent with the SRE's requirements and standards and was developed through a consensus-based process involving industry experts. The plan, which must be provided to an apprentice prior to the beginning of the IRAP, must detail the IRAP's structured work experiences, and appropriate classroom or related instruction, be designed so that apprentices demonstrate proficiency and earn credential(s), and provide apprentices progressively advancing industry-essential skills.
3. The program ensures that, where appropriate, apprentices receive credit for prior knowledge and experience relevant to the instruction of the program.
4. The program provides apprentices with industry-recognized credential(s) during participation in or upon completion of the program.
5. The program provides a safe working environment for apprentices that adheres to all applicable federal, state, and local safety laws and regulations along with any additional safety requirements of the SRE.
6. The program provides apprentices with structured mentorship opportunities throughout the duration of the apprenticeship that involve ongoing, focused supervision and training by experienced instructors and employees, to ensure they have additional guidance on the progress of their training and their employability.

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<sup>9</sup> 29 C.F.R. 29.21(b)(4)-(6).

<sup>10</sup> 29 U.S.C. 22.21(c).

<sup>11</sup> 29 U.S.C. 22.21(c)(1)-(3).

<sup>12</sup> Requirements are largely verbatim from 29 C.F.R. 29.22(a)(4).

7. The program ensures that apprentices are paid at least the applicable federal, state, or local minimum wage and ensures that the program's charging of costs or expenses comply with all applicable federal, state, and local wage laws and regulations. The program provides a written notice to apprentices of what wages they will receive and under what circumstances their wages will increase.
8. The program affirms its adherence to all applicable federal, state, and local laws pertaining to Equal Employment Opportunity (EEO).
9. The program discloses to apprentices, prior to when they agree to participate in the program, any costs or expenses that will be charged to them (such as costs related to tools or educational materials).
10. The program maintains a written apprenticeship agreement for each apprentice that outlines the terms and conditions of the apprentice's employment and training and is consistent with the SRE's requirements.

An SRE must establish its IRAPs' conformity with the aforementioned requirements at the time of recognition and on an annual basis thereafter.<sup>13</sup> The regulations further specify that an SRE must "maintain an ongoing quality-control relationship with IRAPs it has recognized" and that such relationship shall "involve periodic compliance reviews ... to ensure compliance" with the previously listed standards.<sup>14</sup>

## Reporting Requirements

The final rule requires DOL to make publicly available a list of SREs and the IRAPs that they have recognized.<sup>15</sup> The rule does not specify how often this list must be updated.

The rule requires SREs to report to DOL and make publicly available, on an annual basis, information on each program they recognize, including the following:<sup>16</sup>

- up-to-date contact information for each program;
- the total number of new and continuing apprentices in each IRAP under an apprenticeship agreement;
- the total number of apprentices who successfully completed the IRAP annually;
- the annual completion rate for apprentices;<sup>17</sup>
- the median length of time for program completion;
- the post-apprenticeship employment retention rate, calculated 6 and 12 months after program completion;
- the industry-recognized credentials attained by apprentices in an IRAP, and the annual number of such credentials attained;

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<sup>13</sup> 29 C.F.R. 29.22(b).

<sup>14</sup> 29 C.F.R. 29.22(f).

<sup>15</sup> The list must also include suspended and derecognized IRAPs. 29 C.F.R. 29.24.

<sup>16</sup> 29 C.F.R. 29.22(h).

<sup>17</sup> Regulations specify that "Annual completion rate must be calculated by comparing the number of apprentices in a designated apprenticeship cohort who successfully completed the IRAP requirements and attained an industry-recognized credential with the number of apprentices in that cohort who initially began training in the IRAP." 29 C.F.R. 29.22(h)(4).

- the annualized average earnings of an IRAP's former apprentices, calculated over the six-month period after IRAP completion;
- training cost per apprentice; and
- basic demographic information on participants.

## Oversight, Suspension, and Derecognition of SREs

Regulations specify that DOL may “conduct periodic compliance assistance reviews of SREs to ascertain their conformity with” the requirements of the rules.<sup>18</sup> DOL may also initiate a review of an SRE if a complaint is filed or if DOL receives other information indicating that the SRE is not in compliance with the regulations or is otherwise no longer capable of continuing as an SRE.<sup>19</sup> Upon conclusion of the review, DOL may decide to take no action or suspend the SRE for 45 calendar days. If the SRE remedies the issues that led to the suspension, the suspension will end. If the SRE does not remedy the issues “after the close of the 45-day period and any extensions ... [DOL] will derecognize the SRE and must notify the SRE in writing and specify the reasons for the derecognition.”<sup>20</sup>

Following a SRE's derecognition, an IRAP that has been recognized by the SRE is to maintain its status for one year. At the end of one year, the IRAP will lose its status unless it is recognized by another SRE.<sup>21</sup>

## Exclusion of Construction Activities

The rule states an intention of creating an additional option for occupations and industries that do not make wide use of the existing registered apprenticeship system. As such, “programs that seek to train apprentices to perform construction activities” are excluded from being recognized as IRAP programs. The rule specifies that SREs are prohibited from recognizing IRAPs that seek to train apprentices to perform construction activities and that DOL will not recognize SREs that intend to recognize programs in construction activities. The rule defines *construction activities* as the “erecting of buildings and other structures (including additions); heavy construction other than buildings; and alterations, reconstruction, installation, and maintenance and repairs.”<sup>22</sup>

## Implementation of the Final Rule

The final rule took effect May 11, 2020, two months after it was issued. DOL began accepting online applications from prospective SREs that day.<sup>23</sup> On September 23, 2020, DOL announced the first group of SREs. DOL noted that 18 SREs had been approved to recognize IRAPs in 20 industries and nearly 130 occupations.<sup>24</sup>

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<sup>18</sup> 29 C.F.R. 29.23.

<sup>19</sup> 29 C.F.R. 29.25-26.

<sup>20</sup> 29 C.F.R. 29.27(c)(1)(ii).

<sup>21</sup> 29 C.F.R. 29.28.

<sup>22</sup> 29 C.F.R. 29.30.

<sup>23</sup> U.S. Department of Labor, “U.S. Department of Labor Launches Industry-Recognized Apprenticeship Program Standards Recognition Entity Application Portal,” May 11, 2020, <https://www.dol.gov/newsroom/releases/eta/eta20200511-0>.

<sup>24</sup> U.S. Department of Labor, “U.S. Department of Labor Announces First Group of Standards Recognition Entities for



When it announced the initial group of SREs, DOL said that additional SRE applications will be reviewed on a quarterly basis. To be considered for the next review cycle, applications are due by November 30, 2020, and determinations are to be made within about 90 days of that date.<sup>25</sup>

On October 1, 2020, DOL announced the recognition of the first IRAP program.<sup>26</sup>

## Comparison of Registered Apprenticeship Programs and IRAPs

The final IRAP rule is frequently discussed in the context of the existing registered apprenticeship system that it supplements. The structure and design of the regulations governing registered apprenticeship are not directly parallel to the rule for SREs and IRAPs, so direct comparisons of many aspects of the respective frameworks are challenging. For example, in some instances the registered apprenticeship regulations establish a standard that is specific to registered apprenticeship programs while IRAPs may be silent on the issue and defer to federal policies that apply to all workers.

This section of the report highlights some differences between the existing registered apprenticeship regulations and the IRAP rule. It should not be considered a comprehensive comparison.

### Structure and Duration of Programs

The existing registered apprenticeship regulations specify that programs can be time-based (i.e., an apprentice establishes competency by spending a specified amount of time on the skill), competency-based (i.e., an apprentice establishes a skill acquisition through demonstration of the skill as verified by the sponsor), or a hybrid of the two. The IRAP rule does not explicitly limit IRAPs to competency-based programs, but it does specify that SREs must demonstrate “expertise to competency-based standards.”<sup>27</sup> The explanatory text accompanying the IRAP rule clarify a requirement for competency-based standards, but further note that “SREs are not precluded from including time-based requirements as a function of or in addition to competency-based standards.”<sup>28</sup>

The existing registered apprenticeship regulations define an eligible occupation as one that, among other requirements, requires the attainment of skills and knowledge for which at least 2,000 hours of on-the-job training would be necessary.<sup>29</sup> The IRAP rule does not include any provisions related to the expected or minimum duration of an IRAP. Similarly, the registered apprenticeship regulations establish a minimum of 144 hours per year of related instruction, while

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Industry-Recognized Apprenticeship Programs,” September 23, 2020, <https://www.dol.gov/newsroom/releases/eta/eta20200923>.

<sup>25</sup> Ibid.

<sup>26</sup> U.S. Department of Labor, “U.S. Department of Labor Announces First Industry-Recognized Apprenticeship Program,” October 1, 2020, <https://www.dol.gov/newsroom/releases/eta/eta20201001-0>.

<sup>27</sup> 29 C.F.R. 29.21(b)(1).

<sup>28</sup> *Federal Register* notice, p. 14388.

<sup>29</sup> 29 C.F.R. 29.4.

IRAP regulations specify a requirement for related instruction but do not establish a minimum amount of time.<sup>30</sup>

The existing registered apprenticeship regulations do not require sponsors to have a system to evaluate and recognize an apprentice's prior knowledge and experience. The IRAP rule requires industry programs to demonstrate that apprentices receive credit for prior knowledge and experience.<sup>31</sup>

## Schedule of Wage Increases

Both the registered apprenticeship regulations and the IRAP regulations establish that apprentices must be paid at least the federal minimum wage (or higher if specified by state or local law). The registered apprenticeship regulations further require “[a] progressively increasing schedule of wages to be paid to the apprentice consistent with the skill acquired.”<sup>32</sup> The IRAP rule requires that IRAP sponsors “provide a written notice to apprentices of what wages apprentices will receive and under what circumstances apprentices’ wages will increase.”<sup>33</sup>

## Equal Employment Opportunity Provisions

Registered apprenticeship programs are subject to a dedicated set of EEO regulations in 29 C.F.R. 30. The IRAP rule requires IRAP programs to affirm their “adherence to all applicable Federal, State, and local laws pertaining to Equal Employment Opportunity” but are not subject to apprenticeship-specific EEO policies.<sup>34</sup>

## Integration with Other Federal Programs

While registered apprenticeship programs do not necessarily qualify for federal funds, there are a number of federal funding streams for which registered apprenticeship is an allowable use and registered apprenticeship programs may receive special consideration.<sup>35</sup> For example, registered apprenticeship programs are automatically eligible for state formula grant funds under the Workforce Innovation and Opportunity Act (WIOA).<sup>36</sup> Similarly, registered apprenticeship programs are “deemed approved” for the GI Bill and do not have to complete an in-depth review.<sup>37</sup>

The IRAP rule does not align IRAPs with the funding streams. The explanations accompanying the rule specify that the special considerations afforded to registered apprenticeship programs by some other programs do not extend to IRAP programs, but they note that IRAP programs may

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<sup>30</sup> See 29 C.F.R. 29.5(a)(4) for registered apprenticeship policy.

<sup>31</sup> 29 C.F.R. 29.22(a)(4)(iii).

<sup>32</sup> 29 C.F.R. 29.5(b)(5).

<sup>33</sup> 29 C.F.R. 22(a)(4)(vii).

<sup>34</sup> 29 C.F.R. 29.22(a)(4)(viii). For a discussion of the IRAP EEO provisions compared to the registered apprenticeship EEO provisions, see the *Federal Register* notice, pp. 14323-14324.

<sup>35</sup> For a summary of these funding sources, see U.S. Department of Labor, *The Federal Resources Playbook for Registered Apprenticeship*, <https://www.doleta.gov/oa/federalresources/playbook.pdf>.

<sup>36</sup> For a detailed discussion of the interaction of registered apprenticeship and WIOA, see DOL Training and Employment Guidance Letter (TEGL) 13-16, January 12, 2017, [https://wdr.doleta.gov/directives/attach/TEGL/TEGL\\_13-16\\_acc.pdf](https://wdr.doleta.gov/directives/attach/TEGL/TEGL_13-16_acc.pdf).

<sup>37</sup> See 38 U.S.C. 3672 and CRS Report R44728, *The Role of State Approving Agencies in the Administration of GI Bill Benefits*.

qualify for more general forms of workforce funding.<sup>38</sup> The IRAP rule further clarifies that the exception to prevailing wage laws under the Davis-Bacon Act for participants in registered apprenticeship programs does not extend to IRAPs.<sup>39</sup>

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<sup>38</sup> See the *Federal Register* notice, p. 14299, which specifies “where Federal programs confer categorical eligibility, exclusive funding, or special status to registered apprenticeship programs, such benefits do not extend to IRAPs.”

<sup>39</sup> *Federal Register* notice, p. 14323.