

January 20, 2016

Ms. Adele Gagliardi, Administrator
Office of Policy Development and Research
Employment and Training Administration
U.S. Department of Labor Room N-5641
200 Constitution Avenue, NW
Washington, DC 20210

Re: RIN 1205-AB59—Proposed Rulemaking on Apprenticeship Programs; Equal Employment Opportunity Regulations

Dear Ms. Gagliardi:

We write to express our strong support for the U.S. Department of Labor’s (DOL) proposal to update the Apprenticeship Program’s Equal Employment Opportunity (EEO) regulations after nearly forty years. This rulemaking has the ability to significantly impact the participation of women and other underrepresented groups in apprenticeship and the future of these groups in the trades.

In the almost four decades since the EEO regulations were last updated, the representation of women in apprenticeships has remained stagnant. While women make up 47% of the workforce, they account for only 6.3% of apprentices. Persistent barriers to entry and advancement of women in these programs lead to this underrepresentation. Increasing women’s participation in these high-wage, traditionally male-dominated fields will boost women’s overall earnings and help to close the wage gap, providing a pathway to economic security and opportunities for career advancement. Through strengthening and effectively implementing the proposed regulations, DOL can help to ensure progress towards gender parity in apprenticeships that is reflective of the broader workforce. Strengthening these regulations will also help increase the participation of members of racial and ethnic groups who are underrepresented in certain apprenticeship industries and concentrated in apprenticeship programs in lower paying occupations.

We strongly urge DOL to maximize the regulations’ effectiveness in the following ways:

1. Include Equal Employment Opportunity and Affirmative Action Standards for Pre-Apprenticeship Training Programs

We commend DOL for acknowledging that “pre-apprenticeship” training is a key tool for addressing continued disparities in apprenticeship for women, people of color, and individuals with disabilities. We recommend that DOL’s definition in proposed § 30.2 of a quality framework for pre-apprenticeship training incorporate elements specifically addressing barriers unique to women, people of color, and individuals with disabilities and include standards for Equal Employment Opportunity/Affirmative Action (EEO/AA) in technical instruction, selection procedures, and direct entry into apprenticeship programs.

2. Require all Sponsors to Create Affirmative Action Programs, Not Just Sponsors with 5 or More Apprentices

We do not support the proposed exemption of apprenticeship programs with fewer than 5 apprentices from having to adopt an affirmative action program. Such an exemption would exclude a significant percentage of apprenticeship programs from the promises of equal opportunity offered by the regulations. This exemption would also exclude a large number of new apprenticeship programs in their early years of growth when the adoption of an affirmative action program would have the greatest long-term, positive impact.

3. Ensure that the Affirmative Action Regulations Actually Increase Participation of Women and People of Color in Apprenticeships and the Trades

a. Clarify the Meaning and Scope of Individuals Who are “Qualified”/“With the Present or Potential Capacity for Apprenticeship”

We support DOL’s requirement that sponsors compare their “utilization” of women apprentices and apprentices of color with the “availability” of women and people of color who have the “present or potential capacity for apprenticeship” to determine whether they must set a utilization goal and engage in targeted outreach, recruitment, and retention as part of their affirmative action program. However, we strongly urge DOL to clarify and offer guidance as to these important terms. Without such clarification, sponsors might inappropriately or inaccurately determine that women and/or people of color are not underutilized in their programs and thus not engage in needed affirmative action efforts.

Specifically, we urge DOL to clarify that individuals who are “qualified” or “with the present or potential capacity” for apprenticeship are individuals who meet the generally-accepted industry standards for apprenticeships. DOL should explicitly clarify that apprenticeships are entry-level positions, generally requiring no previous experience or minimal requirements other than being at least 18 years of age and holding a high school diploma or equivalent. Importantly, DOL should explicitly affirm its longstanding understanding that, given the minimal requirements for apprenticeship, the population of women and people of color who are “qualified” or have the “present or potential capacity” for apprenticeship will largely correspond with that group’s share of the civilian labor force in the relevant recruitment area. These clarifications will greatly ease the burden on sponsors in conducting this analysis and ensure that the final regulations are applied by sponsors in a manner consistent with DOL’s longstanding treatment of apprenticeship qualifications. The clarifications will also ensure that the proposed utilization goal for sponsors, which must be “at least equal to the availability figure,” remains a robust goal that moves apprenticeship programs towards the gender parity reflected in the overall civilian labor force.

b. Clarify that Sponsors Must Calculate the Availability and Utilization of Women Overall and Women of Historically Excluded Racial and Ethnic Groups

We support the regulations’ proposal to move away from the current requirement that sponsors analyze “availability” and “utilization” for women and then for minorities as an aggregate group, and instead require sponsors to disaggregate the “availability” and “utilization” of individuals for apprenticeship by race, sex, and ethnicity. We urge DOL to further strengthen this analysis by clarifying that this data must also be cross-tabulated by race, sex, and ethnicity to ensure that a sponsor’s analysis does not mask the barriers to apprenticeship faced by key subgroups of individuals, such as African American women or Latinas, and to ensure that a sponsor’s outreach and recruitment is appropriately targeted.

c. Clarify the Definition of “Underutilization”

We strongly urge DOL to clarify that “underutilization” of women apprentices or apprentices of color occurs when a sponsor’s utilization of women, Hispanics or Latinos, and/or individuals of a particular ethnic or racial minority group is “less than the percentage available for apprenticeship in the relevant recruitment area.” This simplified analysis of “underutilization” will ease the burden on sponsors and eliminate the confusion and potential for manipulation introduced by the proposed “less than would be reasonably expected” definition and thereby increase the chance that sponsors will appropriately engage in critical affirmative action efforts.

d. Ensure Sponsors Make Actual Progress Towards Utilization Goals Through the Use of Interim Goals and Timetables

We commend DOL for proposing sponsors adopt a strong utilization goal for women and people of color based on at least the percentage of individuals deemed “available” in the relevant recruitment area. Such a goal will bring apprenticeship programs closer to gender parity. However, we are seriously concerned about ensuring that sponsors actually make efforts to progress towards these goals. Accordingly, we urge DOL to require all sponsors to submit their affirmative action plans to the Registration Agency annually or biannually and, for sponsors which must set a utilization goal, require them to include in their plans interim percentage goals and timetables. DOL should make explicitly clear that compliance with the affirmative action requirements shall be determined by whether the sponsor has made good faith efforts to meet its goals and timetables.

We support DOL’s requirement that all sponsors internally review all elements of their affirmative action programs on an annual basis or biannually, if the sponsor finds there is no underutilization in their program. However, it is imperative that external review mechanisms also exist to ensure sponsors progress towards their goals, especially those sponsors with the greatest rate of underutilization. Accordingly, we urge DOL to designate an agency representative in each Office of Apprenticeship region to engage each sponsor which has less than 50% of the proportion of women, Hispanics or Latinos, and/or individuals of a particular racial minority group available in the sponsor’s relevant recruitment area on an annual basis in developing and attaining interim goals and timetables.

4. Require Robust Measures for Targeted Outreach, Recruitment, and Retention

We strongly commend DOL for addressing the retention of women, people of color, and individuals with disabilities in apprenticeship programs given the glaringly high number of apprentices who never complete their apprenticeship program. Women apprentices are particularly susceptible to non-completion given the unique barriers they face throughout their apprenticeships, including isolation, micro-inequities, harassment, discrimination, and lack of training rotation on the job. We urge DOL to strengthen the regulations as they relate to retention by creating a separate “retention” section outlining the efforts sponsors must undertake to increase retention rates. Among the provisions in the “retention” section, we urge DOL to include, at the very least, a requirement that sponsors: (1) analyze their apprentice retention rates for women, people of color, and individuals with disabilities; (2) set forth in their written affirmative action plans the specific retention activities they plan to take for the upcoming program year, as appropriate; (3) conduct exit interviews of each apprentice leaving the sponsor’s apprenticeship program prior to completion; and (4) implement policy and professional development practices designed to build staff capacity to support and serve traditionally underrepresented groups.

5. Clarify that Sex Discrimination Includes Sexual Orientation and Sex Stereotyping and that Gender Identity and Pregnancy Discrimination Are Prohibited

We strongly support the proposed regulations' explicit inclusion of sexual orientation on the list of bases upon which discrimination is prohibited. We also strongly support the proposed regulations' important recognition that sex discrimination includes pregnancy discrimination and gender identity discrimination. We urge DOL, however, to include a definition of "sex" in § 30.2 that makes clear that sexual orientation discrimination and sex stereotyping discrimination are also prohibited forms of sex discrimination, as is discrimination on the basis of childbirth and medical conditions related to pregnancy or childbirth. In addition, we urge DOL to clarify throughout the text of the actual regulations that the regulations prohibit discrimination on the basis of pregnancy and gender identity by enumerating these categories alongside sex, sexual orientation, and the other protected classes.

6. Implement Inclusive Apprenticeship Selection Procedures

We commend DOL for requiring sponsors' selection method(s) be facially neutral in terms of race, color, religion, national origin, sex, sexual orientation, age (40 or older), genetic information, and disability, and for requiring sponsors to evaluate the impact of their selection procedure(s) on race, sex, and ethnic groups (Hispanic or Latino/non-Hispanic). We urge DOL to clarify that these requirements also apply to pregnancy, sexual orientation, and gender identity. We further urge DOL to explicitly state that sponsors are permitted and encouraged to implement a different selection procedure(s) or extend or reopen selection periods if the initial selection procedure or period was not effective in complying with EEO requirements and/or making progress towards affirmative action goals. Finally, we recommend that DOL establish guidelines for standardizing direct entry into apprenticeships for graduates of pre-apprenticeship programs that adhere to the quality framework to be set out in § 30.2.

7. Include Robust Measures for Ensuring Sponsor Compliance with All Antidiscrimination and Affirmative Action Requirements

While we support the self-monitoring mechanisms proposed in the regulations, such mechanisms alone will be insufficient to ensure sponsor compliance with the regulations' antidiscrimination and affirmative action requirements. Accordingly, we urge DOL to establish external review mechanisms for all sponsors, including requiring annual or biannual sponsor reports to the Registration Agency and the public detailing the sponsor's antidiscrimination and affirmative action efforts and progress; requiring the Registration Agency to regularly conduct compliance reviews of sponsors' antidiscrimination and affirmative action efforts; and requiring compliance review findings and any resulting compliance action plans be made accessible to the public. We further urge DOL to require the Registration Agency to regularly evaluate a sponsor's compliance action plan for effectiveness until the sponsor attains the plan goals. Importantly, DOL should establish opportunities for stakeholder participation in compliance reviews and in the filing and review of EEO/AA complaints.

Finally, we urge DOL to further strengthen the technical assistance provided to sponsors and ease the burden on sponsors by requiring sponsors to include a standing seat on their advisory committee from an external party that supports underrepresented populations in the workforce development arena. We also urge DOL to require regular and ongoing professional development on cultural competency and antidiscrimination and affirmative action requirements for apprenticeship training staff, instructors, administrators, and support staff.

We thank you for the opportunity to provide comments on these important regulations.

Sincerely,

Toni Van Pelt
President and Public Policy
Institute for Science and Human Values, Inc