September 2, 2025

Susan Frazier
Acting Assistant Secretary for Employment and Training
U.S. Department of Labor
Employment & Training Administration
200 Constitution Avenue NW, Room N–5641
Washington, DC 20210

Submitted via Federal Rulemaking Portal: www.regulations.gov

Re: Docket No. ETA-2025-0006 and Regulatory Identification Number (RIN) 1205-AC21, *Prohibiting Illegal Discrimination in Registered Apprenticeship Programs*

Dear Ms. Frazier:

We, the undersigned Attorneys General of Maryland, New York, the District of Columbia, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, Oregon, and Washington submit this comment on the Notice of Proposed Rulemaking ("NPRM") by the U.S. Department of Labor ("DOL") entitled *Prohibiting Illegal Discrimination in Registered Apprenticeship Programs*. We submit this comment on two aspects of the proposed rule, namely the legal basis that DOL has articulated for its proposed rescission of the equal opportunity provisions of 29 C.F.R. Part 30, and the proposal to unlawfully pre-empt state anti-discrimination laws and regulations pertaining to apprenticeship programs.[1]

A. The NPRM Overstates the Requirements of *Students for Fair Admissions* to Justify Rescinding Equal Opportunity Regulations.

In support of its dramatic overhaul of 29 C.F.R. Part 30, DOL relies on the Supreme Court's decision in *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 600 U.S. 181 (2023) ("*SFFA*"). In *SFFA*, the Supreme Court held that the admissions policies of two universities, which considered the race of applicants in the selection of students for admission in an effort to maintain a racially diverse student body, could not satisfy strict scrutiny and therefore violated the equal protection clause of the Fourteenth Amendment. DOL represents that it is rescinding the existing equal opportunity requirements under 29 C.F.R. Part 30 because they are legally vulnerable under *SFFA*.

DOL's proposal rests on an improper reading of *SFFA*. As the Notice of Proposed Rulemaking acknowledges, unlike the university admissions programs at issue in *SFFA*, the programs described in Part 30 do not permit the consideration of race in any way in the selection of admitted apprentices. Rather, these programs are designed to prevent discrimination by identifying where targeted *outreach* to underrepresented populations is necessary and specifically reject quotas in selection. The proposed rule rests largely on speculation that the program provisions "*may* induce" or "incentivize" sponsors to "engage in illegal race and/or sex-based decision-making" in selection decisions, 90 Fed. Reg. 28,947, 28,955 (emphasis added), even

[1] While agencies of several of the undersigned states have submitted separate comments addressing other deficiencies in this proposed rule, this letter provides additional commentary on these two discrete concerns.

though making selection decisions based on race and sex violates existing regulations. DOL's stretched reading of *SFFA* undermines our states' ability to enforce our own lawful state antidiscrimination statutes and requirements, as well as to comply with our obligations under other federal civil rights laws, including Title VII of the Civil Rights Act of 1964. Moreover, DOL proposes to rescind not just the existing utilization goals for race, sex, and ethnicity, but also the utilization goals for individuals with disabilities. *SFFA* has no bearing whatsoever on disability-related affirmative action efforts, which are subject only to rational basis review. *See Cleburne v. Cleburne Living Center, Inc.,* 473 U.S. 432, 446 (1985).

DOL also inaccurately describes prevailing Title VII legal standards by claiming that the proposed elimination of sexual orientation as a category of prohibited discrimination is required to reflect "existing legal authorities" or "the current statutory language and legal standards governing nondiscrimination." 90 Fed. Reg. 28,947, 28,952, 28,960. In reality, the Supreme Court has recognized that Title VII's prohibitions on discrimination on the basis of sex also bars discrimination on the basis of sexual orientation. *See Bostock v. Clayton Cnty., Georgia*, 590 U.S. 644, 683 (2020).

B. The NPRM Unlawfully Seeks to Pre-Empt State Antidiscrimination Laws and Regulations.

The DOL seeks to create "a uniform national standard for nondiscrimination in registered apprenticeship and equality of opportunity," 90 Fed. Reg. 28,959, by rescinding the current regulations that require states to create Equal Employment Opportunity plans but provide only a floor below which those plans may not fall, and replacing them with a mandate to adopt "nondiscrimination" plans that conform exactly – and may not rise above—the requirements of the proposed federal regulation, 90 Fed. Reg. 28,959, 28,975 (Proposed § 30.7). The NPRM goes so far as to prohibit—under the penalty of deregistration of its State Apprenticeship Agency—a State from including any of its own "statutes, regulations, policies and operational procedures" that do not conform to the Department's requirements. 90 Fed. Reg. 28,975 (Proposed § 30.7)("The State plan for nondiscrimination in apprenticeship must— (i) Include current State statutes, regulations, policies and operational procedures pertaining exclusively to nondiscrimination in apprenticeship that conform *only* to the requirements of this part") (emphasis added).

In other words, the proposed regulation improperly seeks to pre-empt any state antidiscrimination laws or regulations that exceed the proposed federal regulation, undermining basic principles of federalism. Congress has expressed no intent for either antidiscrimination statutes or the National Apprenticeship Act to have such pre-emptive effect; in fact, Title VII expressly disavows such pre-emptive effect. *See* 42 U.S.C. § 2000e-7 ("Nothing in this subchapter shall be deemed to exempt or relieve any person from any liability, duty, penalty, or punishment provided by any present or future law of any State or political subdivision of a State . . . ."). Nor do state civil rights laws that exceed the proposed regulation's narrow nondiscrimination standards directly conflict with federal law. Accordingly, there is no basis for such pre-emption.

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DOL's articulated legal reasons for overhauling 29 C.F.R. Part 30 cannot be reconciled with the underlying case law or with respect for state sovereignty. We urge DOL to withdraw its proposed rule.

Sincerely,

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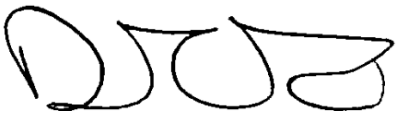

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