

National Skills Coalition Comments on Apprenticeship Programs; Equal Employment Opportunity Notice of Proposed Rulemaking (NPRMs)

January 2016

National Skills Coalition — a broad-based coalition of business leaders, union affiliates, education and training providers, community-based organizations, and public workforce agencies advocating for policies that invest in the skills of U.S. workers — is pleased to submit the following comments regarding the Equal Employment Opportunity in Apprenticeship Programs Notice of Proposed Rulemaking RIN 1205-AB59, “Apprenticeship Programs; Equal Employment Opportunity (EEO).”

Under the National Apprenticeship Act of 1937, the Department of Labor (DOL) is tasked with promoting standards necessary to “safeguard the welfare of apprentices.”¹ DOL’s implementation of this statutory requirement, found in 29 CFR part 29 & 29 CFR part 30, in part addresses the discriminatory impact of recruitment, selection and hiring, and retention policies within apprenticeship programs registered with DOL and State Apprenticeship Agencies. These regulations are intended to further DOL’s goal to promote and protect opportunity for all workers and all employers by removing barriers to fair workplaces.

For the first time since 1978, DOL is proposing to update the equal opportunity regulations implementing the National Apprenticeship Act of 1937 found in 29 CFR part 30.² The proposed rules would make two major changes (1) add age (40 or older), genetic information, sexual orientation, and disability as protected bases upon which a sponsor cannot discriminate, and (2) update affirmative action requirements for sponsors of registered apprenticeship programs. The proposed rules would also align with 2008 changes to 29 CFR 29 and with other changes to relevant laws in the past 37 years.

Proposed 29 CFR part 30 is intended to combat, “the residual impact of longstanding discrimination” which, “continues to exclude historically disadvantaged worker groups from

¹ 29 U.S.C. §50 et. seq

² Proposed updates for 29 CFR 29 were published last year.

participation in registered apprenticeship.”³ The NPRM incorporates evaluation of the extremely low participation in apprenticeship by women, minorities and people with disabilities, focusing on both failures to recruit and failures to retain these underrepresented populations.⁴

According to DOL, there were more than 375,000 registered apprentices in the country at the last time of available data, in 2013. DOL also identifies high growth industries as advanced manufacturing, construction, energy, health care, homeland security, hospitality, and transportation. The NPRM classifies underrepresentation of women, minorities, and people with disabilities and other groups of individuals as a major deficiency in the current RA system.

National Skills Coalition has a history of advocacy for federal policies that ensure all workers have access to the skills training necessary to meet employer needs and to earn good jobs. NSC strongly supports efforts to update the EEO in apprenticeship regulations and is particularly interested in DOL’s focus on pre-apprenticeship and on potential linkages to the newly passed Workforce Innovation and Opportunity Act (WIOA).

Comments on RIN 1205-AB59

One of DOL’s stated purposes in updating these regulations is to align with existing related laws. NSC encourages DOL to incorporate updates that will link the regulations to the newly enacted WIOA and facilitate efficient use of workforce development and registered apprenticeship system efforts to expand access to work-based learning and career training leading to good jobs to the underrepresented populations covered by 29 CFR part 30.

1. Linkages with the Workforce Innovation and Opportunity Act

WIOA anticipates a closer relationship between the Registered Apprenticeship (RA) system and the workforce development system. Some of the activities incorporated in WIOA could support

³ Apprenticeship Programs, Equal Employment Opportunity, 80 Fed. Reg. 68911 (proposed November 5, 2015)

⁴ The ten year average for new apprenticeship enrollments by sex was 7.1% women and 92.9% men. The CPS Labor force participation rates in 2012 were 47.0% and 53.0% for women and men, respectively. Only 1.8% of new apprentices in the utility industry, 2.3% in construction and 3.7% in hospitality educational services were women. By comparison, in health care and social assistance, men’s least represented industry, men were still 4.5% of apprentices, 95.5% of apprentices were women. DOL analysis provides similar, though much less stark, underrepresentation for minority men and women.



greater opportunities for access to apprenticeship for nontraditional populations, particularly for low-income adults and disconnected youth.

WIOA requires state and local workforce development boards to engage the membership of registered apprenticeship sponsors and registered apprenticeship programs are automatically qualified to be placed on the state's eligible training provider list (ETPL), evidencing the legislative intent to link the registered apprenticeship system with the nation's workforce development system.

Career pathways – defined in WIOA as including activities to prepare individuals for success in apprenticeship⁵ – offer an important model for expanding access to apprenticeship for all workers, specifically through pre-apprenticeship programs. Industry or sector partnerships, a required activity for all local areas under WIOA,⁶ offer a vital outreach, recruitment and retention mechanism to ensure equal access to apprenticeship for underrepresented populations. WIOA features an increased focus on business engagement, both with registered apprenticeship sponsors and with their industry partners and workforce intermediaries or associations.

WIOA youth services are significantly updated from those required under the law's predecessor, the Workforce Investment Act (WIA). Statutory and proposed regulatory language covering youth services specifically target pre-apprenticeship and work-based learning strategies as qualifying youth program activities and key elements of WIOA's strategy to expand access to workforce development system services for out-of-school youth.⁷ In fact, 75 percent of youth Title I WIOA funds are required to be spent on out-of-school youth, and 20 percent of all local youth funds allocated specifically to work experience such as pre-apprenticeship.⁸

Finally, like WIOA, the proposed regulations would make important updates to requirements for apprenticeship program sponsors' outreach and engagement with individuals with disabilities. WIOA institutionalizes the Advisory Committee on Increasing Competitive Integrated Employment for Individuals with Disabilities, comprised of workforce experts and advocates for individuals with disabilities. This Advisory Committee can represent an

⁵ §3(7)(B)

⁶ §3(26)

⁷ §129(a)(1)(B) describes out of school youth as a youth not in school, between ages 16-24, and is either (i) dropped out of school, (ii) not attending during the most recent quarter of the school year, (iii) graduated and is low-income and is either basic skills deficient or an English Language learning, (iv) engaged in the juvenile or adult justice system, (v) homeless, (vi) pregnant or parenting, (vii) an individual with a disability, or (viii) a low-income individual who requires additional assistance to finish school and get a job.

⁸ WIOA §129 (c)(2)(C)(ii)



important collaborative mechanism between apprenticeship sponsors and groups serving individuals with disabilities, ensuring these individuals are truly integrated into our apprenticeship system.

2. Definitions

NSC supports the updates proposed in §30.2 to include a definition of pre-apprenticeship, as well as the removal of the term “state apprenticeship council” to aid increased uniformity with the use of the often synonymous, “State Apprenticeship Agency” and as updated in 29 CFR 29.

a. *Pre-apprenticeship*

The NPRM explicitly references DOL’s Training and Employment Notice (TEN) 13-12’s definition of a quality pre-apprenticeship program, describing the definition at proposed §30.2 as consistent with the content of the TEN.

NSC’s previous analysis detailing the importance of soft skills, industry skills, certifications and supportive services to pre-apprenticeship program and participant success is consistent with TEN 13-12. The proposed definition, and TEN 13-12, define a quality pre-apprenticeship program as incorporating these same elements. In TEN 13-12, the Employment and Training Administration (ETA) also encourages pre-apprenticeship program providers to expand partnerships with a series of industry and sector partners – RA sponsors, workforce development agencies, economic development agencies, business, labor management organizations, and community colleges. While TEN 13-12 does not explicitly reference WIOA’s predecessor, the Workforce Investment Act (WIA), in this section, this list of partners is the consistent with those required to participate on Workforce Investment Boards under that law, Workforce Development Boards under WIOA, and are the encouraged partners in an Industry or Sector Partnership under WIOA.

While NSC supports the proposed definition, we encourage DOL to issue an update to TEN-13-12 incorporating references to WIOA, instead of WIA, and adding enhanced guidance to link quality pre-apprenticeship programs with industry or sector partnerships and recognizing these programs as part of a career pathway. This recommendation is consistent with the clear statutory authority under WIOA §3(7) to consider pre-apprenticeship as part of a broader career pathway leading to registered apprenticeship.



b. *State Apprenticeship Agency*

DOL proposes to remove the reference in regulations to a “State Apprenticeship Council” in favor of exclusively referencing “State Apprenticeship Agencies,” making 29 CFR part 30 consistent with 29 CFR part 29.

The National Apprenticeship Act gives the Department of Labor the jurisdiction over registering apprenticeship programs for states that wish the federal agency to take on this role. The law also permits states to maintain their own agency, dubbed a State Apprenticeship Council/Agency. These state agencies are required to adhere to federal standards and the Secretary of Labor is permitted oversight of the state agencies. Currently, 25 states have opted to cede the registration authority to DOL, while 25 have maintained their own state agencies. While the same law governs RA in either situation, state agencies have been granted certain levels of autonomy in the governance around their registration process.

While engaged with NSC partners – specifically representatives of small- and medium-sized businesses – we have heard that one barrier to expanding apprenticeship is the difficulty in navigating the registration process in different states. NSC believes that while a small change, the removal of the term “State Apprenticeship Council” and uniform use of “State Apprenticeship Agency” is a step in the right direction of helping businesses seeking to start or expand an apprenticeship program with the often difficult registration process. We support this change in the proposed rule.

NSC also encourages Department of Labor to expand opportunities to standardize processes between states with SAAs and the DOL procedures for registration, monitoring and compliance.

3. Universal Requirements

Section §30.2 details requirements for all apprenticeship programs, as compared to requirements later in the NPRM which pertain only to those programs that have identified underutilization of certain groups of individuals.

NSC supports the proposed §30.3(b)(3) language that would require programs to ensure outreach and recruitment activities extend to all individuals in a program’s region, regardless of gender, race, ethnicity and disability status of the individual. This proposed section would



require programs to track recruitment and referral sources, recommending programs utilize the public workforce system's referral services when recruiting. The NPRM also encourages programs to look to community based organizations, community colleges, and pre-apprenticeship programs as referral sources. This proposed update is consistent with expanded focus in WIOA on engaging apprenticeship programs and vital to ensuring effective use of resources.

4. Utilization Analysis

Proposed §30.5 would update the analysis an apprenticeship program sponsor would be required to perform in evaluating whether their program's participant pool is reflective of those individual available in the RA program's geographic area to participate in the apprenticeship program. NSC strongly supports DOL's proposed change that would require sponsors to analyze available qualified individuals by race, sex, and ethnicity, rather than the current approach that requires only availability for women and then minorities as an aggregate. This analysis is consistent with DOL's stated intent to align 29 CFR part 30 with protected bases identified in other laws already applicable to registered apprenticeship programs.

NSC is concerned, however, with the proposed first step in utilization analysis. DOL proposes to require sponsors to identify the composition of their workforce by industry, as opposed to the current requirement to do so by job title. This change seems contrary to language in the NPRM detailing the segregation of women and minorities in lower paying positions within an industry. The NPRM identifies this process of industry level evaluation in §30.5 as refined enough to identify barriers, ignoring earlier analysis in the NPRM recognizing that underrepresented populations, even when represented in an industry, are much more likely to be concentrated in lower paying positions and less likely to continue on a career pathway to more highly trained – and paid – position.

NSC strongly recommends maintaining the requirement that sponsors must evaluate the composition of their workforce based on job title.

NSC also supports DOL's intentions, as stated in the NPRM, to provide significant technical assistance to assist program sponsors in complying with regulations. NSC encourages DOL to provide more extensive guidance on how to define whether an individual has present or potential capacity for apprenticeship – not just in an industry, but for each job title consistent with the analysis necessary to analyze utilization.



DOL specifically requests comments on how sponsors can determine whether individuals have present or potential capacity to participate in an apprenticeship program. NSC encourages DOL to incorporate participation in a pre-apprenticeship program, as part of a broader career pathway, as a mechanism to evaluate present and potential capacity for participation in an apprenticeship program.

Career pathways combine education, training, career counseling and support services that align with industry skill needs so participants can earn secondary school diplomas or their equivalent, postsecondary credentials, and get middle-skill jobs. Career pathways also include adult basic education, typically offered concurrently with and in the same context as general workforce preparation and training for a specific occupation.

As described above, pre-apprenticeship is a key strategy for expanding opportunity for underrepresented populations.⁹ DOL could encourage RA sponsors to partner with pre-apprenticeship training partners through Memorandum of Agreement where RA programs would commit to direct entry from their partnership pre-apprenticeship program. This type of relationship, utilized by a number of leading pre-apprenticeship programs across the country, could be used as a proxy during analysis of utilization and allow a registered apprenticeship program to meet the required utilization standard for individuals of a population which the pre-apprenticeship program serves. This solution would engage RA sponsors in meaningful relationships with pre-apprenticeship programs to ensure the programs were providing the most useful skills training for the RA program, leading to more efficient – as well as diverse – outcomes for sponsors.

By explicitly linking the determination of “present or potential capacity” to pre-apprenticeship as part of a career pathway, DOL can expand this meaning of this term beyond educational attainment and link to activities within the local workforce development system.

5. Utilization Goals

NSC supports proposed updates to §30.6 that would clarify that percentage goals in utilization plans must be at least equal to the availability figure computed by a sponsor. This requirement, when coupled with a utilization analysis that incorporates pre-apprenticeship as an element of a

⁹ Programs such as Women in Apprenticeship and Nontraditional Occupations (WANTO) grantees Chicago Women in Trades, Oregon Tradeswomen Inc., Tradeswomen Inc., Women in Nontraditional Employment Roles, and West Virginia Women Work have a long history of providing women with pre-apprenticeship training necessary to expand their access to registered apprenticeship programs.



broader career pathway, will ensure that underrepresented populations benefit from the EEO intent of the regulatory language.

6. Targeted Outreach, Recruitment, and Retention

Proposed § 30.8 covers the outreach, recruitment, and retention activities required by an apprenticeship sponsor if the sponsor has identified underutilization of a certain group of individuals. The section is designed to ensure that once a sponsor has identified underutilization, the sponsor is able to explicitly detail plans to increase the application for, and retention in, apprenticeship programs by individuals in underrepresented groups.

Current 29 CFR part 30 details requirements of an affirmative action plan participant to take positive steps to conduct outreach to and recruit underrepresented populations. NSC supports the addition of language in the proposed rule that would also require activities facilitating the retention of underrepresented groups in apprenticeship programs. As cited in the NPRM preamble, individuals in underrepresented groups have much higher attrition rates than for the general population of apprentices, regardless of the industry.

Proposed §30.8(a)(1) would require an affirmative action plan to include a minimum of four actions to evidence targeted outreach, recruitment, and retention. The NPRM makes clear, however, that a program would be encouraged to tailor these activities, and additional, to the specific needs of their underrepresented groups, industry, and geographic location. The proposed rule would require the following from RA sponsors with an affirmative action plan:

1. Disseminating information to a variety of CBOs and secondary and post-secondary institutions;
2. Advertising apprenticeship openings in newspapers or media with wide circulation;
3. Working with local school boards and career and technical education systems to align with quality pre-apprenticeship programs; and
4. Establishing linkage agreements with pre-apprenticeship programs

NSC would encourage DOL to add, appended to each of the steps the language, “including those who serve underrepresented populations,” after each required activity. While this language would not add an additional burden to sponsors, as their outreach is required to target underrepresented populations, it would signal DOL’s intent to reach these populations and serve as a further catalyst for engagement with organizations and institutions currently serving these individuals.



DOL requests comments on if there are extenuating circumstances that would make these activities difficult for RA sponsors to complete. While NSC supports flexibility necessary for apprenticeship programs to be effective in training and employing apprentices, these activities should be achievable by all apprenticeship programs.

NSC encourages DOL to add additional language requiring registered apprenticeship programs to work with their local workforce development system. DOL could add the following language as §30.8(a)(1)(v), “Engagement with local workforce development board and with industry or sector partnerships (as established under the Workforce Innovation and Opportunity Act) to establish linkages with the workforce development system as a recruitment source for both youth and adult participants.”

This added requirement would provide a mutually beneficial relationship for the workforce development system and the registered apprenticeship system. Many of the new activities required of Workforce Development Boards under WIOA, if engaged in partnership with RA sponsors, could meet the goals of both WIOA and 20 CFR § 30. This is particularly true given the workforce development system serves individuals that are largely members of populations currently underrepresented in the RA system. In Program year 2013, almost 49% of exiters from Adult Programming were women and 54.2% were racial and ethnic minorities.¹⁰ In youth programming, 54.5% of exiters were women and 68.9% were racial and ethnic minorities.¹¹

NSC also suggests updating references to “vocational, career and technical schools” to refer to career and technical schools, consistent with updates to the Carl D. Perkins Career and Technical Education Act.

7. Selection of Apprentices

Proposed §30.10 would change the qualifying methods by which an apprenticeship program can select apprentices, requiring programs to adhere with requirements in other EEO laws and use selection procedures that are facially neutral towards underrepresented populations.

Current §30.5, which covers selection of apprentices, details four optional methods apprenticeship program sponsors must use to select apprentices.

¹⁰ Table II-1, Characteristics of Adult Exiters, Trends Over Time, http://www.doleta.gov/performance/results/pdf/PY_2013_WIASRD_Data_Book.pdf

¹¹ Table IV-3, Characteristics of Youth Exiters, Trends over Time, http://www.doleta.gov/performance/results/pdf/PY_2013_WIASRD_Data_Book.pdf



1. Ranking apprentices from an eligible pool – sponsors can create an eligible pool of applicants and rank those potential apprentices based on certain qualification standards, selecting based on rank.
2. Random selection from an eligible pool – sponsors can seek DOL approval of a random method to select apprentices from an established eligible pool of participants.
3. Selection from current employees – sponsors can select apprentices from their current pool of employees. Often this method was established in a collective bargaining or employer promotion policy.
4. Alternative methods – sponsors can also use any other procedure for selecting apprentices with DOL approval and that adhered to other employment laws.

The NPRM details DOL analysis that current regulatory language is not necessary, as most programs use a hybrid method of these selection processes or use a method that falls under the alternative methods option. DOL therefore proposes to remove the enumerated approaches in favor of more general requirements that (i) programs simply apply the same process to all apprentices, (ii) that the process comply with other employment laws, and (iii) that these standards are facially neutral towards applicants regardless of race, color, religion, national origin, sex, sexual orientation, age, genetic information, and disability.¹²

While NSC agrees that the enumerated procedures in the current regulations are redundant given Title VII employment restrictions' application to apprenticeship programs and the regulatory reference to other EEO laws, the proposed change does not offer information to help registered apprenticeship sponsors establish selection processes that will improve access for underrepresented populations. NSC is concerned that nothing in the updated language will encourage or enable selection procedures that are any more equitable than those a program currently uses.

NSC encourages the DOL to issue guidance on best practices in selection procedures as soon as possible. This guidance should include references to linkages with pre-apprenticeship programs as an eligible pool of workers. Guidance should also include analysis of selection procedures, such as relying on interviews or base apprenticeship program selection on a homogeneous pool of current candidates that can reinforce underrepresentation the regulations seek to remedy.

¹² Selection procedures must be compliant with the 41 CFR § 60-3 and Title I of the ADA.

