

**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:** Final rule.**SUMMARY:** The U.S. Department of Labor (DOL or the Department) is issuing this final rule to rescind its 2020 regulation

that established a process under which the Department's Office of Apprenticeship (OA) Administrator (Administrator) was authorized to grant recognition to qualified third-party entities, known as Standards Recognition Entities (SREs), which in turn were authorized to evaluate and extend recognition to Industry-Recognized Apprenticeship Programs (IRAPs). This final rule also makes necessary conforming changes to the regulations governing the registration of apprenticeship programs by the Department.

**DATES:** This final rule is effective November 25, 2022.**FOR FURTHER INFORMATION CONTACT:** John V. Ladd, Administrator, Office of Apprenticeship, U.S. Department of Labor, 200 Constitution Avenue NW, Room C–5311, Washington, DC 20210; telephone (202) 693–2796 (this is not a toll-free number).

Individuals with hearing or speech impairments, please dial 7–1–1 to access telecommunications relay services.

**SUPPLEMENTARY INFORMATION:****List of Abbreviations**

Abbreviation	Definition
AAI .....	American Apprenticeship Initiative.
Administrator .....	Administrator of the U.S. Department of Labor's Office of Apprenticeship.
BLS .....	U.S. Bureau of Labor and Statistics.
CFR .....	Code of Federal Regulations.
COVID–19 .....	Coronavirus Disease 2019.
DOL or the Department .....	U.S. Department of Labor.
ECEC .....	Employer Costs for Employee Compensation.
EEO .....	equal employment opportunity.
E.O. ....	Executive Order.
ERISA .....	Employee Retirement Income Security Act of 1974.
ETA .....	Employment and Training Administration.
FR .....	Federal Register.
FY .....	Fiscal Year.
GS .....	General Schedule.
HHS .....	U.S. Department of Health and Human Services.
IC .....	information collection.
IRAP .....	Industry-Recognized Apprenticeship Program.
IT .....	information technology.
NAA .....	National Apprenticeship Act of 1937.
NPRM .....	Notice of Proposed Rulemaking.
OA .....	Office of Apprenticeship.
OJL .....	on-the-job learning.
OMB .....	Office of Management and Budget.
RAP .....	Registered Apprenticeship program.
RAPIDS .....	Registered Apprenticeship Partners Information Database System.
RI .....	Related instruction.
SAA .....	State Apprenticeship Agency.
Secretary .....	U.S. Secretary of Labor.
SOC .....	Standard Occupational Classification.
SRE .....	Standards Recognition Entity.
Task Force .....	Task Force on Apprenticeship Expansion.
UMRA .....	Unfunded Mandates Reform Act of 1995.
U.S.C. ....	U.S. Code.

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**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 (EEO) in apprenticeship) in 1963 and at 29 CFR 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 (including pregnancy and gender identity), sexual orientation, age (40 or older), genetic information, and disability, and they require sponsors of Registered Apprenticeship programs (RAPs) to promote equal opportunity in such programs. The part 29 regulations set forth labor standards designed to safeguard the welfare of apprentices in RAPs, 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, hereinafter “the 2008 final rule”), and updated 29 CFR part 30 in 2016 “to modernize the 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 of Labor 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 Notice of Proposed Rulemaking (NPRM) on June 25, 2019 (84 FR 29970, hereinafter “the 2019 IRAP NPRM”), which proposed amending 29 CFR part 29 by adding a subpart (subpart B) containing a new regulatory framework governing both the recognition and oversight of SREs by the Department, and the recognition and oversight of IRAPs by Department-

recognized SREs. After considering approximately 326,000 written comments on the 2019 IRAP NPRM, the Department published a final rule in the **Federal Register** on March 11, 2020 (85 FR 14294), entitled “Apprenticeship Programs, Labor Standards for Registration, Amendment of Regulations” (hereinafter “the 2020 IRAP final rule”), which established a new 29 CFR part 29, subpart B governing the recognition and oversight of SREs and IRAPs, designated the Registered Apprenticeship regulations at 29 CFR 29.1 through 29.14 as subpart A under the heading “Subpart A—Registered Apprenticeship Programs,” and made conforming edits to subpart A to account for the addition of subpart B.

The 2020 IRAP final rule established a set of standards and procedures under which the Administrator would evaluate and extend recognition to SREs; these recognized SREs, in turn, were authorized under the rule to evaluate and recognize IRAPs. The 2020 IRAP final rule set forth in detail the requirements for third-party entities applying for Departmental recognition as SREs. It also identified certain requirements apprenticeship programs must meet to obtain recognition from SREs as IRAPs. The 2020 IRAP final rule became effective on May 11, 2020.

On February 17, 2021, President Biden issued E.O. 14016, “Revocation of Executive Order 13801” (86 FR 11089); section 2 of this E.O. 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 that it would initiate a review of the IRAP system. The Department also suspended the acceptance and review of new and pending SRE recognition applications.<sup>1</sup> The Department advised that all SREs recognized by the Department prior to the February 17, 2021 suspension, as well as all IRAPs recognized by an SRE prior to that date, could continue to operate in accordance with the requirements outlined in 29 CFR part 29, subpart B. At the time the Department began the SRE pause and IRAP system review, there were 27 organizations recognized by the Department as SREs.

Consistent with E.O. 14016, the Department considered whether to retain the 2020 IRAP regulation. After review, the Department concluded that retaining the IRAP regulatory framework

was not in the best interest of apprentices or the Department. Accordingly, on November 15, 2021, the Department published an NPRM in the **Federal Register** (86 FR 62966, hereinafter “the 2021 IRAP Rescission NPRM”), proposing to rescind the 2020 IRAP final rule and to make necessary conforming changes to the Department’s Registered Apprenticeship regulations in 29 CFR part 29, subpart A (Registered Apprenticeship Programs).

In the 2021 IRAP Rescission NPRM, the Department explained the rationale for adopting the 2020 IRAP final rule, acknowledged that the proposed rescission represented a change in its position with respect to the need for and the benefits of IRAPs, and explained why it proposed to rescind the 2020 final rule. Commenters on the proposed rescission largely supported the Department’s proposal for the reasons discussed at length in the proposal, as discussed in more detail in the “Public Comments” section below. Accordingly, the Department, for the reasons discussed in the 2021 IRAP Rescission NPRM and the preamble to this final rule, is finalizing the rule as proposed.

The Department is rescinding the 2020 IRAP final rule because it has determined that the Department’s efforts and resources should be focused on Registered Apprenticeship, which has proven to be highly successful for both industry and workers and incorporates valuable quality standards and worker protections. This is consistent with the Administration’s priority to expand Registered Apprenticeship because of its success as a pathway to the middle class and ability to connect a diverse workforce to family-supporting jobs.<sup>2</sup> Further, it aligns with the Department’s priority to use “Registered Apprenticeship [to] provide pathways to strengthen our workforce and our economy.”<sup>3</sup>

In contrast, and as explained in detail in the 2021 IRAP Rescission NPRM, the Department now believes the 2020 IRAP final rule does not align with the Department’s priorities of providing high-quality training with an emphasis on apprentice safety and welfare. 86 FR 62968–71. This is due to the 2020 IRAP final rule’s fewer quality training and worker protection standards as compared to Registered Apprenticeship’s on-the-job learning and related instruction requirements and apprentice protections, such as

<sup>1</sup> DOL, “U.S. Department of Labor Undertakes Several Actions to Strengthen Registered Apprenticeship Program, Eliminate Duplication,” Feb. 17, 2021, <https://www.dol.gov/newsroom/releases/eta/eta20210217>.

<sup>2</sup> <https://www.whitehouse.gov/briefing-room/statements-releases/2021/02/17/fact-sheet-biden-administration-to-take-steps-to-bolster-registered-apprenticeships/>.

<sup>3</sup> <https://www.dol.gov/newsroom/releases/eta/eta20210217>.

enhanced safety standards, a progressive wage requirement, and EEO regulations. Within the Registered Apprenticeship regulations, there is also greater accountability because the Department can exercise direct oversight to ensure employers provide industry-established prevailing wages, ensure stringent safety standards are in place, and monitor program quality to protect workers. By contrast, the Department's limited, indirect oversight role of IRAPs under the 2020 IRAP final rule constrains its ability to ensure that IRAPs are providing quality training and worker protection, leading to potentially inequitable access to higher quality training and worker protections among program participants. Accordingly, the Department no longer believes the IRAP model is a reasonable or effective alternative to the training standards, worker protection, and oversight that are the cornerstones of Registered Apprenticeship. 86 FR 62968–71.

The Department also determined that two of the key justifications for issuing the 2020 IRAP final rule—the purported inflexibility in the Registered Apprenticeship system and the administrative burdens hindering Registered Apprenticeship's ability to meet the needs of different industries—are fundamentally flawed. As discussed at length in the 2021 IRAP Rescission NPRM, the assertion that the Registered Apprenticeship system is inflexible and administratively burdensome is belied by the demonstrated success of Registered Apprenticeship for industry and workers alike, and by Registered Apprenticeship's continued growth and expansion into new industries and occupations. Indeed, Registered Apprenticeship has continued to show strong growth since its establishment, including the latest data reflecting strong growth in 2020 and 2021, during the height of the COVID-19 pandemic.<sup>4,5</sup> RAPs are a flexible training strategy, with vital quality controls, that can be customized to meet the business needs for a skilled workforce. As the Department discussed in the 2021 IRAP Rescission NPRM, the most recent data reflects that Registered Apprenticeship has not only continued to grow but has also expanded into “non-traditional” industry sectors, such as healthcare, cybersecurity, transportation, and advanced manufacturing, through a variety of initiatives (e.g., Department's 2015 American Apprenticeship

Initiative (AAI)) and has demonstrated success in those sectors. 86 FR 62971–72.

The Department also determined that the 2020 IRAP final rule's justification that IRAPs were necessary to address a purported “skills gap” was based on faulty reasoning. As discussed in the 2021 IRAP Rescission NPRM, the Department no longer believes the purported “skills gap,” as referenced in the 2020 IRAP final rule, to be the major challenge facing the labor market. 86 FR 62971. Rather, the Department now believes that there are additional factors that have a bearing on industry labor needs, such as employer investments in workforce development, competitive and rising wages to attract and retain workers, commitments to opportunity and diversity, and worker empowerment.<sup>6,7</sup> These are factors that the RAP framework supports and is well-positioned to address, thereby providing a more promising and effective framework for addressing and closing persistent inefficiencies in the labor market. In contrast, the 2020 IRAP final rule is deficient in incorporating these factors, and its deficiencies in job quality and worker protection requirements (particularly with respect to EEO and progressive wages for apprentices) reduce the ability of IRAPs to address any current or future labor shortages. Further, the IRAP final rule's deficiencies in ensuring quality standards for workers undermine both the RAP framework and the Administration's commitment to promoting good quality, family-sustaining jobs for all workers, including apprentices.

Finally, through the experience of administering the IRAP system, the Department has determined that the IRAP system is redundant of Registered Apprenticeship and that such redundancy creates confusion and reduces resources that would be better used to support the continued success and growth of Registered Apprenticeship across industries and occupations. As discussed in the 2021 IRAP Rescission NPRM, the Department observed significant duplication of occupations covered by RAPs and IRAPs. 86 FR 62972. The Department notes that the flexible RAP model has

continued to expand into emerging occupations and sectors; accordingly, as discussed above and in the 2021 IRAP Rescission NPRM, there is a significant overlap in the industry sectors served by RAPs and IRAPs. Further, the administration of the IRAP system has generated duplicative work and costs for the Department, created inconsistent standards for quality training, reduced worker protections such as EEO, and committed limited resources that could have been better utilized by the Department to partner with industry to expand the existing Registered Apprenticeship system. 86 FR 62971–72.

### Public Comments

The 2021 IRAP Rescission NPRM invited written comments from the public concerning the proposed rulemaking; the comment period closed on January 14, 2022. During the 60-day public comment period, the Department received a total of 20 public comment submissions (including 18 unique submissions, one duplicate submission, and one submission that was outside the scope of the rulemaking). The comments received on the 2021 IRAP Rescission NPRM may be viewed at <https://www.regulations.gov> by entering docket number ETA–2021–0007.

The commenters represented a range of stakeholders from the public, private, and not-for-profit sectors, including: six labor organizations; three trade associations; two advocacy organizations; two SAAs; one organization that represents SAAs; one SRE; and one IRAP. The Department also received comments from two individuals. After careful consideration of the comments received and for the reasons explained below, the Department is adopting this final rule, which rescinds the regulatory framework for SREs and IRAPs codified at 29 CFR part 29, subpart B, and makes necessary conforming changes to the Department's Registered Apprenticeship regulations in 29 CFR part 29, subpart A, as proposed (including removing the subpart A designation).

### General Support for and Opposition to the 2021 Proposal To Rescind the 2020 IRAP Final Rule

Several commenters discussed their general support for the proposal to rescind the 2020 IRAP final rule and thereby remove the regulatory framework for SREs and IRAPs under 29 CFR part 29, subpart B. Some commenters expressed agreement with the proposal and further supported the proposal's focus on strengthening and modernizing the current Registered

<sup>4</sup> OA 2020 Data and Statistics, available at <https://www.dol.gov/agencies/eta/apprenticeship/about/statistics/2020>.

<sup>5</sup> OA 2021 Data and Statistics, available at <https://www.dol.gov/agencies/eta/apprenticeship/about/statistics/2021>.

<sup>6</sup> 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/>.

<sup>7</sup> 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/>.

Apprenticeship system, ensuring that apprentices are protected from abuse and properly trained by their chosen apprenticeship program, and safeguarding the welfare of apprentices. Other commenters expressed support for the proposal and argued that the Registered Apprenticeship system should be supported and expanded to new industries and that, “if allowed to remain in place, the 2020 IRAP final rule would threaten to undo more than eight decades of highly effective apprenticeship programs validated by public entities.” A commenter conveyed its support for the removal of subpart B because doing so would ensure that construction industry apprenticeships continue as the “gold standard” for apprenticeship programs throughout the United States and to serve as an example to other industries to emulate. Another commenter urged the Department to ensure that the proposal only strengthen RAPs and maintain the high quality of the Registered Apprenticeship system.

The Department appreciates the commenters’ support of the proposal and agrees that the RAP model is effective and has proven successful for both industry and workers for more than 80 years. The Department shares the view of the commenters who believe that the Department should focus its efforts on bolstering and modernizing the Registered Apprenticeship system and facilitating the expansion of RAPs into new and emerging industries and sectors. The Department appreciates the commenter’s assertion that the rescission of 29 CFR part 29, subpart B would ensure that construction industry apprenticeships continue as the “gold standard” for apprenticeship programs, however, the Department also notes that the rescission of this subpart would ensure that all apprenticeship programs, including construction industry apprenticeships, maintain high-quality labor standards in connection with the Registered Apprenticeship framework. The Department recognizes the value of the Registered Apprenticeship system and has prioritized investing in the RAP model to rebuild the economy, expand economic opportunities and workforce access for underrepresented populations and communities, and advance racial and gender equity. By adopting this proposal, the Department preserves high-level requirements for apprentice training and safety. These requirements are vital to establishing quality RAP opportunities that lead to good-quality jobs, and careers for workers, while also helping fulfill labor market demands and support economic growth.

The Department received comments expressing general support for the IRAP model, based on commenters’ use of the model, and discussing some of the benefits of their use of the IRAP model. One commenter described the process by which it developed an SRE and its process to create criteria to evaluate IRAPs. The commenter described its process as fair, valid, impartial and well-received by the IRAP that it recognized. Another commenter asserted that IRAPs can help close the growing skills gap, creating a bridge between business leaders and career seekers. The commenter further argued that IRAPs help rebuild the workforce by shortening the amount of time required to enter or upskill in a given industry. The commenter also highlighted the internal and external program evaluation elements in their IRAP that cover validation of need, validation of competencies, qualifications of personnel, apprentice selection, and program effectiveness.

The Department acknowledges these comments in general support of IRAPs and appreciates that there can be instances of success in IRAPs. Nevertheless, as stated in the 2021 IRAP Rescission NPRM, the Department views the 2020 IRAP final rule as inconsistent with the Department’s goal of expanding quality apprenticeships in a manner that both ensures a high level of quality for apprentices and industry while also retaining the necessary flexibility to adapt apprenticeships to different industries and occupations. Further, the Department views the IRAP system as duplicative of the Registered Apprenticeship system, though with fewer quality standards and less oversight, and the IRAP system is not a prudent use of Government resources and would diminish the quality and coherence of the Department’s apprenticeship efforts.

In response to the commenter who asserted that IRAPs can help address the skills gap in the American workforce, the Department disagrees with this view. In the 2021 IRAP Rescission NPRM, the Department explained why the IRAP model is not poised to address the existing challenges and inefficiencies in the labor market. Specifically, 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.<sup>89</sup> The well-established RAP model provides a more promising and effective framework for addressing and closing persistent inefficiencies in the labor market.

#### *The Department’s Role in Administering the National Apprenticeship Act and Implementing Its Regulations*

The Department received several comments that questioned whether the 2020 IRAP final rule’s issuance was consistent with the NAA, referring to the legislative history and purpose of the NAA. One commenter, in describing the NAA’s legislative history, highlighted congressional comments about Federal intervention to halt the exploitation of apprentices. Several commenters remarked that the 2020 IRAP final rule constituted an improper delegation of the Department’s authority under the NAA. One commenter stated that Congress did not enable the Secretary to delegate the authority to approve apprenticeships or apprenticeship standards to an outside party. Similarly, another commenter stated that the 2020 IRAP final rule shifts the authority from the Department to third-party SREs in contravention of the Department’s responsibility under the NAA to determine whether statutory requirements have been met. Another commenter stated that IRAPs created under the 2020 IRAP final rule do not feature the level of standardization demanded by the NAA. A commenter asserted that the 2020 IRAP final rule unlawfully delegated EEO oversight to SREs, contrary to the Department’s goals in the 29 CFR part 30 regulations to address discrimination and inequitable participation of women and minorities in apprenticeships. Another commenter asserted that the 2020 IRAP final rule eliminated protections for apprentices established by the 2008 final rule, including: (1) the requirement that a State Apprenticeship Agency serving as a Registration Agency recognized by the Department under 29 CFR part 29 must be a Government entity; (2) the provisional registration of new apprenticeship programs; (3) minimum standards for instructor qualifications; and (4) a cap on the length of an apprentice’s probationary period. The commenter argued that rescinding the

<sup>89</sup> 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/>.

<sup>90</sup> 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/>.

IRAP regulations would restore these important protections as well as other safeguards that preceded the 2008 final rule, such as the minimum number of hours of related instruction (RI), for all apprentices.

The Department acknowledges these comments and appreciates their support for the 2021 IRAP Rescission NPRM. As the Department explained in the 2020 IRAP final rule (85 FR 14295–14296, Mar. 11, 2020), the NAA provides a general authorization and direction for the Secretary to create and promote standards of apprenticeship, including through contracts, and to interface with employers, labor, and States to create apprenticeships and apprenticeship standards. See 29 U.S.C. 50. The 2020 IRAP final rule does not exceed or conflict with the broad authority granted by Congress to the Secretary in the NAA. However, the Department agrees that IRAPs created under the 2020 IRAP final rule do not provide adequate standards for high-quality training or safety and welfare protections, including sufficient EEO protections. As stated in the 2021 IRAP Rescission NPRM, the 2020 IRAP final rule “does not provide adequate focus on worker needs and protections, does not ensure adequate program quality standards, does not provide sufficient [EEO] protections for apprentices, and does not provide a proven pathway to family-sustaining jobs” (86 FR 62967, Nov. 15, 2021).

With regard to the comment that the 2020 IRAP final rule eliminated protections for apprentices established by the 2008 final rule, the Department clarifies that the 2020 IRAP final rule did not propose any revisions to the 29 CFR part 29 requirements that a State Apprenticeship Agency serving as a Registration Agency must be a Government entity, the provisional registration of new apprenticeship programs, the minimum standards for instructor qualifications, and a cap on the length of an apprentice’s probationary period. Rather, the 2020 IRAP final rule made technical amendments to subpart A to account for subpart B. The 2021 IRAP Rescission NPRM proposed to remove subpart B, to make conforming technical edits to what had been subpart A, and to remove the distinctions of subparts because they would no longer be necessary with the removal of subpart B. Therefore, no changes are required in response to these comments.

## II. The Registered Apprenticeship System Is Highly Successful for Industry

A skilled workforce is foundational to a strong economy, and RAPs provide a proven avenue by which to deliver much needed talent development to various industry sectors. For over 80 years, the Registered Apprenticeship system has been successful in providing industry with high-quality work-based learning. RAPs combine paid on-the-job learning (OJL) with RI 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. Additionally, employers have continued to turn to Registered Apprenticeship to hire and train new employees, with over 241,000 new apprentices in RAPs in Fiscal Year (FY) 2021 across several industries, including cybersecurity, healthcare, advanced manufacturing, transportation, energy, and information technology (IT).<sup>10</sup> 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 RAPs drove increased worker productivity.<sup>11</sup> RAPs are a flexible training strategy, with vital quality controls, that can be customized to meet the business needs for a skilled workforce. These strategies include 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.

Most commenters agreed with the Department’s position in the NPRM that RAPs are highly successful for industry. One commenter noted the eight successful decades of the Registered Apprenticeship system and credited RAPs with continued success in expanding their presence in high-

growth sectors (e.g., advanced manufacturing, healthcare, transportation, and IT) and “in industries not traditionally associated with apprenticeship.” Another commenter encouraged the Department to “embrace and bolster” the RAP model. Several commenters referred to RAPs as the “gold standard” for apprenticeship that creates a highly trained workforce. The Department appreciates these commenters’ support for RAPs and agrees that the Registered Apprenticeship system has had a robust and successful history.

Notably, these same commenters who lauded RAP as beneficial to industry also expressed their views that IRAPs are harmful to industry. One commenter expressed concern that the 2020 IRAP final rule’s lack of uniform standards disincentivizes the creation of apprenticeship programs because apprentices are easily “poached” due to minimal standards and less program transparency. The commenter also stated that the Department’s decision to create IRAPs was counter to the Task Force’s recommendation to start with a pilot program to determine industry interest, leading to a hastily created apprenticeship model without evidence that it would be embraced by industry or successful as a viable alternative to RAPs.

Commenters also expressed the view that the 2020 IRAP final rule was detrimental to the construction industry, despite the exclusion of construction activities from the 2020 IRAP final rule. A commenter also noted that future administrations could remove the construction exclusion from the 2020 IRAP final rule, thereby undermining RAPs in the construction industry, and jeopardizing RAPs as the “premier method for preparing its future workforce.”

The Department appreciates the support received to rescind the 2020 IRAP final rule. The Department acknowledges the commenters’ assertions that IRAPs would create disincentives to setting up apprenticeship programs or an overall negative impact on industry, including the construction industry. The Department’s rationale for rescinding the 2020 IRAP final rule does not rely upon general concerns about the potential detrimental effect to industry generally and the construction industry particularly, but the Department appreciates these concerns and notes that the rescission of the 2020 IRAP final rule in its entirety obviates such concerns.

Conversely, a commenter in support of the IRAP system noted their

<sup>10</sup> 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 FY 2021 (Oct. 1, 2020–Sept. 30, 2021), as reported by these entities, and are available at <https://www.dol.gov/agencies/eta/apprenticeship/about/statistics/2021> (last visited May 19, 2022).

<sup>11</sup> Urban Institute Research Report, “The Benefits and Challenges of Registered Apprenticeship: The Sponsors’ Perspective,” June 12, 2009, <https://www.urban.org/research/publication/benefits-and-challenges-registered-apprenticeship-sponsors-perspective>.

opposition to the Department's exclusion of the construction industry from recognition under the IRAP regulatory framework.<sup>12</sup> This commenter argued that the construction industry was ripe for an expansion of apprenticeship opportunities. While the commenter applauded efforts to recruit, retrain, and upskill workers in the Registered Apprenticeship system, the commenter asserted that "new and innovative apprenticeships" are necessary in the construction sector as it recovers from the negative economic impacts of the Coronavirus Disease 2019 (COVID-19) pandemic. The commenter specifically highlighted the residential construction industry as one that could benefit from these new approaches to apprenticeship. The commenter urged the Department, when designing and implementing apprenticeship and job training opportunities, to target those industries with the highest number of job openings and conduct greater outreach efforts to identify the individual sectors that are underrepresented. The commenter also encouraged the Department to take steps to distinguish between types of construction activities (such as residential construction) and collaborate with the different segments of the construction industry "to develop and expand [RAPs] through companies, educational organizations, and other nonunion groups that better represent the demographics of the workforce."

In response to the comment reiterating opposition to the construction industry's exclusion in the 2020 IRAP final rule, the Department has concluded that the rescission of the 2020 IRAP final rule should have a beneficial impact across all industries by restoring a unitary regulatory framework for quality apprenticeship programs, both in sectors where such programs are widespread (such as construction) and in a wide range of high-growth and emerging occupations (such as healthcare, IT, cybersecurity, advanced manufacturing). While the Department notes the commenter's concerns about a current shortage of workers in the residential construction sector, it does not believe that preserving a parallel system of apprenticeship that lacks quality control and oversight is the appropriate solution for addressing such a worker shortage. Moreover, the Department notes that it has registered nonunion programs in the construction sector, which demonstrates

the RAP model can be successfully utilized across all parts of an industry. The Department notes further that the IRAP system is not necessary to expand the reach of apprenticeship to new and different industries as RAPs have proven to be successful across a wide range of industry sectors. The Department continues to be interested in expanding and strengthening the RAP model in all industry sectors, including residential construction and other construction-related activities.

### III. The Registered Apprenticeship System Is Highly Successful for Workers

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

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. RAPs are designed to ensure high-quality training through structured OJL, mentorship, and RI, while also prioritizing safety, wage progression, and EEO for apprentices. RAPs implement federally approved industry standards for training apprentices for skilled occupations in the workplace; specifically, these programs must abide by regulatory provisions for supervision and training of apprentices to further enhance safety in the workplace. During training, apprentices are guaranteed progressive wage increases, and research shows that RAP completers earn over \$300,000 (including benefits) more over their lifetimes as compared with individuals who do not complete a RAP.<sup>13</sup> 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 intervene and ensure employers provide progressive wages established in their approved Registered

Apprenticeship standards, ensure stringent safety standards are in place, address discrimination and issues of equal opportunity, and monitor program quality to protect workers.

Commenters agreed with the Department that the RAP model is highly successful because of its emphasis on both high-quality training and apprentice safety and welfare and agreed with the Department's position that IRAPs are not designed to uniformly promote these core elements of quality apprenticeship programs. For example, several commenters, in expressing support for the Department's 2021 IRAP Rescission NPRM, remarked that RAPs offer protection and standards to ensure quality among the hallmarks of apprenticeship—high-quality training, including OJL and RI, safety and welfare, progressive wages, EEO protections, and worker empowerment. One commenter argued that Registered Apprenticeship is a proven model that consistently provides quality training and employment opportunities, and another commenter stated that the RAP model's balance of regulatory oversight and standardized training requirements produces workers with skillsets that lead to family-sustaining careers. In addition, in noting their support for the Department's 2021 IRAP Rescission NPRM, several commenters compared the RAP model with that of IRAPs, agreeing with the Department's determination that the IRAP model neither adequately ensures high-quality training nor apprentice safety and welfare.

Commenters also provided suggestions on how to improve Registered Apprenticeship. One commenter suggested that the Department use lessons learned from the IRAP model to strengthen Registered Apprenticeship, specifically recommending that the RAP model should emphasize the assessment of competencies, use third-party capstone industry-recognized certifications, and require a program evaluation component with an emphasis on outcomes. Another commenter, in expressing support for the 2021 IRAP Rescission NPRM, suggested that resources be refocused on aggressive oversight of RAPs to ensure the protection of apprentices, including investigation into the amount and source of funding for the operation of a RAP; the adequacy of the facilities and equipment used for training; adequacy of plans for retraining graduates to upgrade skillsets; the track record of the RAP sponsor; and whether the sponsor has the ability to provide broad-based training that will prepare apprentices to

<sup>12</sup> The 2020 IRAP final rule at § 29.30 excluded SREs from not recognizing as IRAPs programs that seek to train apprentices to perform construction activities as defined in § 29.30.

<sup>13</sup> 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](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 Apprenticeship on earnings. Moreover, the estimates do not represent increments between RAPs and IRAPs (the latter not having been implemented at the time the study was conducted).

be marketable in an industry-recognized occupation.

The Department appreciates these comments that support its 2021 IRAP Rescission NPRM. The Department also appreciates and agrees with the comments characterizing the RAP model as highly successful because of its emphasis on protections and standards that ensure high-quality training and apprentice safety and welfare. The Department agrees with the comments that assert that the IRAP model does not adequately ensure high-quality training or apprentice safety and welfare. With respect to the suggestions on how to improve Registered Apprenticeship, the Department acknowledges these comments and continues to be interested in ideas to expand Registered Apprenticeship while elevating important quality standards and promoting advancement opportunities for workers. The Department notes that the 2020 IRAP final rule does not mandate industry capstone certifications and that such mechanisms are not prohibited under the Registered Apprenticeship regulations. The Department continues to be interested in exploring ideas for strengthening the Registered Apprenticeship system and training model, and the Department appreciates these suggestions on how to make Registered Apprenticeship more successful for all workers and industries.

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.<sup>14</sup> OJL is a critical component for the apprentice's learning experience, and the Department considers a structured mentorship requirement as a strength for high-quality apprenticeship programs. RAPs 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, the IRAP regulations lack a structured, standardized framework for OJL, resulting in inconsistent training across all SREs and IRAPs.

Another critical component of a RAP is RI.<sup>15</sup> This RI provision is designed to ensure that 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 RI. In contrast, the IRAP regulations lack standards on minimum RI hours, and do not articulate how SREs monitor or evaluate RI.

The Department received several comments concerning OJL and RI. Several commenters, in expressing their support for the Department's 2021 IRAP Rescission NPRM, agreed with the Department's assertion that the IRAP model lacks OJL and RI standards that are necessary to ensure high-quality training. One commenter argued that the 2020 IRAP final rule's lack of robust OJL requirements means that many IRAPs would not include this essential aspect of quality apprenticeship programs. Another commenter lauded the current OJL and RI requirements in the Registered Apprenticeship regulations<sup>16</sup> and agreed with the Department's assertion that the 2020 IRAP final rule's requirement of only a written training plan<sup>17</sup> means that IRAPs cannot create a standardized framework for quality training since quality of training can vary across SREs. Another commenter suggested that the RAP model benefits apprentices through robust requirements for OJL, which provides a holistic understanding of their specific field; the commenter also asserted that the RAP model is generally supported by a recommended minimum

requirement for RI, which provides theoretical and technical education associated with an apprentice's profession. The same commenter argued that the absence of minimum standards and an articulated approach to evaluation for RI in the 2020 IRAP final rule results in subpar IRAP training relative to RAPs and a lower quality experience for employers and apprentices. Another commenter agreed with the Department and stated that the 2020 IRAP final rule's approach to OJL and RI is amorphous and inadequate. The commenter also referred to the Department's recent updates to its RAP guidance<sup>18</sup> around flexibilities available in the delivery of OJL and RI to demonstrate that the RAP model can be flexible while still adhering to quality standards.

Another commenter, in expressing support for the proposed rescission, argued that the IRAP model also failed to incorporate apprenticeability standards, which appear at 29 CFR 29.4.<sup>19</sup> The commenter argued that rescission of the 2020 IRAP final rule is important to ensure that apprentices receive broad-based training for in-demand skills because the 2020 IRAP final rule fails to account for apprentices' need to affordably retrain and update their skillsets. The commenter referred to three States—Delaware, New York, and Pennsylvania—that have included language in their apprenticeability standards that ensures skill development is not restricted to a single organization. Further, the commenter referred to Washington State's apprenticeability standard as one of the most stringent.

While not expressly opposing the Department's 2021 IRAP Rescission NPRM, two commenters, nevertheless, expressed their support of the general IRAP approach to OJL and RI, and suggested improvements to the RAP model based on the 2020 IRAP final rule. One of these commenters developed an IRAP-recognition procedure that the commenter described as “based on national and international standards [. . .] that, in turn, incorporate adult learning principles, validate content in alignment with industry, and produce rigorous and

<sup>14</sup> RAP regulations at 29 CFR 29.5(b)(2) set forth the requirements for the term of apprenticeship, which for an individual apprentice may be measured either through the completion of the industry standard for OJL (at least 2,000 hours) (time-based approach), the attainment of competency (competency-based approach), or a blend of the time-based and competency-based approaches (hybrid approach).

<sup>15</sup> RI 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. Under 29 CFR 29.5(b)(4), a minimum of 144 hours of RI is recommended for Registered Apprenticeship; many RAPs exceed this 144-hour recommendation.

<sup>16</sup> See 29 CFR 29.5(b)(1) through (3) for OJL and 29.5b(4) for RI.

<sup>17</sup> See 29 CFR 29.22(a)(4)(ii).

<sup>18</sup> OA issued Circular 2021–01, Flexibilities Available for the Delivery of On-the-Job Learning (OJL) and Related Instruction (RI) by Registered Apprenticeship Programs (RAPs), on December 16, 2020. It is available at <https://www.apprenticeship.gov/about-us/legislation-regulations-guidance/circulars>.

<sup>19</sup> Registered Apprenticeship regulations at 29 CFR 29.4 set forth criteria for determining when an occupation qualifies as apprenticeable.



validated assessment tools and personnel who are qualified to facilitate learning in the work environment.” This commenter expressed the view that incorporating such a competency-based approach could strengthen outcomes for RAP apprentices by assuring industry and employers that competencies have been attained. The commenters recommended that all apprenticeships be based on competency and performance criteria rather than having the option of a time-based approach, and they stated that the Department should incorporate positive features of the 2020 IRAP final rule into a new, modified Registered Apprenticeship system. To this end, one of the commenters recommended that RAPs emphasize the assessment of competencies by using a third-party capstone industry-recognized certification and by requiring a program evaluation component with an emphasis on outcomes. The other commenter opined that the IRAP model’s competency-based approach to learning is more cost effective than apprenticeship programs that are time-based. The commenter further asserted that IRAPs provide credit for prior knowledge for all workers, allowing individuals to complete apprenticeships more quickly. The same commenter stated that its IRAP ensures quality of OJL and apprentices’ instruction by specifically using an assessment model tiered with several levels of quality assurance.

The Department appreciates and agrees with the comments asserting that, when compared to Registered Apprenticeship, the IRAP model lacks OJL and RI requirements that are necessary to ensure high-quality training. The Department agrees with the comments that laud the RAP model’s approach to OJL and RI, which provide a holistic understanding of a specific field and are generally supported by a recommended minimum requirement for RI that provides theoretical and technical education associated with an apprentice’s profession. The Department also agrees that the standards and approach to evaluation for RI in the 2020 IRAP final rule results in subpar training relative to RAPs and a lower quality experience for employers and apprentices. The Department concurs that the existing approach to OJL and RI in RAPs has 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.

In response to the comment that notes the 2020 IRAP final rule failed to incorporate apprenticeability standards, the Department concurs that the omission of the apprenticeability requirements from the 2020 IRAP final rule was problematic. The Department agrees that this omission is further support for the proposed rescission, as apprenticeability standards are a key component in determining whether an occupation’s training is responsive to the needs of industry. The RAP model’s incorporation of apprenticeability standards to determine whether proposed training is suitable for an occupation and responsive to industry needs underscores the quality of the existing RAP model.

In response to the comments that expressed support of the IRAP model’s approach to OJL and RI, the Department maintains that IRAPs do not have the same rigorous training standards for minimum skill level or competency baselines in their respective occupations when compared to RAPs. Regarding the commenter that stated that the IRAP model’s competency-based approach to learning is more cost effective than apprenticeship programs that are time-based, the Department notes that the RAP model allows for a competency-based approach to OJL (see 29 CFR 29.5(b)(2)(ii)) and permits RAP sponsors the ability to choose the approach—time-based, competency-based, or hybrid—that is best suited for their industry, programs, and apprentices. Regarding the same commenter’s further assertion that IRAPs provide credit for prior knowledge for all workers, allowing individuals to complete apprenticeships more quickly, the Department notes that the RAP model also permits sponsors to grant advanced standing or credit for demonstrated competency (see 29 CFR 29.5(b)(12)). Finally, in response to the same commenter that stated its IRAP ensures quality of OJL and apprentices’ instruction by specifically using an assessment model tiered with several levels of quality assurance, the Department acknowledges that while the commenter’s specific IRAP may implement several levels of quality assurance for its OJL and RI, the 2020 IRAP final rule fails to ensure that all IRAPs include such quality standards for OJL and RI.

In response to the comments that suggest improvements to the RAP model’s approaches to OJL and RI, the Department appreciates the commenters’ recommendation concerning the assessment of

competencies as a key measure for evaluating the successful completion of a RAP by an apprentice but notes that adoption of these suggestions are outside the scope of this rulemaking. The Department also notes that the RAP regulations at 29 CFR 29.2 define “competency” as “the attainment of manual, mechanical or technical skills and knowledge, as specified by an occupational standard and demonstrated by an appropriate written and hands-on proficiency measurement.” Accordingly, competency attainment is the basis for advancement through and successful completion of both the competency-based and hybrid approaches in RAPs. The Department is committed to expanding competency attainment models as a feature of RAPs while also ensuring the acquisition of critical structured OJL necessary to acquire these competencies. Such models should include sufficient mentoring opportunities for apprentices to obtain proficiency in the skilled occupation.

The Department acknowledges this comment regarding the utility of third-party evaluation of an apprentice’s competencies in apprenticeship program design and is committed to continuing to study effective RAP models, identify research and evidence-based practices, and evaluate their outcomes.

#### *B. Registered Apprenticeships Provide Better Safety and Welfare Protections*

The importance of apprentice safety and welfare cannot be overstated. As discussed in the 2021 IRAP Rescission NPRM and reiterated below, the Registered Apprenticeship system includes enhanced requirements related to safety, EEO, 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 2020 IRAP final rule fall short in these areas. That final rule’s 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 EEO protections and requirements. The 2021 IRAP Rescission NPRM also noted that the 2020 IRAP final rule 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. The Department received several comments regarding these issues, which are discussed below.



## 1. Workplace Safety

RAPs require several safety protections designed to both teach apprentices how to work safely within their occupation and create safe workplaces for apprentices.<sup>20</sup> 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 covered by enhanced safety standards beyond generally applicable Federal, State, and local safety laws and regulations and any additional safety requirements of the SRE.

Several comments in support of the 2021 IRAP Rescission NPRM discussed the strength of Registered Apprenticeship's worker safety protections. For example, one commenter noted that the Registered Apprenticeship safety framework has proven effective in striking the right balance between safety, quality, and flexibility across industries. Further, the commenter highlighted the strength of Registered Apprenticeship's safety parameters, to include ratios, supervision, and training requirements. Another commenter highlighted the importance of a safe training environment for apprentices in RAPs, with an emphasis on data from the construction industry about the inherent dangers to younger, less experienced workers. The commenter described how RAPs include extensive safety training as well as supervision and on-the-job training to ensure the work environment is safe. These commenters also contrasted the Registered Apprenticeship safety protections with the 2020 IRAP final rule. One commenter highlighted the lack of required safety training in the 2020 IRAP final rule and offered that a mere pledge to comply with workplace safety laws was insufficient to adequately protect apprentices. Another commenter acknowledged the construction industry exclusion from the 2020 IRAP final rule but expressed concern that some industry programs could still be recognized as IRAPs, which in the commenter's view would create parallel systems that would dilute safety requirements and affect overall industry safety for apprentices, journeyworkers, and the public. A commenter faulted the 2020 IRAP final rule for merely requiring IRAPs to abide by Federal, State, and local safety laws and for

providing SREs with too much discretion to establish their own safety standards, leading to less rigorous safety requirements that could result in unsafe training programs and high-risk workplaces. Finally, a commenter contrasted the safety requirements for RAPs in the Registered Apprenticeship regulations at 29 CFR 29.5 with the lack of an apprentice-to-journeyworker ratio in the 2020 IRAP final rule at 29 CFR 29.22 to ensure a level of supervision necessary for apprentice safety.

The Department appreciates these comments and agrees that Registered Apprenticeship's worker safety provisions are designed to provide stronger protections than provided in the 2020 IRAP final rule. The Department views the enhanced safety requirements in Registered Apprenticeship regulations as an essential element of a successful apprenticeship program, given the nature of apprenticeship as OJL and training. The focus in the Registered Apprenticeship regulations on both workplace safety standards and safety through training and mentorship provides a multi-pronged approach to worker safety. 29 CFR 29.5(b)(7) and (9). The Department agrees with the commenters' assessments that the safety requirements in Registered Apprenticeship are rigorous enough to provide essential protection and training for apprentices as well as flexible and adaptable enough to each workplace and industry needs. The Department also agrees with commenters' assessments of the 2020 IRAP final rule requirements at § 29.22(a)(4) as being insufficient to provide a safe training environment for apprentices. Likewise, the Department agrees that the 2020 IRAP final rule instead inadvisably gives discretion to the SRE on the important matter of apprentice safety, potentially leading to both inconsistencies and deficient safety requirements across IRAPs even within the same industry. With respect to the construction industry exclusion from the 2020 IRAP final rule in § 29.30, the Department acknowledges concerns that IRAPs could have been recognized in the construction industry despite the exclusion in the 2020 IRAP final rule. Although the Department views the explicit construction industry exclusion from the 2020 IRAP final rule as an appropriate safeguard against such potential outcomes, the Department's decision to rescind the 2020 IRAP final rule resolves concerns about potential weaknesses in the 2020 IRAP final rule's construction industry exclusion.

## 2. Progressive Wages

It is a priority of the Department to grow opportunities to help workers access family-sustaining jobs. The RAP 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 RI 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 family-sustaining careers. 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.

Several commenters in support of the 2021 IRAP Rescission NPRM discussed the importance of Registered Apprenticeship's progressive wage requirements. A couple of commenters cited research showing that apprentices who successfully complete RAPs accrue, over the course of their careers, approximately \$300,000 more in salary and benefits than similarly situated workers who have not completed a RAP.<sup>21</sup> Another commenter described RAPs as providing “a pathway to the middle class” because apprentices are guaranteed to receive higher wages as they advance and complete training requirements.

These commenters also faulted the IRAP model for failing to require progressive wage increases for participants. One commenter expressed concern that failing to require progressive wages would decrease the attractiveness of IRAPs, lead to lower completion rates, and worsen employee loyalty. One commenter expressed that the 2020 IRAP final rule's lack of progressive wage requirement undermined the pathway to the middle class because IRAPs are permitted to

<sup>21</sup> 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](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 Apprenticeship on earnings. Moreover, the estimates do not represent increments between RAPs and IRAPs (the latter not having been implemented at the time the study was conducted).

<sup>20</sup> See 29 CFR 29.5(b)(7) and (9).

offer a single wage rate that never increases, even after apprentices' complete months or years of training.

A commenter expressed concern that IRAPs could subvert Davis-Bacon Act provisions that provide exemptions for apprentices in RAPs to be paid at an amount commensurate with their skill level for Federal construction contract positions. The commenter noted that this exemption allows an apprentice to gain firsthand experience through a robust training program with mentorship. Citing research, a commenter remarked that "robust" prevailing wage laws help States attract more apprentices and lead to improved safety on construction work sites.

The Department agrees with the commenters that progressive wages are a critical element in successful apprenticeship programs both because they guarantee increases commensurate with the apprentice's experience and proficiency and because they lead apprentices on a path to higher lifetime earnings. The Department also agrees with these commenters that the absence of a requirement for a progressively increasing schedule of apprentice wages in the 2020 IRAP final rule is a fundamental shortcoming and is inconsistent with the Department's role in promoting the highest quality apprenticeship programs. The Department acknowledges one commenter's concern regarding Davis-Bacon wages and related concern that IRAPs could subvert these wage provisions to create instability in the construction apprenticeship program. The Department does not share this view, however, because the construction industry exclusion in the 2020 IRAP final rule was specifically designed to address this concern. Moreover, the Department's decision to rescind the 2020 IRAP final rule in its entirety will obviate any concerns about its potential negative impact on construction industry wages.

One commenter in support of the 2020 IRAP final rule stated that IRAPs provide opportunities for job seekers to obtain profitable employment while earning a credential and developing "specific industry-related skill sets." The commenter remarked that its practice was to create apprenticeship programs that pay a living wage, as determined by local workforce development boards.

The Department acknowledges and appreciates that IRAPs may structure their programs to provide a path to family-sustaining employment, and that the commenter's particular IRAP may be one that is beneficial to its apprentices. The issue with the 2020 IRAP final rule,

however, is that it does not set requirements in this regard—other than adherence to applicable laws—and therefore, IRAPs' wage structures may vary widely. IRAPs have broad discretion to structure their wages as they please and to include stagnant wages that do not provide a viable path to family-sustaining employment. For this reason, the Department does not view IRAPs' wage requirements as sufficiently meeting the Department's goal of ensuring high-quality apprenticeship programs.

### 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. 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. In contrast, the 2020 IRAP final rule only requires IRAPs to affirm their adherence to applicable Federal, State, and local laws and regulations pertaining to EEO.

Commenters in support of the Department's 2021 IRAP Rescission NPRM highlighted the strength of the Registered Apprenticeship system's EEO requirements. One commenter remarked that the Registered Apprenticeship system's EEO requirements are especially important for women, people of color, and veterans.<sup>22</sup> Another lauded the Registered Apprenticeship system's requirements to take affirmative steps to ensure EEO in apprenticeship. One commenter specifically noted the Registered Apprenticeship system's requirements to develop and maintain an extensive affirmative action plan, comprehensive recordkeeping, and complaint and enforcement provisions.

Commenters were also critical of the 2020 IRAP final rule's lack of enhanced EEO provisions. One commenter faulted the 2020 IRAP final rule for failing to

ensure EEO in its apprenticeship programs for underrepresented groups, including women, minorities, and individuals with disabilities. The commenter stated that merely requiring SREs to develop outreach strategies was insufficient because there was no requirement to implement such strategies. Another commenter similarly faulted the 2020 IRAP final rule for failing to require programs to comply with Registered Apprenticeship's EEO regulations at 29 CFR part 30 and instead only requiring IRAPs to practice "passive nondiscrimination" and comply with a "patchwork" of Federal, State, and local antidiscrimination laws. Because of this, the commenter asserted that IRAPs do not comply with the Biden Administration's E.O. 13985, "Advancing Racial Equity and Support for Underserved Communities Through the Federal Government." The commenter argued that the 2020 IRAP final rule undermined diversity efforts in its industry and fails to protect minorities and other disadvantaged populations that would otherwise benefit from apprenticeship programs in its industry. By rescinding the 2020 IRAP final rule and redirecting resources to expansion of the Registered Apprenticeship system, the commenter said the Department would promote equity and equal opportunities to participate in training programs with a "proven record of leading to middle-class jobs for all Americans." Similarly, another commenter agreed that IRAPs would not successfully expand opportunities to participate in apprenticeship programs to underserved populations because programs under the IRAP model are only required to affirm they will adhere to Federal, State, and local EEO laws and regulations. A commenter also noted the benefits of building upon and strengthening the successful Registered Apprenticeship program rather than allowing a parallel model "to evolve through the shedding of strong EEO commitments, obligations, [and] accountability."

The Department appreciates and agrees with the comments in support of the Registered Apprenticeship system's part 30 regulations. The Department also agrees with the comments faulting the 2020 IRAP final rule for falling short by only requiring the bare minimum under applicable laws and minimal additional outreach responsibilities by the SREs that do not include a mechanism for accountability. The Department also agrees with the commenter who stated that the Department's focus on building and strengthening Registered

<sup>22</sup> Pursuant to 29 CFR 30.3, all apprentices and applicants for Registered Apprenticeship are protected against discrimination on the bases of race, color, religion, national origin, sex, sexual orientation, age (40 or older), genetic information, or disability. While the EEO in apprenticeship regulations do not specify veterans as a protected group, sponsors may specifically seek out veterans or give them preference in hiring as long as doing so does not discriminate on the basis of any of the protected characteristics covered by 29 CFR 30.3.

Apprenticeship would be the most effective path in ensuring successful apprenticeship programming for all U.S. workers.

Conversely, a commenter opposed to the proposed rescission asserted that both IRAPs and RAPs are required to take affirmative steps to ensure EEO, and that IRAPs promote increased apprenticeship opportunities while continuing to safeguard the welfare of apprentices.

The Department disagrees with this assertion. As noted in the 2021 IRAP Rescission NPRM, the current regulations governing EEO in Registered Apprenticeship under 29 CFR part 30 require program sponsors to take affirmative steps to promote diversity and equity in apprenticeship and provide sponsors with the tools needed to reduce barriers to equal opportunity within their programs. The structured and specific EEO requirements in Registered Apprenticeship regarding equal opportunity, anti-harassment, affirmative action, utilization analyses and goals, targeted recruitment, outreach and retention, compliance, and enforcement are absent from the IRAP model. The IRAP model simply requires programs to affirm their adherence to applicable Federal, State, and local laws and regulations pertaining to EEO, but provides no specific mechanisms by which to measure effort and outcomes.

#### 4. Worker Empowerment

As mentioned in the 2021 IRAP Rescission NPRM, the Department generally believes the relationship between workers and employers must be balanced so workers have a voice in ensuring fair and safe work conditions. 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 program and employment relationship. Although the IRAP regulation at 29 CFR 29.22(a)(4)(x) also contains 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. 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.

Commenters in support of the Department's 2021 IRAP Rescission NPRM praised the Department's attention to worker empowerment. One commenter proposed that RAPs be

further strengthened to empower workers in industries that lack union representation and achieve the Biden Administration goal of creating jobs "to be filled by diverse, local, well-trained workers who have a choice to join a union." The commenter also agreed with the Department's reasoning that the apprenticeship agreement is crucial to "articulating the standards of apprenticeship and the terms and conditions of employment" given the required elements of the apprenticeship agreement. The commenter additionally praised RAPs for protecting apprentices by requiring periodic performance evaluations and only canceling an apprenticeship for "good cause" after a reasonable and time-limited probationary period that counts toward completion of the program. Other commenters similarly praised the RAP apprenticeship agreement requirements as a crucial tool for worker empowerment and success.

Commenters highlighted the 2020 IRAP final rule's lack of worker empowerment provisions. One commenter faulted the 2020 IRAP final rule for failing to comply with the NAA's directive to safeguard apprentices' welfare by leaving undue discretion to SREs, failing to "establish the minimum standards necessary" to ensure industries do not exploit new entrants to an industry, and failing to clarify the process for employee grievances or complaints. A commenter similarly stated that the 2020 IRAP final rule fails to appropriately empower workers through the lack of clarity on grievance procedures. A commenter also agreed with the Department's reasoning that the IRAP model's "hands-off approach" enables employers to ignore apprentice needs and asserted that apprentices participating in IRAPs would be at risk of sudden, arbitrary cancellation of their participation in a program. Commenters noted that there were no uniform requirements for IRAP apprenticeship agreements to include apprentice work plans and number of classroom hours needed for program completion.

The Department views an apprenticeship agreement as a foundational requirement for worker empowerment and agrees that the RAP requirements for apprenticeship agreements provide apprentices with knowledge and awareness of the terms of their employment and training during the apprenticeship. As commenters noted, unlike in the 2020 IRAP final rule, the apprenticeship agreement for RAPs 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 RI hours), the schedule of work processes, the graduated scale of wages to be paid, the standards of the apprenticeship program, dispute resolution, and an EEO statement. See 29 CFR 29.7. Registered Apprenticeship agreements must also set forth the requirement that the apprenticeship agreement be canceled for "good cause," which provides additional protection for apprentices, as does the requirement to include information on grievance procedures. These elements of an apprenticeship agreement are not required in the 2020 IRAP final rule, and the Department views their absence as a detriment to apprentices.

The Department further agrees with commenters that the 2020 IRAP final rule's requirement for an IRAP apprenticeship agreement is insufficient to guarantee that apprentices are fully informed of the terms and conditions of their apprenticeship because the IRAP can determine which terms to include as long as the IRAP is consistent with its SRE's requirements. Because there are two levels of discretion for IRAP apprenticeship agreements—the SRE decides its required parameters and the IRAP determines which terms and conditions to include—apprenticeship agreements can vary widely among IRAPs and may not include all provisions the Department thinks are necessary to protect the interests of apprentices.

A commenter who supported IRAPs stated that the IRAP model does meet workers' needs by providing them with a clear sense of career trajectory and increased job satisfaction while also increasing loyalty and reducing turnover for employers. The Department acknowledges that an individual IRAP may structure its program to lead to such results. However, the Department does not view the requirements in the 2020 IRAP final rule as sufficient to provide apprentices with the information needed to make informed decisions or be knowledgeable about their rights and responsibilities during their apprenticeship.

#### 5. Departmental Oversight

In support of its proposal, the Department noted its concern with the oversight structure set forth in the 2020 IRAP final rule because the required safety and welfare provisions of the 2020 IRAP final rule are primarily overseen and enforced by SREs. The Department also described its limited ability to intervene in any disparities in worker protections or outcomes among IRAPs.

Commenters agreed with these concerns, faulting the 2020 IRAP final rule for failing to ensure adequate Departmental oversight. For example, a commenter noted that the 2020 IRAP final rule provided the Department with almost no basis for evaluating SRE standards or IRAP recognition. Another commenter stated that the requirement for “reasonable” and “effective” quality control between the SREs and IRAPs was not sufficient to ensure IRAP compliance with the minimal requirements of the 2020 IRAP final rule. This commenter also noted that SREs and IRAPs would have no reason to comply with the higher fiduciary standards under the Employee Retirement Income Security Act of 1974 (ERISA), in contrast to the majority of apprentices in IRAPs being protected by ERISA. A commenter also expressed concern that the 2020 IRAP final rule lacked an adequate quality assurance framework and that vesting oversight responsibilities with SREs would lead to disparities in the quality of IRAPs available, noting that there were few, if any, consequences for low-performing IRAPs. One commenter referenced the 2008 final rule, in which the Department concluded that delegation of oversight responsibilities to State Apprenticeship Councils failed to meet its obligation under the NAA, to argue that the Department similarly should conclude that delegation of oversight to SREs is prohibited under the NAA.

The Department generally agrees that tasking SREs with oversight in the manner set forth in the 2020 IRAP final rule dilutes the Department’s role in overseeing apprenticeship and concurs with the notion that the 2020 IRAP final rule’s oversight provisions are less rigorous than those in the Registered Apprenticeship framework due to the Department’s more limited role. The Department agrees that the lack of uniformity in the 2020 IRAP final rule could lead to disparities in IRAP quality that may go unchecked. The Department also acknowledges that the Department’s reduced role in the 2020 IRAP final rule could present compliance challenges and, in combination with the insufficient apprentice safety and welfare provisions, could lead to less protection for apprentices—a fundamental reason for the Department’s proposed rescission. The Department disagrees, however, that it inappropriately delegated its oversight responsibilities to SREs and that it did so in a manner inconsistent with the NAA. The Department considered this issue in developing the 2019 IRAP NPRM and

the 2020 IRAP final rule and views the oversight provisions in the 2020 IRAP final rule, which include SRE reporting requirements and the Department’s oversight of SREs, to be consistent with the NAA. That said, in rescinding the 2020 IRAP final rule, the Department has determined that, for the reasons discussed in the NPRM and provided by the commenters, the better approach is for the Department to have a more direct oversight role than provided for in the 2020 IRAP final rule.

#### 6. Other Worker Protection Concerns

The Department received comments in support of the proposed IRAP rescission offering additional criticisms that the 2020 IRAP final rule fails to protect apprentices and proposing additional bases for the rescission of the 2020 IRAP final rule. Commenters raised several concerns, in addition to the reasons set forth by the Department in the 2021 IRAP Rescission NPRM, related to IRAPs’ impact on apprentice safety and welfare. One commenter expressed the view that the SRE recognition process was flawed because it did not provide for adequate input from industry experts, stakeholders, or members of the public in reviewing SRE applications and did not provide for their subsequent involvement in SRE recognition of IRAPs. The commenter noted that the 2020 IRAP final rule’s processes for suspension or derecognition of an SRE are an “inadequate remedy” to protect apprentices who have spent their time and money on a poor-quality program. This commenter also expressed the view that allowing IRAPs to maintain their status for 1 year despite their SRE’s derecognition further deprives apprentices of protection without recourse with the IRAP regardless of the quality of the program that the derecognized SRE recognized.

The Department generally agrees with the comment about the lack of effective industry and public involvement in the IRAP framework; such engagement can be instrumental to ensuring a high-quality apprenticeship system that is responsive to industry, employer, and worker needs. For example, as noted above, the apprenticeability process for IRAPs under 29 CFR 29.4 is one instance in which interested stakeholders and industry are invited to share their expertise about the suitability of certain occupations for apprenticeship training. The Department also agrees that the 2020 IRAP final rule lacked protections for apprentices if SREs were suspended or derecognized, particularly by allowing IRAPs to maintain their status for 1 year after SRE derecognition

without any additional protections for their apprentices.

Some commenters noted that the design of SRE–IRAP recognition in the 2020 IRAP final rule led to inherent conflicts of interest that would leave apprentices vulnerable. One commenter argued that SREs and IRAPs were incentivized to do only the bare minimum necessary to comply rather than seeking to satisfy higher standards and requirements. This commenter also expressed the view that there were inadequate safeguards against self-dealing between SREs and their affiliates and that SREs were responsible for policing their own conflicts of interest. This commenter expressed the belief that IRAPs’ on-the-job training could lead to an apprentice being treated as an independent contractor and that the IRAP model fails to ensure participants are protected by ERISA. A commenter also asserted that SREs could not be impartial in their recognition of IRAPs because of the industry-driven nature of the 2020 IRAP final rule and wide flexibility in recognition of SREs and IRAPs.

The Department appreciates the commenters’ concerns about these perceived deficiencies in the 2020 IRAP final rule. The Department generally agrees with the commenters that IRAPs provide insufficient protection for apprentices, as discussed in the NPRM and above. The Department also generally agrees that the 2020 IRAP final rule does not eliminate risks of conflicts of interest or apprentice misclassification. Nonetheless, the Department does not view the concerns raised about conflicts of interest or apprentice misclassification as additional bases for rescission of the 2020 IRAP final rule. With respect to conflicts of interest, the Department notes that it discussed conflicts of interest at length in the 2020 IRAP final rule and added specific provisions to increase transparency and mitigate against conflicts of interest during the SRE recognition process. See 85 FR 14309–14312, 14336–14339 (Mar. 11, 2020). Additionally, the apprenticeship agreement requirement in the 2020 IRAP final rule provides some protection against apprentice misclassification, though the Department acknowledges that it does not eliminate the risk of such misclassification. As discussed above, the Department does not view the apprenticeship agreement requirement in the 2020 IRAP final rule as sufficient to inform apprentices of the terms and conditions of their apprenticeship. Finally, ERISA requirements are binding on all employee benefit plans, and the

2020 IRAP final rule does not allow SREs or IRAPs that constitute such plans to circumvent ERISA's obligations. While the Department does not agree with these commenters' specific concerns as the bases for IRAP rescission, these features of the 2020 IRAP final rule do not overcome the deficiencies that have led the Department to rescind the 2020 IRAP final rule.

#### IV. The IRAP System Is Redundant of the Registered Apprenticeship System

In the 2021 IRAP Rescission NPRM, the Department asserted that a key premise justifying the establishment of the IRAP alternative framework—that the Registered Apprenticeship system is too inflexible and administratively burdensome to sufficiently accommodate the needs of both industry and workers—is contradicted by the notable gains made in the RAP model through such strategies as the Industry Intermediaries concept<sup>23</sup> and the AAI grants.<sup>24</sup>

Commenters in support of the Department's 2021 IRAP Rescission NPRM expressed concerns that the 2020 IRAP final rule would, over time, undermine the integrity of Registered Apprenticeship, create confusion, and generate unnecessary duplication. One commenter remarked that creating two distinct apprenticeship systems with different policies and regulations could lead to inconsistent training for

apprentices, which would negatively impact their skills and marketability. The commenter also viewed the IRAP framework as devaluing apprenticeship. Another commenter echoed these concerns and asserted the establishment of a duplicative, parallel system, which is not responsive to employers or workers, would lead to confusion and disparate outcomes for apprentices. A number of commenters expressed concern that the IRAP model undermines investments in the proven RAP model and could disincentivize the creation of new apprenticeship programs.

The Department agrees with the concerns expressed by these commenters. The inherent confusion and redundancy created by parallel systems was a significant factor in the Department's proposal to rescind the 2020 IRAP final rule, as was the Department's concern about disparate outcomes resulting from a lack of uniformity across programs.

#### V. The Effect of the Department's Rescission of the 2020 IRAP Final Rule

For the reasons discussed above, the Department has determined that the IRAP model established in the 2020 IRAP final rule does not ensure access to high-quality job skills and training to American workers, nor does it adequately safeguard the welfare of apprentices. The Department has further concluded that because the IRAP system duplicates the Registered Apprenticeship system, though with less quality standards and oversight, continuing to operate the IRAP system is not a prudent use of Government resources and would diminish the quality and coherence of the Department's apprenticeship efforts.

In considering alternatives, the Department also has determined that amending, rather than rescinding, the 2020 IRAP final rule would not address these issues. As discussed in detail above, Registered Apprenticeship provides for apprentice safety and welfare and continues to nurture apprenticeship opportunities without sacrificing crucial requirements for quality or worker protections. Amending the 2020 IRAP final rule to align with the Department's goals and priorities so that the IRAP model possesses more of the qualities of Registered Apprenticeship, however, would simply recreate the RAP model with less oversight by the Department. Rather than administer two parallel programs, 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. The Department therefore has decided to adopt the NPRM as proposed.

As stated in the 2021 IRAP Rescission NPRM, the Department acknowledges this final rule does immediately affect current SREs, IRAPs, and the apprentices participating in IRAPs. The Department understands SREs devoted resources to developing their applications and the infrastructure necessary to operate effectively 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 impact of this rescission will be limited. Over the 9-month period between May 2020, when the 2020 IRAP final 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.<sup>25</sup> For FY 2021, covering the period of October 1, 2020, through September 30, 2021, 6 of the 27 recognized SREs recognized 178 IRAPs, which served 23,975 apprentices. A single SRE recognized the majority of the IRAPs (167).<sup>26</sup> The rescission of the 2020 IRAP final rule does not require that the SREs and the IRAPs they have recognized cease their operations; rather, this action only requires that these entities cease indicating that they are recognized by or associated with OA. The apprentices enrolled in the existing IRAPs can continue to receive training from the program uninterrupted. Alternatively, those apprenticeship programs can seek registration with a Registration Agency (either OA or a recognized SAA). Even if the IRAP does not seek such registration, those apprentices currently enrolled in an IRAP can seek to transfer into a RAP. In addition, IRAP apprentices moving into a RAP, either on their own or because their IRAP has been registered as a RAP with a Registration Agency, may qualify for

<sup>23</sup> Since 2016, the Department has launched funding opportunities for Industry Intermediaries to develop, promote, and expand the availability of and access to Registered Apprenticeships across the United States. See <https://www.apprenticeship.gov/investments-tax-credits-and-tuition-support> (last visited May 19, 2022). Through these investments, Industry Intermediaries have expanded Registered Apprenticeship into new industry sectors and occupations, worked with sponsors to ensure that diverse and underrepresented populations are connected to Registered Apprenticeship opportunities, and promoted Registered Apprenticeship as a workforce solution. An OA fact sheet highlighting the accomplishments these entities have made to accommodate the needs of workers and industry is available at <https://www.apprenticeship.gov/sites/default/files/Industry-and-Equity-Intermediary-Accomplishment-Fact-Sheet.pdf> (last visited May 19, 2022).

<sup>24</sup> In 2015, the Department launched the AAI to expand Registered Apprenticeship in the United States, particularly in high-growth and high-tech industries, such as healthcare, IT, and advanced manufacturing, as well as to populations traditionally underrepresented in apprenticeship, including women, people of color, and individuals with disabilities. Through AAI, AAI grantees have successfully expanded the RAP model into new industries and extended it to more diverse populations. For more information, see National Governors' Association Report, "Registered Apprenticeship Reimagined: Lessons Learned from the American Apprenticeship Initiative," Nov. 9, 2020, available at <https://www.nga.org/center/publications/registered-apprenticeship-reimagined>.

<sup>25</sup> Applications received by the Department for SREs. Approved SREs published at <https://www.apprenticeship.gov/employers/industry-recognized-apprenticeship-program/approved-standards-recognition-entities> (last visited May 19, 2022).

<sup>26</sup> According to the IRAP Program and Performance Reporting System, as of September 30, 2021, of the 175 IRAPs approved, 167 were recognized by the same SRE. See <https://www.apprenticeship.gov/sites/default/files/SRE-FY21-performance-data.pdf> (last visited September 6, 2022).

advanced standing or credit in those RAPs. Moreover, as the 2020 IRAP final rule requires only basic compliance with existing federal, state, and local laws governing employees, and does not provide any further protections that would enhance the safety and welfare of apprentices, the Department believes that the issuance of this final rule will not adversely affect the existing rights and protections of IRAP apprentices impacted by this rescission.

Several commenters referred to the Department's acknowledgement that rescinding the 2020 IRAP final rule would affect current SREs, IRAPs, and any apprentices participating in IRAPs. Two commenters agreed with the Department's position that the overall impact of the rescission to SREs, IRAPs, and apprentices in IRAPs would be minimal based on the reported data. Of these comments, one commenter said the data suggest that IRAPs have not been widely adopted and therefore will not likely be effective or successful. One commenter presented an alternative view, suggesting that the number of recognized SREs and IRAPs since the issuance of the 2020 IRAP final rule is significant relative to the amount of time for which the rule has been effective. Another commenter remarked that the number of recognized SREs and IRAPs since the issuance of the 2020 IRAP final rule should not be understood as a lack of interest from the business community but rather as a reflection of the broader impact of the COVID-19 pandemic on industry.

The Department appreciates the comments supporting its analysis in the 2021 IRAP Rescission NPRM of the potential impact of the rescission of the 2020 IRAP final rule for SREs, IRAPs, and any apprentices participating in IRAPs. The Department acknowledges the comment suggesting the number of recognized SREs and IRAPs since the issuance of the 2020 IRAP final rule is significant relative to the amount of time for which the rule has been effective. As discussed below in Section VI.A.2, *Economic Analysis of Executive Orders 12866 (Regulatory Planning and Review and 13563 (Improving Regulation and Regulatory Review)*, the Department notes that the actual number of recognized SREs and IRAPs is lower than anticipated in *Economic Analysis of the 2020 IRAP final rule* (85 FR 14357–14358, Mar. 11, 2020). However, regardless of the number of current SREs and IRAPs, the Department, for the reasons discussed above, has concluded that rescission of the IRAP regulation is appropriate. The rescission of the 2020 IRAP final rule does not require that the SREs and the

IRAPs they have recognized cease their operations. This rescission only requires that these entities cease indicating that they are recognized by or associated with OA. Further, as stated above, there are multiple avenues for IRAPs to continue operation, either as independent apprenticeship programs or by seeking registration with OA, and for apprentices to receive training, either in their current program or in a RAP. Thus, the Department maintains that the impact of the rescission will be limited and outweighed by the benefits of rescission discussed above.

The Department also acknowledges that the COVID-19 pandemic had broad societal impacts, including on the business community, which may have had an impact on both RAPs and IRAPs. While the COVID-19 pandemic may have had a negative impact on IRAPs, as the commenter asserted, in contrast, despite the COVID-19 pandemic, FY 2021 represented the fourth-highest year of new RAP development over the past decade, with over 2,800 new RAPs developed.<sup>27</sup>

In the 2021 IRAP Rescission NPRM, 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. The Department did not receive any specific comments on these two options. One commenter stated that returning to a single RAP model and “[i]mmediate rescission of the [2020 IRAP final rule] is superior to any other alternative course of action.” The commenter noted that, based on the reported data at the time of the NPRM, it was evident that private industry has rejected IRAPs as a vehicle for training workers. As such, the commenter asserted there are no disadvantages to rescinding the 2020 IRAP final rule now. The Department agrees that rescinding the 2020 IRAP final rule and immediate cessation of recognition for currently recognized SREs or IRAPs is appropriate in light of the concerns discussed above.

#### *Transition to and Implementation of the Final Rule*

In the 2021 IRAP Rescission NPRM, the Department sought comments on how to address the effects of the proposed immediate cessation of

recognition on SREs, IRAPs, and apprentices in IRAPs, including comments on the alternatives considered, but ultimately not adopted, by the Department. One commenter suggested the Department continue to explore efforts to develop industry-driven apprenticeship programs and continue to establish and strengthen workforce development initiatives that partner with business. Another commenter recommended that the Department provide technical assistance to build the capacity of SREs and IRAPs to offer high-quality apprenticeships, even if they operate outside of the Registered Apprenticeship system.

The Department, as noted, is rescinding its recognition of SREs under this final rule; however, it continues to expand and further develop the Registered Apprenticeship system as a premier workforce development strategy. The Department appreciates the suggestions that it continue to develop workforce development initiatives that partner with business and industry, and it notes their integral role in the Registered Apprenticeship system. This final rule does not prevent IRAPs from continuing to offer a range of training options to job seekers. The Department is interested in continuing to promote more work-based learning strategies in its employment and training programs, with an increased emphasis on RAP models as a proven solution for both career seekers and business.

Additionally, the Department has provided and will continue to provide technical assistance and support to SREs or IRAPs that 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 and IRAPs with information and resources the SREs can share with any apprentices in IRAPs who may seek placement in a RAP.

## **VI. Regulatory Analysis and Review**

*A. Executive Orders 12866 (Regulatory Planning and Review) and 13563 (Improving Regulation and Regulatory Review) and Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996*

Under E.O. 12866, the Office of Management and Budget's (OMB) Office of Information and Regulatory Affairs (OIRA) 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

<sup>27</sup> These figures reflect Registered Apprenticeship national results and are available at <https://www.dol.gov/agencies/eta/apprenticeship/about/statistics/2021> (last visited September 6, 2022).

(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.* OIRA has determined that this final 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.

Pursuant to Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996, also known as the Congressional Review Act (5 U.S.C. 801 *et seq.*), OIRA designated this rule as a “major rule,” as defined by 5 U.S.C. 804(2).

## 1. Public Comments

In the preliminary economic analysis in the 2021 IRAP Rescission NPRM, the Department invited written comments from the public concerning the potential number of SREs and IRAPs in the absence of the proposed rule and the removal of the February 17, 2021, suspension, as well as on possible alternatives to the proposed rule. Only one commenter submitted comments pertaining to the preliminary economic analysis. The commenter stated that the rescission of the 2020 IRAP final rule will result in cost savings in excess of those set forth in the proposed rule; in particular, savings will be realized when Government grant money that would

otherwise go to “ineffective IRAPs and SREs” is better used by RAPs. The commenter stated that, if resources are used for RAPs instead of “wasted on IRAPs,” workers will be safer, better protected, and more justly compensated, plus society will benefit from a greater diversity of apprentices, a larger tax base, increased employee loyalty, higher productivity, and additional skilled labor that will help address labor market demands. The commenter suggested that the monetary value of those additional benefits should be factored into the cost analysis.

The Department appreciates the commenter’s recognition of the benefits of RAPs to the U.S. economy and workforce. The Department agrees that supporting RAPs is a better use of grant funds than supporting IRAPs; accordingly, the Department has not issued grant funding specifically for IRAPs and does not plan to do so. The Department agrees that RAPs provide numerous benefits to apprentices, employers, taxpayers, and society, and that a quantification of these benefits would be ideal to include in the economic analysis. Due to data limitations, however, the Department cannot quantify the benefits listed by the commenter and has maintained a qualitative discussion in this final rule.

The same commenter stated that returning to a single RAP model is the best course of action and rescinding the 2020 IRAP final rule is superior to any alternative. The commenter anticipates that the cost of transferring current IRAP participants to RAPs will be minimal and will be offset by the increased benefits that will accrue to IRAP trainees when they become RAP apprentices. The Department agrees that rescinding the 2020 IRAP final rule is the best course of action.

## 2. 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 2020 IRAP final rule. The Department is issuing this final rule because the Department has determined that a single apprenticeship system, namely, the Registered Apprenticeship system, will provide clearer messaging and more consistent outcomes than two parallel apprenticeship systems that likely would 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 this final rule. The Department anticipates that this final rule will result in cost savings for SREs and IRAPs since they will no longer need to comply with the provisions of the 2020 IRAP final rule.

The Department has estimated the cost savings of this final rule relative to the existing baseline (*i.e.*, 27 SREs and 178 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 2021 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 17, 2021, 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, IRAPs, and apprentices over the 10-year analysis period. The Department used the number of SREs (27), the number of IRAPs (178), and the number of apprentices in IRAPs (23,975) as of September 30, 2021, for this analysis.

### b. Compensation Rates

The compensation rates used to quantify the cost savings of this final rule are based on the compensation rates in the 2020 IRAP final rule. The Department updated the compensation rates with 2021 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 2021 was \$61.92.<sup>28</sup> For this analysis, the Department used

<sup>28</sup> BLS, “Occupational Employment and Wages, May 2021,” <https://www.bls.gov/oes/current/oes113131.htm> (last updated March 31, 2022).



a fringe benefits rate of 45 percent<sup>29</sup> and an overhead rate of 54 percent,<sup>30</sup> resulting in a fully loaded hourly compensation rate for Training and Development Managers of \$123.22 [= \$61.92 + (\$61.92 × 0.45) + (\$61.92 × 0.54)].

According to BLS, the mean hourly wage rate for Office and Administrative Support Occupations in May 2021 was \$20.88.<sup>31</sup> The Department used a fringe benefits rate of 45 percent and an overhead rate of 54 percent, resulting in a fully loaded hourly compensation rate for Office and Administrative Support Occupations of \$41.55 [= \$20.88 + (\$20.88 × 0.45) + (\$20.88 × 0.54)].

The Department estimated the compensation rate for a Program Analyst in OA using the midpoint (Step 5) for Grade 13 of the General Schedule (GS), which is \$56.31 in the Washington, DC, locality area.<sup>32</sup> The Department used a fringe benefits rate of 69 percent<sup>33</sup> and an overhead rate of 54 percent, resulting in a fully loaded hourly compensation rate for Program Analysts of \$125.57 [= \$56.31 + (\$56.31 × 0.69) + (\$56.31 × 0.54)].

#### c. Time Estimates

The hourly time burdens used to quantify the cost savings of this final

rule are based on the Department's time estimates in the 2020 IRAP final rule. 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
- 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
- Preparation of written apprenticeship agreement: 10 minutes per apprentice

#### 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 final rule over 10 years (2022–2031) at discount rates of 3 and 7 percent. The final rule is expected to have first-year cost savings of \$1.8 million in 2021 dollars. Over the 10-year analysis period, the annualized cost savings are estimated at \$1.8 million at a discount rate of 7 percent in 2021 dollars. In total, over the first 10 years, the final rule is estimated to result in cost savings of \$12.9 million at a discount rate of 7 percent in 2021 dollars.

<b>Exhibit 1: Estimated Cost Savings (2021 dollars)</b>	
	<b>Cost Savings</b>
<b>First Year Total</b>	<b>\$1,832,752</b>
<b>Annualized, 3% discount rate, 10 years</b>	<b>\$1,832,752</b>
<b>Annualized, 7% discount rate, 10 years</b>	<b>\$1,832,752</b>
<b>Total, 3% discount rate, 10 years</b>	<b>\$15,633,750</b>
<b>Total, 7% discount rate, 10 years</b>	<b>\$12,872,486</b>

The Department also contemplated including an alternative baseline that assumed the Department's February 17, 2021, 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 rule is not adopted. If the world did not include this rule, but included the removal of

<sup>29</sup> BLS, “Employer Costs for Employee Compensation” (ECEC), <https://www.bls.gov/ncs/data.htm> (last visited May 19, 2022). Wages and salaries averaged \$27.22 per hour worked in 2021, while benefit costs averaged \$12.24, which is a benefits rate of 45 percent.

<sup>30</sup> U.S. Department of Health and Human Services (HHS), “Guidelines for Regulatory Impact Analysis,” 2016, [https://aspe.hhs.gov/system/files/pdf/242926/HHS\\_RIAGuidance.pdf](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.

<sup>31</sup> BLS, “Occupational Employment and Wages, May 2021,” <https://www.bls.gov/oes/current/oes430000.htm> (last visited May 19, 2022).

<sup>32</sup> Office of Personnel Management, “General Schedule (GS) Locality Pay Tables,” [https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2021/DCB\\_h.pdf](https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2021/DCB_h.pdf) (last visited May 19, 2022).

<sup>33</sup> Congressional Budget Office, “Comparing the Compensation of Federal and Private-Sector Employees, 2011 to 2015,” Apr. 25, 2017, <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.

the February 17, 2021, suspension as well as decision making by potential SREs in the manner anticipated in the 2020 IRAP final rule, it is possible that there would be more than 27 SREs and 178 IRAPs in each year of the analysis period. Given the potential temporary nature of the February 17, 2021, suspension, some members of the public may believe there will be an opportunity to participate in the program again in the absence of this rule. Under such a scenario, 27 SREs and 178 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 rule would then prevent some of the eventual effects of the 2020 IRAP final 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 rule and the removal of the February 17, 2021, 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 IRAP final rule are not an appropriate source for quantifying an alternative baseline in this final rule. Over the 9-month period between May 2020, when the 2020 IRAP final 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 IRAP final rule. To begin with, the number of SRE applications was far fewer than the number anticipated in the 2020 IRAP final rule. For the 2020 IRAP final rule, the Department used the number of entities that submitted grant applications under the 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 (178) compared to the numbers anticipated in the 2020 IRAP final rule (203 SREs and 2,030 IRAPs in Year 1).

While the estimated number of SRE applications in the 2020 IRAP final 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 rule and the removal of the February 17, 2021, suspension.

Without a reasonable way to estimate the number of SREs and IRAPs or to quantify the cost savings, benefits, and transfer payments, the Department acknowledges that this 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 is rescinding the 2020 IRAP final rule and, instead, refocusing its efforts on expanding, modernizing, strengthening, and diversifying 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 RAPs drove increased worker productivity.<sup>34</sup> 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 RAPs as a workforce training model for industry, RAPs have proven to be highly beneficial to workers because of their emphasis on high-quality training as well as apprentice safety and welfare. During training, apprentices are guaranteed wage increases, and research shows that RAP completers earn over \$300,000 (including benefits) more over their lifetimes as compared with similar individuals who do not complete a RAP.<sup>35</sup>

<sup>34</sup> Urban Institute Research Report, "The Benefits and Challenges of Registered Apprenticeship: The Sponsors' Perspective," June 12, 2009, <https://www.urban.org/research/publication/benefits-and-challenges-registered-apprenticeship-sponsors-perspective>.

<sup>35</sup> See, e.g., Mathematica Policy Research, "An Effectiveness Assessment and Cost-Benefit Analysis of Registered Apprenticeship in 10 States: Final

The Registered Apprenticeship system has successfully been adopted across a diverse range of sectors, with significant growth in recent years. The expansion of the Registered Apprenticeship system into "nontraditional" sectors indicates that the IRAP model may be superfluous and not a good use of Government resources that could support the proven activities of the Registered Apprenticeship system.

### 3. Regulatory Alternatives

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 2020 IRAP final rule for a longer period of time. Therefore, the costs of the 2020 IRAP final 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

Report," July 25, 2012, [https://wdr.doleta.gov/research/FullText\\_Documents/ETAOP\\_2012\\_10.pdf](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 Apprenticeship; however, for purposes of this 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.

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.

*B. Regulatory Flexibility Act 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 this final rule to determine whether they will

have a significant economic impact on a substantial number of small entities. As explained in the E.O. 12866 economic analysis above, this final rule is expected to lead to cost savings for IRAPs because these entities will no longer be required to comply with the provisions of the 2020 IRAP final rule. Cost savings for IRAPs will primarily arise from no longer needing to submit performance data to the SRE and no longer needing to prepare or sign a written apprenticeship agreement with each apprentice.

In the 2020 IRAP final rule, the Department estimated that it would take IRAPs approximately 25 hours per year to collect and provide the relevant performance data. To estimate the cost savings per IRAP under this final rule, the Department multiplied the number of IRAPs (178) by 25 hours and by the hourly compensation rate for Training and Development Managers (\$123.22 per hour). In the 2020 IRAP final rule, the Department estimated that it would take IRAPs approximately 10 minutes

per apprentice to prepare and sign a written apprenticeship agreement. To estimate the cost savings per IRAP under this final rule, the Department multiplied the number of apprentices (23,975) by 10 minutes and by the hourly compensation rate for Training and Development Managers (\$123.22 per hour). In total, the first-year cost savings per IRAP is estimated at \$5,516 at a discount rate of 7 percent. The annualized cost savings per IRAP is estimated at \$5,902 at a discount rate of 7 percent.

As of September 30, 2021, the number of IRAPs recognized by SREs stood at 178. Of the 178 IRAPs, 167 are in the health care industry; specifically, the vast majority of the 167 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	\$5,516	N/A	\$5,902	N/A
Firms with receipts of \$100,000 to \$499,999	35	2.4%	145	\$8,838,000	\$252,514	\$5,516	2.2%	\$5,902	2.3%
Firms with receipts of \$500,000 to \$999,999	20	1.4%	136	\$14,654,000	\$732,700	\$5,516	0.8%	\$5,902	0.8%
Firms with receipts of \$1,000,000 to \$2,499,999	19	1.3%	515	\$30,189,000	\$1,588,895	\$5,516	0.3%	\$5,902	0.4%
Firms with receipts of \$2,500,000 to \$4,999,999	65	4.4%	3,616	\$251,405,000	\$3,867,769	\$5,516	0.1%	\$5,902	0.2%
Firms with receipts of \$5,000,000 to \$7,499,999	100	6.8%	7,135	\$598,696,000	\$5,986,960	\$5,516	0.1%	\$5,902	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	\$5,516	0.1%	\$5,902	0.1%
Firms with receipts of \$10,000,000 to \$14,999,999	218	14.8%	28,209	\$2,599,739,000	\$11,925,408	\$5,516	0.0%	\$5,902	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	\$5,516	0.0%	\$5,902	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	\$5,516	0.0%	\$5,902	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	\$5,516	0.0%	\$5,902	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	\$5,516	0.0%	\$5,902	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	\$5,516	0.0%	\$5,902	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	\$5,516	0.0%	\$5,902	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 final rule will result in cost savings for SREs. The cost savings will arise from SREs no longer needing to perform the activities listed in the E.O. 12866 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 \$13,555 at a discount rate of 7 percent. The annualized cost savings per SRE is estimated at \$14,504 at a discount rate of 7 percent.

The Department has recognized 27 SREs. Only 6 of the 27 SREs have recognized IRAPs, and of those 6 SREs, 1 has 99.2 percent of all apprentices in IRAPs (23,781 out of 23,975 apprentices). This particular SRE is unlikely to be considered a small entity

based on its annual revenue,<sup>36</sup> which exceeds the Small Business Administration's Small Business Size Standard of \$20.5 million for professional organizations (North American Industry Classification System code 813920).<sup>37</sup>

<sup>36</sup> IRS Form 990 filing data available from the Internal Revenue Service, "Tax Exempt Organization Search," <https://apps.irs.gov/app/eos> (last visited May 19, 2022).

<sup>37</sup> U.S. Small Business Administration, "Table of Small Business Size Standards," <https://www.sba.gov/document/support-table-size-standards> (last updated May 2, 2022).

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

### C. Paperwork Reduction Act

As explained in the “Background” section above, the Department is rescinding subpart B, “Standards Recognition Entities of Industry-Recognized Apprenticeship Programs,” from 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 2020 IRAP final rule, the Department developed and received OMB approval for two information collections (ICs), an application form and a performance report. The first active IC 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. The second active IC 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. This rule does not result in any additional cost burden for either IC.

Because this final rule rescinds subpart B, which is the authority for these information collections, the Department will no longer use the “Industry-Recognized Apprenticeship Program Standards Recognition Entity Regulation and Application” IC and the “IRAP Program and Performance Report for Standards Recognition Entities” IC.

The Department has submitted requests to discontinue both OMB Control Number 1205–0536 and OMB Control Number 1205–0545, eliminating all paperwork burden associated with the ICs. These ICs will discontinue upon the effective date of this final rule.

### D. Executive Order 13132: Federalism

This final rule 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 final rule 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 final rule in accordance with E.O. 13175 and has determined that it does not have tribal implications. The final 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, Apprenticeship 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 amends 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.

■ 2. Remove the subpart A 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.

### § 29.3 [Amended]

■ 5. In § 29.3 amend paragraphs (b)(1), (g) introductory text, and (h) by removing word “subpart” and add in its place the word “part”.

### § 29.6 [Amended]

■ 6. In § 29.6 amend paragraph (b)(2) by removing word “subpart” and add in its place the word “part”.

### § 29.10 [Amended]

■ 7. In § 29.10 amend paragraph (a)(2) by removing word “subpart” and add in its place the word “part”.

### § 29.11 [Amended]

■ 8. In § 29.11 amend the introductory text removing word “subpart” and add in its place the word “part”.

### § 29.13 [Amended]

■ 9. 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]

■ 10. 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.

**Subpart B—[Removed]**

- 11. Remove subpart B, consisting of §§ 29.20 through 29.31.

**Brent Parton,**

*Acting Assistant Secretary for Employment  
and Training, Labor.*

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