



August 29, 2025

Luke Murren, Acting Administrator
Office of Policy Development and Research
U.S. Department of Labor, Employment
and Training Administration
200 Constitution Avenue NW
Washington, DC 20210

Dear Mr. Murren:

Pacific Legal Foundation (PLF) is the leading public interest law firm seeking to vindicate the principles of individualism, equal protection under the law, property rights, and separation of powers. In the area of equal protection, PLF files cases in state and federal court to uphold the constitutional principle that individuals should be treated as individuals and not on the basis of race or sex. PLF also propounds model legislation and conducts original research to ensure that constitutional non-discrimination principles are protected.

The Center for Equal Opportunity is a think tank founded in 1995 dedicated to promoting colorblind opportunity and nondiscrimination in America. Its mission includes studying and disseminating ideas that support these principles. To this end, CEO documents the role of race in college admissions and advocates against race-based policies.

Parents Defending Education (DE) is a national grassroots organization working to restore schools at all levels from activists imposing harmful agendas. Through network and coalition building, investigative reporting, civil rights complaints, litigation, and engagement, DE fights indoctrination in classrooms and on campuses in order to promote the establishment of a quality, non-political education for all students. DE's membership includes parents, educators, and students throughout the country who oppose race and sex-based discrimination in all federally funded and regulated programs, including education, education-related employment, apprenticeship programs, and contracting. DE and its vast membership seek to secure the promises of Equal Protection for all Americans.

The authors of this comment draw on their institutions' expertise to write in support of the rescission of these regulations that encourage race and sex discrimination in apprenticeship programs. Rescinding them will help ensure

that Americans are treated as individuals and not subject to arbitrary discrimination based on their race, sex, or other characteristics irrelevant to their character or competence.

The Constitution prohibits discrimination based on race unless narrowly tailored to serve a compelling interest. To the proponents of the Fourteenth Amendment, it represented a “foundational principle”—the “absolute equality of all citizens of the United States politically and civilly before their own laws.”¹ The Supreme Court has recognized that the principle of equality before the law embodied in the Equal Protection Clause also applies against the federal government and its agencies through the Due Process Clause of the Fifth Amendment.²

The principle of equality through the law resounds through more recent Supreme Court decisions. *Palmore v. Sidoti*, for example, holds that the “core purpose” of equal protection is to “do away with all governmentally imposed discrimination based on race.”³ “It is a sordid business, this divvying us up by race.”⁴ “Every time the government places citizens on racial registers and makes race relevant to the provision of burdens or benefits, it demeans us all.”⁵ Most recently, the Supreme Court struck down race preferential admissions schemes at Harvard University and the University of North Carolina, emphasizing that the Constitution’s goal of “[e]liminating racial discrimination means eliminating all of it.”⁶ *Students for Fair Admissions* also clarified that race-preferential educational programs are illegal unless they satisfy the “twin commands” of the Equal Protection Clause in addition to the traditional strict scrutiny test. The twin commands are that “race may never be used as a ‘negative’ and. . . it may not operate as a stereotype.”⁷

As discussed in the Federal Register, the OFCCP rules to be withdrawn encourage apprenticeship programs to discriminate based on race or sex. The original version of the relevant regulation at 29 CFR part 30—“Nondiscrimination in Apprenticeship and Training”—noted that Title VII’s ban on employment discrimination covered apprentices and stated that “discrimination based on race, creed, color or national origin has no place in American life today, particularly in the programs by which young people acquire the skills that determine their future employment prospects.”⁸ In 1971, the Department revised this section to make it clear that employers were prohibited from discriminating

¹ Cong. Globe, 39th Cong., 1st Sess. 431 (1866) (statement of Rep. Bingham).

² See *Bolling v. Sharpe*, 347 U.S. 497 (1954).

³ 466 U.S. 429, 432 (1984) (footnote omitted).

⁴ *League of United Latin Am. Citizens v. Perry*, 548 U.S. 399, 511 (2006) (Roberts, J., concurring).

⁵ *Grutter v. Bollinger*, 539 U.S. 306, 353 (2003) (Thomas, J., concurring).

⁶ *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 600 U.S. 181, 206 (2023).

⁷ *Id.* at 217.

⁸ See 28 Fed. Reg. 11313 (Oct. 23, 1963).

against apprentices based on sex and religion and introduced a new requirement that apprenticeship programs with five or more apprentices establish a written affirmative action program (AAP.) This rule also stated that such AAPs must include female apprentices. A 2016 rule in this area, among other things, imposed a new scheme of demographic and utilization rules to determine whether AAPs were meeting demographic goals and required program sponsors to review annually their personnel practices to ensure they are achieving demographic characteristics. Though the rule requires sponsors to impose numerical goals, these goals were imposed without regard to nondiscriminatory factors that might explain demographic disparities between an employer's workforce and the labor market as a whole.

Apprenticeships are one valuable way for young people to receive the training necessary to obtain good jobs. Higher education is also an excellent way to launch a career, but it is often expensive and has an abstract focus that does not directly prepare students for certain occupations. It is therefore especially important that apprenticeship opportunities be open to all based on character, competence and not allocated based on arbitrary characteristics like race or sex. Yet the rule to be withdrawn encouraged the directors of such programs to discriminate based on such arbitrary characteristics. As the Notice of Proposed Rulemaking suggests, the mandatory AAP plans and emphasis on achieving particular demographic results is in tension with the 1963 prohibition on discrimination. The emphasis on numbers for their own sake in the development of apprenticeship AAP programs encourages employers to focus on tailoring their hiring practices to achieve the numbers the Department of Labor wants to see, rather than on sussing out and eliminating actual discrimination. Or, as the Notice of Proposed Rulemaking puts it, the current regime of rules "may incentivize and induce sponsors with five or more apprentices in their programs to consider characteristics like race, ethnicity and sex when making employment decisions concerning apprentices. This creates an untenable legal conflict where sponsors are required to operate their programs on a nondiscriminatory basis while, while being simultaneously incentivized and induced to engage in the disparate treatment of applicants."⁹

While disparities between the demographics of apprenticeship programs and those of the broader workforce are sometimes cited to justify preferences, such disparities alone should not save race preferential programs. With regard to the apprenticeship rules, for example, the Department of Labor has previously asserted that in the absence of discrimination, the demographics of an apprenticeship program should resemble the demographics of the surrounding area. If they do not, the argument goes, discrimination is the likely cause. plenty of causes other than discriminatory exclusion can explain such disparities. Racial and ethnic groups and the two sexes are not evenly

⁹ Notice of Proposed Rulemaking at --.

represented in most lines of work, including most apprenticeship programs. Often causes more benign than discrimination explain these disparities. Cambodians are overrepresented in the doughnut industry largely because of the success of a single entrepreneur's bakery decades ago.¹⁰ Manicurists are disproportionately Vietnamese American because, when visiting a refugee camp in the 1970s, actress Tippi Hedren's impeccable nails inspired a generation of recent escapees from South Vietnam to attend manicure school.¹¹

It is "unrealistic to suppose that employers can eliminate, or discover and explain, the myriad of innocent causes that may lead to statistical imbalances in the composition of their work forces,"¹² Justice O'Connor wrote in an employment discrimination case, and the same myriad innocent causes may explain why a particular sex or particular racial groups are over or underrepresented within particular sectors of government contracting. Without much stronger and more direct evidence of discriminatory exclusion, disparities are an ordinary fact of life that do not overcome the constitutional prohibition on race and sex discrimination.

Conclusion

Apprenticeships are a valuable way for young people to launch their careers and a valuable means of opening up opportunity. It is important that potential apprentices are able to compete for positions based on their character, competence and fit for the position and are not restricted from apprenticeships based on their race, sex, or other demographic characteristics. The Department of Labor's previous regulations encouraged providers of apprenticeships to discriminate in order to achieve the Department of Labor's desired demographics. Rescinding these rules will ensure that potential apprentices have equal opportunities to compete fairly for these positions.

¹⁰ Elaine Lewinnek, Thuy Vo Dang & Gustavo Arellano, *The Cambodian American Reign of Doughnut Shops Began in This La Habra Shop*, Lost LA, A People's Guide to Orange County, PBS SoCal, (April 13, 2022), <https://www.pbssocal.org/shows/lost-la/the-cambodian-american-reign-of-doughnut-shops-began-in-this-la-habra-shop>.

¹¹ Regan Morris, *How Tippi Hedren made Vietnamese refugees into nail salon magnates*, BBC News, (May 3, 2015), <https://www.bbc.com/news/magazine-32544343>.

¹² *Watson v. Fort Worth Bank and Trust*, 487 U.S. 977, 992 (1988).

Acting Administrator Luke Murren
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Sincerely,



LINDA CHAVEZ
Chairman
Center for Equal Opportunity
1054 31st Street NW
Suite 330
Washington, DC 20007



SHAWNA BRAY
General Counsel
Center for Equal Opportunity
1054 31st Street NW
Suite 330
Washington, DC 20007



SARAH PARSHALL PERRY
Vice President & Legal Fellow
Defending Education
4532 Cherry Hill Road
Suite 119
Arlington, VA 22207



ALISON SOMIN
Senior Legal Fellow
Pacific Legal Foundation
3100 Clarendon Boulevard
Suite 1000
Arlington, VA 22201
asomin@pacificlegal.org
(916) 503-9026