

Office of Senator Tom Cotton
American Workforce Act
Section by Section Summary

Section 2: Definitions

Key definitions:

- Defines a prospective trainee as any American citizen who has a high school diploma, but has not earned a bachelor's degree or higher.
- Defines an employer as any private, for-profit employer, as described in section 3 of the Fair Labor Standards Act of 1938 (29 U.S.C. 203).
 - Clarifies that participation in the workforce project does not make the employer a federal contractor subject to the jurisdiction of the Office of Federal Contract Compliance Programs of the Department of Labor
 - Requires employers to train and consider each trainee for a position that would have an annual wage or salary of not less than 80 percent of the annual median household income of the county in which the job involved is located (or hourly wages based on that income and adjusted for a 2,080-hour annual work period), as determined by the 5-year estimates of the American Community Survey of the Bureau of the Census
- Defines an American Workforce Program as a paid, full-time position, lasting at least six weeks, in which the trainee is engaged in a combination of:
 - structured on-the-job work, which requires specialized knowledge and experience and involves the performance of complex tasks; and
 - educational workforce training, which must be designed in a manner that enables trainees to obtain and demonstrate competency and obtain progressively advancing and portable skills that are necessary for the industry or occupation involved
- Defines competency-based credential as a performance-based test taken to demonstrate proficiency in knowledge and abilities essential to the industry or occupation, which test does not place restrictions on how, when or where the test taker studied and acquired the knowledge and abilities.

Section 3: American Workforce Division

Duties of the American Workforce Director

- Establishes an American Workforce Division (AWD) within the Department of Commerce's Economic Development Administration, with a budget subject to appropriations from Congress, and creates a Senate confirmed director of the AWD. The Director is required to have significant experience in the private sector.
 - Requires the Secretary of Commerce to appoint an interim Director to serve during vacancies, ensuring that the program continues to operate during Senate confirmation of the full time Director.

- Tasks the Director with creating a short, standard template for trainee-employer contracts (referred to as American Workforce Contracts) and creating a streamlined website allowing employers to post their training positions and accept bids from prospective trainees.
- Requires the Director to review and approve or disapprove of American Workforce Contracts within one month of receipt and maintain records of contracts.
 - Creates a presumption of approval to ensure that interested parties are not subject to delays
 - If the Director rejects a contract, he is required to describe the reason for rejection, cite the requirement not met, and offer a recommendation for how the proposed contract should be amended to comply so that the employer may resubmit it
- Allows the Director to coordinate with state and local governments to widely publicize the availability of workforce education subsidies, especially among secondary students
- Demands 5- and 10-year Congressional reports from the Director based on annually collected data, such as completion rates, estimated average earnings of trainees, and credentials obtained

Accountability and contract enforcement by the American Workforce Director

- Establishes a whistleblower process allowing a trainee to file a complaint with the Director if he alleges the terms of the American Workforce Contract are not being met
 - Grants the Director one month upon receipt of the complaint to open an investigation
 - Requires the Director to make a preliminary determination within 90 days of the investigation's start
 - Requires the Director to use the clear and convincing evidence standard in investigating the complaint
 - Allows the director to warn, fine (not more than the amount received in workforce education subsidies during the past two years), or suspend an employer found at fault.
 - Grants the employer 90 days to appeal the decision if it involves suspension
 - Forbids employers from firing a trainee who submitted a whistleblower complaint
- Authorizes the Director to conduct random, periodic compliance reviews of workforce projects, review relevant materials from employers, and to consider any employer with consistent pattern of violating American workforce contracts or a completion rate below 25% over four years for suspension (meaning, across a four-year period, fewer than 25% of trainees have been hired by an employer)

Section 4: American Workforce Program

Rules on of Educational Workforce Subsidies:

- Instructs the Director to provide employers with an educational workforce subsidy up to \$9,000, with sums totaling no more than \$1,500 per month, following the end of each financial quarter during which the training and on-the-job work specified in the American workforce contract have been completed by a trainee. Allows the funds to be dispensed

over a three-year period, after which point the employer is responsible for providing any additional funding

- Offers a \$1,000 bonus to the employer, paid after six months, if an individual is hired as a full time, regular employee upon completion of the project
- Prohibits the workforce subsidy from being used for the trainee's wages, for diversity, equity, and inclusion training, for any political spending, or any other purpose that is not directly related to educational workforce training
- Allows a state or local government to supplement the workforce education subsidies, provided it does not attempt to attach conditions to federal subsidies

Provisions of the American Workforce Contract:

- Establishes the provisions that must be addressed in any American Workforce contract, which will be based on a template created by the Director, with a maximum of three pages.
 - The parties involved, including the trainee, employer, and any third-party training partners, as well as the length of the program, which may not be less than six weeks
 - A detailed overview of the curriculum for educational workforce training, as well as a description of the structured on the job work and the skills and competencies a trainee will obtain
 - A written agreement that outlines the terms and conditions of training, the wage or salary a trainee will receive, and the estimated starting wage or salary for the position a trainee is being considered for, which must be at least 80% of median county wage where the position is located, and the technical and professional standards a trainee must meet in order to successfully complete the workforce project
 - Expected long and short-term outcomes, such as any qualifying positions at the employer and third-party training entities and estimated salary range for the occupation
 - The projected growth of the relevant industry or occupation, if available, which the Director may provide technical assistance to obtain
 - Circumstances under which their wages or salary will increase during the workforce project and a description of any voluntary mentorship opportunities that may be available
 - Disclosure of the amount of workforce education subsidy that the employer will receive and any expenses that will be charged to the trainee or could reasonably be expected to be charged to the trainee
 - If competency-based credentials exist for the relevant industry or occupation, a description of the top 1-3 such credentials that the individual might earn on successful completion of the workforce project. If no such credentials are available, a description of any other credentials, such as a certificate, certification, or license, that the individual may earn in the relevant occupation or industry

- Permits the Director to note any additional credentials he thinks trainee should be made aware of in their workforce contract
- Forbids the Director from rejecting an American Workforce Contract because of his view of the credential listed by the employer and clarifies that the Director cannot require a trainee to obtain a credential as a condition of receiving funding
- Authorizes the employer to use workforce education subsidies to pay a third party for training. The following third-party entities are eligible:
 - A trade, industry, or employer group or association.
 - A corporation or other related organized entity.
 - An institution of higher education, including a community college, and a secondary school.
 - A State or local government agency or entity.
 - A nonprofit organization.
 - A union.
 - A joint labor-management organization.
 - A certification or accreditation body or entity for an industry or occupation.
 - A consortium or partnership of entities such as entities described above

Rules for employers:

- Requires the employer to pay the trainee according to the federal, state or local minimum wage during the workforce program, comply with applicable safety and non-discrimination laws, to use e-verify for all trainees and individuals employed while accepting subsidies, and to publish a public disclosure document available to the general public that describes basic information, such as the total cost, if any, of the program for a trainee, the expected wage or salary of the position that the program was created for, and the expected length of the program.
- Allows an employer to offer an American workforce program to their current employees, provided that, during the duration of the program, the employee receives an equal or higher wage than their current salary, and the expected annual pay increase for the employee upon successful completion of the project is at least 25% of the educational workforce subsidy provided for the project

Rules for trainees:

- Protects trainee choice by allowing them to leave a workforce project before the halfway point, without losing the value of their voucher, and ensures that if an employer ceases operations, the trainee is able to immediately use the full value of their voucher elsewhere
- Allows a person to access a maximum of three separate educational workforce training vouchers during their lifetime, with at least one year between use of each.
 - The 1 year waiting period does not apply to someone who completed a workforce project but was not hired by the employer providing training.

- Allows employers offering remote work run a workforce training program, provided that their trainees and employees live and file taxes in the United States

Section 5: General Provisions:

- Clarifies that a workforce program may extend beyond three years, but any funding for projects beyond that point will not receive federal funds
- Allows anyone who does not meet the qualifications to become a trainee may undertake training similar to or based on American workforce programs, but they will not receive federal funds
- Forbids the Department of Commerce from pressuring or incentivizing any employer to choose a particular third-party training entity
- Requires any regulations issued under this act to be issued within three months after the enactment, unless otherwise specified
- After five years, allows the Secretary of Commerce to issue regulations specifying a minimum ratio between the number of trainees and the open positions number of openings for a position in order to ensure a trainee has a reasonable opportunity to be hired on as a full time, regular employee while ensuring employers keep high standards.

Section 6: Sunset and Evaluations

- Requires the program to be sunset after ten years of operation, unless Congress reauthorizes the program
- Requires the Director to provide a five and ten year report to Congress, which compares the program to Registered Apprenticeships and other major workforce education programs run by the federal government, collects data on the program and success, surveys employees and trainees about their experience of the program, makes recommendations to Congress on a number of improvements and expansions, such as increasing the use of competency based credentials, increasing participation by small businesses, and helping to allow citizens without a high school degree to use the program

Section 7: Endowment Tax

- Levy a 1 percent tax on the aggregate fair market value of eligible endowments of private, secular colleges that have endowments worth more than \$2.5 billion and endowments valued at \$500,000 per full time-enrolled student