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## **DEPARTMENT OF LABOR**

### **29 CFR parts 29 and 30**

**RIN: 1205-AB59**

#### **Apprenticeship Programs; Equal Employment Opportunity**

**AGENCY:** Employment and Training Administration, Labor.

**ACTION:** Notice of proposed rulemaking; request for comments.

**SUMMARY:** The U.S. Department of Labor (DOL or Department) is issuing a Notice of Proposed Rulemaking (NPRM) to update the equal opportunity regulations that implement the National Apprenticeship Act of 1937. These regulations prohibit discrimination in registered apprenticeship on the basis of race, color, religion, national origin, and sex, and require that sponsors of registered apprenticeship programs take affirmative action to provide equal opportunity in such programs. The proposed rule would revise regulations to reflect changes made in October 2008 to Labor Standards for Registration of Apprenticeship Programs; update equal opportunity standards to include age (40 or older), genetic information, sexual orientation, and disability among the list of protected bases upon which a sponsor must not discriminate; strengthen the affirmative action provisions for sponsors by detailing mandatory actions a sponsor must take to

satisfy its affirmative action obligations, and by requiring affirmative action for individuals with disabilities; and improve the overall readability of through restructuring and clarification of the text. In addition, the proposed rule would make technical, conforming amendments to current regulations.

**DATES:** Comments must be submitted by [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** You may submit comments, identified by Regulatory Information Number (RIN) 1205-AB59, by any one of the following methods:

- Federal e-Rulemaking Portal [www.regulations.gov](http://www.regulations.gov). Follow the Web site instructions for submitting comments.
- Mail: Please address all written comments (including disk and CD-ROM submissions) to Adele Gagliardi, , Administrator, Office of Policy Development and Research, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N-5641, Washington, D.C. 20210.
- Hand Delivery/Courier: Adele Gagliardi, Administrator, Office of Policy Development and Research, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N-5641, Washington, D.C. 20210.

Please submit your comments by only one method. The Department will post all comments received on <http://www.regulations.gov> without making any change to the comments, including any personal information provided. The

<http://www.regulations.gov> Web site is the Federal e-rulemaking portal and all comments posted there are available and accessible to the public. The Department cautions commenters not to include their personal information such as Social Security Numbers, personal addresses, telephone numbers, and e-mail addresses in their comments as such submitted information will become viewable by the public via the <http://www.regulations.gov> Web site. It is the responsibility of the commenter to safeguard his or her information. Comments submitted through <http://www.regulations.gov> will not include the commenter's e-mail address unless the commenter chooses to include that information as part of his or her comment.

Postal delivery in Washington, D.C., may be delayed due to security concerns. Therefore, the Department encourages the public to submit comments via the Web site indicated above.

Docket: For access to the docket to read background documents or comments received, go to the Federal eRulemaking portal at <http://www.regulations.gov>. The Department will also make all the comments it receives available for public inspection during normal business hours at the Office of Policy Development and Research (OPDR) at the above address. If you need assistance to review the comments, the Department will provide you with appropriate aids such as readers or print magnifiers. The Department will make copies of the rule available, upon request, in large print and as an electronic file on computer disk. The Department will consider providing the proposed rule in other formats upon request. To schedule an appointment to review the comments and/or obtain the rule in an alternate format, contact OPDR at (202) 693-3700 (VOICE) (this is not a toll-free number) or 1-800-877-8339 (TTY/ASCII).

**FOR FURTHER INFORMATION CONTACT:** Adele Gagliardi, Administrator, Office of Policy Development and Research, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N-5641, Washington, D.C. 20210, [gagliardi.adele@dol.gov](mailto:gagliardi.adele@dol.gov), (202) 693-3700 (this is not a toll-free number). Individuals with hearing or speech impairments may access this telephone number via TTY by calling the toll-free Federal Information Relay Service at 1-800-877-8339.

**SUPPLEMENTARY INFORMATION:** This preamble is divided into three sections. Section I provides general background information on the development of the proposed revisions to 29 CFR parts 29 and 30 (part 29 and part 30, respectively). Section II is a section-by-section analysis of the proposed regulatory text. Section III covers the administrative requirements for this proposed rulemaking as mandated by statute and Executive Order.

## **I. Background**

### **A. General Overview of Registered Apprenticeship**

The National Apprenticeship Act of 1937 authorizes the Department to formulate and promote the furtherance of labor standards necessary to safeguard the welfare of apprentices. 29 U.S.C. 50. The responsibility for formulating and promoting these labor standards lies with the Department's Employment and Training Administration's (ETA) Office of Apprenticeship (OA). As part of its duties, OA registers apprenticeship programs that meet certain minimum labor standards. These standards, set forth at 29

CFR parts 29 and 30, are intended to provide for more uniform training of apprentices and to promote equal opportunity in apprenticeship.

Part 29 implements the National Apprenticeship Act by setting forth labor standards that safeguard the welfare of apprentices by prescribing policies and procedures concerning the registration, cancellation, and deregistration of apprenticeship programs; the recognition of State Apprenticeship Agencies (SAA) as Registration Agencies; and matters relating thereto. On October 29, 2008, the Department published an amended part 29 to provide a framework that supports an enhanced, modernized apprenticeship system. 73 FR 64402. These regulations can be accessed on OA's Web site at: <http://www.doleta.gov/oa/pdf/FinalRule29CFRPart29.pdf>.

Part 30 implements the National Apprenticeship Act by requiring registered apprenticeship program sponsors to provide equal opportunity for participation in their registered apprenticeship programs, and by protecting apprentices and applicants for apprenticeship from discrimination based on race, color, religion, national origin, and sex. In addition, part 30 also requires that sponsors of registered apprenticeship programs take affirmative action to provide equal opportunity in such programs. The Department first published part 30 on December 18, 1963, at the direction of President Kennedy, who ordered that the Secretary of Labor, in implementing the National Apprenticeship Act and Executive Order 10925, require that the admission of young workers to apprenticeship programs be on a completely nondiscriminatory basis. 28 FR 13775. At that time, the regulations prohibited discrimination based on race, color, religion, and national origin. Coverage on the basis of sex was added in 1971, as was the requirement for sponsors with five or more apprentices to develop and implement a written

affirmative action plan (AAP) for minorities. 36 FR 6810, April 8, 1971. In 1978, the Department amended these regulations to require inclusion of female apprentices in AAPs. 43 FR 20760, May 12, 1978. There have been no changes to these regulations since that time.

Registered apprenticeship is a combination of on-the-job training and related technical instruction in which workers learn the practical and theoretical aspects of a highly-skilled occupation. Apprenticeship programs are sponsored voluntarily by individual employers, employer associations, or Joint Apprenticeship Training Committees that partner organized labor with employers. In the U.S. today, there are more than 19,000 program sponsors representing over 200,000 employers who are offering registered apprenticeship training to more than 375,000 registered apprentices.<sup>1</sup>

OA oversees the National Registered Apprenticeship System. Federal staff members are directly responsible for registered apprenticeship activities in 25 States and provide technical assistance and oversight to 25 SAAs in the other 25 States. In these “SAA States,” the SAA has voluntarily requested recognition from the Secretary of Labor to serve as the entity authorized to register and oversee State and local apprenticeship programs for Federal purposes. Therefore, in those 25 States, the SAA, in accordance with Federal regulations, has responsibility for registering apprenticeship activities for Federal purposes.

Registered apprenticeship programs appear in traditional industries, such as construction (where the majority of registered programs has been) and manufacturing, as well as in new emerging “high-growth” industries, such as health care, information

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<sup>1</sup> Fiscal Year (FY) 2013 national results available at [http://doleta.gov/oa/data\\_statistics.cfm](http://doleta.gov/oa/data_statistics.cfm)

technology, and energy. High-growth industries are those sectors in the economy that are projected to add substantial numbers of new jobs to the economy or affect the growth of other industries, or they are existing or emerging businesses being transformed by technology and innovation requiring new skill sets for workers.<sup>2</sup>

## **B. Overview of the NPRM**

In spring 2010, to inform the drafting of this NPRM, OA conducted a series of town hall meetings across the nation, a webinar, and listening sessions with the agency's stakeholders to elicit their recommendations for updating part 30. Through these efforts, OA received valuable input from a broad array of interested individuals, including SAAs; the National Association of State and Territorial Apprenticeship Directors (NASTAD); advocacy organizations; registered apprenticeship program sponsors such as labor-management organizations, employers, and employer associations; journeyworkers; former apprentices; and registered apprentices. This input addressed features of part 30 that work well, those that could be improved, and additional requirements that might help to effectuate the overall goal of ensuring equal opportunity for all individuals who are participating in or seeking to participate in the National Registered Apprenticeship System. Recurring themes in these town halls, webinars, and listening sessions included the need for increased outreach efforts to attract women and minorities; a focus on equal training and retention of apprentices; stricter enforcement of the Equal Employment Opportunity (EEO) obligations; clarification of complaint procedures; and progressive actions by Registration Agencies to achieve sponsor compliance with the regulations.

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<sup>2</sup>High growth industries include: advanced manufacturing, construction, energy, health care, homeland security, hospitality, and transportation.

In developing the proposed rule, the Department also consulted with its Advisory Committee on Apprenticeship (ACA). Chartered under the Federal Advisory Committee Act, the ACA provides advice and recommendations to the Secretary of Labor (Secretary) on a wide range of matters related to apprenticeship. The ACA is comprised of approximately 30 members with equal representation of employers, labor organizations, and the public.

In January 2011, the ACA unanimously accepted a series of recommendations to revise part 30, prepared by its EEO regulations workgroup, and then formally provided those recommendations to the Department. In particular, the ACA recommended that the revised part 30: (1) align with part 29; (2) link the part 30 regulatory requirements with apprenticeship programs' standard operating procedures, so that program sponsors can minimize administrative burden; (3) enhance program sponsors' accountability for compliance; (4) align requirements for outreach and recruitment activities with established national best practices; (5) allow maximum flexibility in selection procedures provided they are objective and specific; (6) provide for the use of local labor market information in establishing and updating utilization goals; and (7) require that all registered apprenticeship programs, regardless of size, adopt AAPs and selection procedures, supported by OA technical assistance.

This proposed rule is based on public input, ACA consultation, as well as OA's analysis of demographic patterns in apprenticeship discussed later in this preamble, and a literature review regarding barriers to entry, underutilization, and discrimination in apprenticeship and nontraditional occupations for women and minorities, and best practices to address these challenges. This NPRM proposes four general part 30

revisions: (1) changes required to make part 30 consistent with the Labor Standards for Registration of Apprenticeship Programs set forth in part 29; (2) changes updating the scope of a sponsor's EEO obligations; (3) changes to enhance sponsors' affirmative action obligations and enforcement efforts by Registration Agencies; and (4) changes to improve the overall readability of part 30.

The first set of changes align the EEO regulations at part 30 with its companion regulations at part 29, and are necessary to ensure a cohesive, comprehensive regulatory framework for the National Registered Apprenticeship System. To that end, the Department proposes to revise or add several terms in 29 CFR 30.2, Definitions. These terms include "administrator," "apprentice," "apprenticeship committee," "apprenticeship program," "pre-apprenticeship," "employer," "journeyworker," "Office of Apprenticeship," "Registration Agency," "sponsor," and "State Apprenticeship Agency."

In addition, proposed part 30 incorporates the procedures set forth in part 29 for deregistration of apprenticeship programs, derecognition of SAAs, and hearings. The use of a single set of procedures would streamline management of the National Registered Apprenticeship System. This would, for example, avoid the confusion of requiring two simultaneous proceedings when separate part 29 and part 30 issues arise in relation to a single registered apprenticeship program.

The second category of proposed changes addresses the fact that the EEO regulations for the National Registered Apprenticeship System have not been revised since 1978. The current EEO regulations prohibit discrimination in registered apprenticeship against individuals based on race, color, religion, national origin, and sex. Since 1978, however, the legal landscape for EEO has evolved. Within the context of the

existing protected category of sex, for example, Congress passed the Pregnancy Discrimination Act in 1978, which amended Title VII to include, within the context of sex discrimination, discrimination on the basis of pregnancy, childbirth, and related medical conditions. The scope and analysis of pregnancy discrimination has been refined in Title VII case law throughout the years, up to and including the Supreme Court's recent holding in Young v. United Parcel Serv., Inc., 135 S. Ct. 1338 (2015), addressing the obligations for providing workplace accommodations for pregnancy, childbirth, or related medical conditions. Further, the Equal Employment Opportunity Commission (EEOC), Department of Justice, the Department's Office of Federal Contract Compliance Programs (OFCCP), and several federal courts have held that discrimination on the basis of gender identity or transgender status falls within the ambit of sex discrimination.<sup>3</sup> Consistent with the Department's interpretation, this regulation interprets sex discrimination in line with these developments in the law.

The EEO landscape has evolved beyond those protected categories specifically enumerated in the regulations as well. In 1990, Congress enacted the Americans with Disabilities Act (ADA), 42 U.S.C. 12101 *et seq.*, prohibiting employers from discriminating in employment against qualified individuals on the basis of disability. In 2008, Congress passed the ADA Amendments Act (ADAAA), making it easier for an

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<sup>3</sup> See Macy v. Holder, Appeal No. 0120120821, 2012 WL 1435995, at \*7 (EEOC) (2012), available at <http://www.eeoc.gov/decisions/0120120821%20Macy%20v%20DOJ%20ATF.txt> (last accessed August 26, 2015), on remand, Department of Justice (DOJ) Final Agency Decision, Agency Complaint No. ATF-2011-00751, DJ No. 187-9-149 (July 8, 2013); Memorandum from Attorney General Eric Holder to United States Attorneys and Heads of Department Components (Dec. 15, 2014), available at <http://www.justice.gov/file/188671/download> (last accessed August 26, 2015); OFCCP Directive 2014-02 (August 19, 2014), available at [http://www.dol.gov/ofccp/regs/compliance/directives/dir2014\\_02.html](http://www.dol.gov/ofccp/regs/compliance/directives/dir2014_02.html) (last accessed August 26, 2015); see also, e.g., Glenn v. Brumby, 663 F.3d 1312 (11th Cir. 2011); Kastl v. Maricopa Cnty. Cmty. Coll. Dist., 325 F. App'x 492 (9th Cir. 2009); Smith v. City of Salem, 378 F.3d 566 (6th Cir. 2004); Barnes v. City of Cincinnati, 401 F.3d 729 (6th Cir. 2005); Schroer v. Billington, 424 F. Supp. 2d 203 (D.D.C. 2006).

individual to establish that he or she has a disability within the meaning of the ADA. Most sponsors are subject to the ADA, as it applies to, among others, private employers with 15 or more employees, including part-time employees, and to joint labor management committees controlling apprenticeship and training. In 1996, the Equal Employment Opportunity Commission (EEOC) amended its regulations implementing the Age Discrimination in Employment Act (ADEA), subjecting apprenticeship programs to the ADEA's requirements, thus barring apprenticeship programs from setting upper age limit requirements or otherwise discriminating against apprentices age 40 or older on the basis of age. In 2008, Congress enacted the Genetic Information Nondiscrimination Act (GINA), which applies to joint-labor management training and apprenticeship programs, among others, and prohibits them from discriminating against employees or applicants because of genetic information. GINA prohibits the use of genetic information in making employment decisions and prohibits covered entities, including joint-labor management training and apprenticeship programs from requesting, requiring, or purchasing genetic information and strictly limits the disclosure of genetic information. Accordingly, this proposal would add age, disability, and genetic information to the list of bases upon which a sponsor must not discriminate, and revises part 30 throughout consistent with this change.

Additionally, the proposed rule adds sexual orientation to the list of protected bases. Since 1978, the legal landscape regarding employment discrimination related to sexual orientation has changed. Many employment practices that were not then widely recognized as discriminatory now constitute unlawful sex discrimination under title VII. In particular, it is now widely recognized that employment decisions made on the basis of

stereotypes about how males and/or females are expected to look, speak, or act are a form of sex-based employment discrimination. See Price Waterhouse v. Hopkins, 490 U.S. 228, 250 (1989) (finding sex discrimination on basis of sex stereotyping). Following Price Waterhouse, the EEOC has concluded that discrimination against an individual because of that person's sexual orientation is a violation of Title VII. David Baldwin v. Dep't of Transportation, EEOC Appeal No. 0120133080 (July 15, 2015), at p. 14 (available at <http://www.eeoc.gov/decisions/0120133080.pdf>) (last accessed August 26, 2015). Also at the Federal level, in July 2014, President Obama issued Executive Order 13672, which amended Executive Order 11246 to add sexual orientation and gender identity to the list of bases for which discrimination by Federal contractors and subcontractors is prohibited. 79 FR 42971 (July 21, 2014). At the State and local level, the recognition of sexual orientation as a protected characteristic has expanded significantly. As of the publication of the proposed rule, 22 States and the District of Columbia, in addition to numerous additional counties and municipalities across the country, have passed statutes and ordinances explicitly prohibiting employment discrimination on the basis of sexual orientation in the public and private sectors.<sup>4</sup>

Adding sexual orientation as a protected characteristic is consistent with both the statutory authority requiring the formulation of “labor standards necessary to safeguard the welfare of apprentices,” 29 U.S.C. 50, and the Department’s purpose and approach since part 30 was first established: to promote equality of opportunity in registered apprenticeship programs and prevent discrimination in the recruitment, selection, employment and training of apprentices by requiring, among other things, that

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<sup>4</sup> <https://www.aclu.org/maps/non-discrimination-laws-state-state-information-map> (last accessed Aug. 27, 2015).

apprentices and applicants for registered apprenticeship are selected according to objective and specific qualifications relating to job performance. 30 CFR 30.1 and 30.5. It is also consistent with the developing legal landscape in this area. While the proposal prohibits discrimination on the basis of sexual orientation, it does not require incorporating sexual orientation into written affirmative action plans, nor does it require sponsors to collect employee or applicant data on sexual orientation. This is consistent with the treatment of sexual orientation under OFCCP's affirmative action programs for federal contractors.

The third category of proposed changes in this NPRM seeks to improve the effectiveness of program sponsors' required affirmative action efforts and of Registration Agencies' efforts to enforce and support compliance with this rule by, among other things, detailing specific mandatory actions a sponsor must take to satisfy its affirmative action obligations, including mandating certain actions that are merely suggested in the existing regulations. This NPRM also gives Registration Agencies more tools with which to promote compliance with affirmative action objectives. In addition, this NPRM expands affirmative action requirements in part 30 by requiring affirmative action for individuals with disabilities. These proposed enhancements are necessary because, despite the progress that has been made in some segments of the workforce since the promulgation of the existing part 30, the residual impact of longstanding discrimination continues to exclude historically disadvantaged worker groups from participation in registered apprenticeship. The Department has a strong interest in ensuring that its approval of a sponsor's apprenticeship program does not serve to support, endorse, or further private discrimination.

The fourth category of proposed changes in the NPRM would improve the overall readability of part 30 through a reorganization of the part 30 requirements, basic editing, and by providing clarifying language where needed. For instance, the Department proposes to make minor language changes for the purposes of clarity and adhering to plain language guidelines. This includes replacing the word “shall” with “must” or “will” as appropriate to the context. The Federal Plain Language Guidelines specify that use of the word “shall” is not only outdated, but also imprecise, as it “could indicate either an obligation or a prediction.”<sup>5</sup> In the past, the word “shall” has been used throughout the part 30 regulations to denote a requirement—something the word “must” does with greater clarity. In addition, the proposed rule would add a new section setting forth the effective date for this rule and for programs currently registered to come into compliance with the revised regulations.

Finally, the Department proposes to make a few minor, conforming changes in 29 CFR part 29, the companion rule to part 30. These changes do not alter any substantive requirements of part 29; rather, this NPRM makes minor revisions to part 29 in order to harmonize parts 29 and 30. The specific proposed revisions to parts 29 and 30 are explained in detail in Section II below.

### **C. Demographic Patterns of Women and Minorities in Apprenticeship**

At the outset of the regulatory revision process, OA evaluated demographic changes in apprenticeship programs, apprenticeable occupations, and employment-related training programs in construction and non-construction industries. OA reviewed data in

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<sup>5</sup> Federal Plain Language Guidelines at 25 (March 2011), available at <http://www.plainlanguage.gov/howto/guidelines/FederalPLGuidelines/FederalPLGuidelines.pdf> (last accessed Dec. 2, 2014).

OA's Registered Apprenticeship Partners Information Data System (RAPIDS)<sup>6</sup> and analyzed workforce-related data from the Department of Commerce/Census Bureau's American Community Survey Data (ACS), the Current Population Survey (CPS), and the Bureau of Labor Statistics (BLS), all of which provide the Department with data on who is currently working in various labor market sectors. The representation of each demographic group employed in apprenticeable occupations provides a basis for estimating a minimum of who may be interested and/or available to enter into apprenticeships. OA recognizes that an estimate of availability for apprenticeship should more broadly include those with the potential capacity for registered apprenticeship, rather than being limited to those currently employed in the apprenticeable occupation. But even comparisons to the demographic characteristics of current employees in apprenticeable occupations and industries disclosed disparities in apprenticeship.

As described in more detail below, the Department has concluded from these data and other available analyses that women and minorities continue to face substantial barriers to entry into and, for some groups, completion of registered apprenticeships, despite their availability in industry sectors that include apprenticeable occupations.

Barriers include:

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<sup>6</sup> RAPIDS includes individual, apprentice-level data from the 25 states in which OA is the Registration Agency, and from the nine SAA states that have chosen to participate. However, unless otherwise stated, the tables and discussions of RAPIDS data are limited to the apprentice data managed by OA staff. We note that, currently, RAPIDS does not collect data regarding individuals with disabilities. The analysis excludes apprentice data maintained by State Apprenticeship Agencies, including those that participate in the RAPIDS database, since the majority of the SAA states provide limited aggregated information which does not lend itself to detailed statistical analysis of demographic characteristics. Given the unique structure of the Registered Apprenticeship system, OA believes that data managed by OA staff is an acceptable proxy for the nation as a whole, because this individual record dataset contains 62 percent of the total active apprentices nationwide (excluding active military members—USMAP) and a representative cross-section of 25 states.

- Lower than expected enrollment rates in registered apprenticeship for specific groups including, most notably, women and specific minority groups;
- To the extent that women and minorities participate in registered apprenticeships, women and almost all minority groups are concentrated in lower-paying occupations; and
- In the construction industry, barriers to apprenticeship program completion, which result in significant differences in completion rates amongst minority groups and for women in the construction industry.

Women in Apprenticeships

Women’s enrollment in apprenticeship programs is significantly lower than expected. All women, regardless of race or ethnicity, are severely underrepresented in registered apprenticeship programs when compared to their share of the U.S. labor force. This disparity exists in comparison to the number of men in registered apprenticeships, and also in comparison to the number of women who are working in the wider civilian labor force. CPS data indicate that in 2014 the national labor force was 53.0 percent male and 47.0 percent female. Yet, as Table 1 illustrates, in the last decade, on average, women comprised only 7.1 percent of all new enrollments in registered apprenticeships, whereas men accounted for 92.9 percent—roughly the same as a decade ago.

**Table 1<sup>7</sup>**  
**New Enrollments in Registered Apprenticeship by Sex, All Industries**

Year	% Female	% Male
2003	6.9%	93.1%

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<sup>7</sup>Source: Query of RAPIDS database—February 2014.

2004	7.7%	92.3%
2005	6.7%	93.3%
2006	7.1%	92.9%
2007	6.1%	93.9%
2008	6.7%	93.3%
2009	7.8%	92.2%
2010	8.3%	91.7%
2011	6.7%	93.3%
2012	7.5%	92.5%
2013	6.7%	93.3%
<b>10 Year Average</b>	<b>7.1%</b>	<b>92.9%</b>
<b>CPS Labor Force Participation (2012)</b>	<b>47.0%</b>	<b>53.0%</b>

When analyzed on an industry basis more pronounced disparities are disclosed. As seen in Table 2 below, of the seven high-growth industries identified by OA as particularly desirable for expansion opportunities for registered apprenticeship, all show huge disparities between male and female enrollment rates. For example, women are the vast majority of apprentices in the health care industry but are a fraction of apprentices in the construction and utilities industries.

**Table 2<sup>8</sup>**  
**New Enrollments in Registered Apprenticeship**  
**by Sex and Industry, 2013**

<b>Industry</b>	<b>% Female</b>	<b>% Male</b>
Advanced Manufacturing	10.4%	89.6%
Construction	2.3%	97.7%
Utilities	1.8%	98.2%
Health Care and Social Assistance	95.5%	4.5%
Homeland Security Public Administration and National Security	16.1%	83.9%
Hospitality Educational Services	3.9%	96.1%
Transportation	3.7%	96.3%
<b>CPS Labor Force Participation (2012)</b>	<b>47.0%</b>	<b>53.0%</b>

<sup>8</sup>Source: Query of RAPIDS database —February 2014.

The underrepresentation of women in registered apprenticeship programs for high-growth industries also is demonstrated by comparing the percentage of women working in high-growth industries with their percentage in registered apprenticeships in those same industries. As seen in Table 3 below, female enrollment was significantly below women’s share of the workforce in the same six high-growth industries as in Table 2. Except for health care, these comparisons indicate that the representation of women enrolled in apprenticeship programs in these industries is significantly lower than the female rate of participation in these industries in the U.S. civilian labor force.

**Table 3<sup>9</sup>**  
**Comparison of Newly Enrolled Apprentices by Sex and Industry to Civilian Workforce Currently Employed in the Industry, 2013**

<b>Industry</b>	<b>Data</b>	<b>% Female</b>	<b>% Male</b>
Advanced Manufacturing	Apprenticeship	10.4%	89.6%
	Workforce	29.0%	71.0%
Construction	Apprenticeship	2.3%	97.7%
	Workforce	8.9%	91.1%
Utilities	Apprenticeship	1.8%	98.2%
	Workforce	23.4%	76.6%
Health Care and Social Assistance	Apprenticeship	95.5%	4.5%
	Workforce	78.4%	21.6%
Homeland Security Public Administration and National Security	Apprenticeship	16.1%	83.9%
	Workforce	45.4%	54.6%
Educational Services	Apprenticeship	3.9%	96.1%
	Workforce	68.6%	31.4%
Transportation	Apprenticeship	3.7%	96.3%
	Workforce	23.2%	76.8%

Apprenticeship= National Federal Workload only tracked in RAPIDS  
Workforce = Civilian Population Survey (CPS) February 2013

<sup>9</sup>Source: Query of RAPIDS database —February 2014, and CPS, February 2013 (<http://www.bls.gov/cps/cpsaat16.htm>).

Women also are concentrated in apprenticeship programs for the lowest paying apprenticeable occupations. As shown in Table 4 below, women account for less than 10 percent of the enrollments in apprenticeship programs in the highest paid apprenticeable occupations, which include many construction occupations, but comprise typically over 80 percent of the enrollments in apprenticeship programs in the lowest paying apprenticeable occupations, such as nursing assistants in the health care industry.

**Table 4<sup>10</sup>**  
**Representation of Women in Apprenticeship Programs**  
**In Top 25 Apprenticeable Occupations**

Category	Examples	Hourly Earnings	% Women
Best Paid Occupations	Electrician Pipe Fitter Painter	\$25 - \$35 per hour	1 – 8.5%
Intermediate Pay Level Occupations	Correction Officer, Cook/Chef	\$15 - \$20 per hour	10 - 50%
Lowest Paid Occupations	Child Care Development Specialist Certified Nursing Assistant	Less than \$15 per hour	85-99%

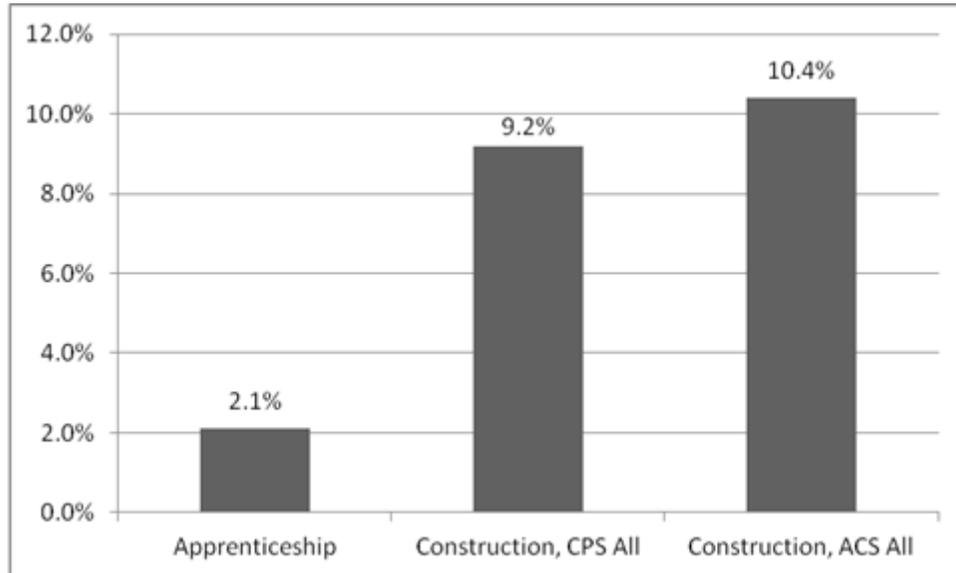
Disparities between male and female enrollment rates are dramatic in the construction industry, where almost 60 percent of registered apprentices were enrolled in 2013, according to RAPIDS. As seen in Table 5 below, the representation of women in construction apprenticeship programs in 2013 (2.3 percent) was lower than the representation of women in construction industry occupations in all industries (8.9 percent according to the CPS and 9.9 percent according to the ACS).

**Table 5<sup>11</sup>**

<sup>10</sup>Source: Query of RAPIDS database for all active apprentices—February 2014.

<sup>11</sup>Table 5 uses multiple data sources. The RAPIDS database is the source for apprenticeship data. Other sources are the CPS and the ACS.

### Comparison of Various Female Utilization Rates Construction Industry, 2013



This striking underrepresentation of women in construction apprenticeship programs is consistent with the historical underrepresentation of women in on-site construction occupations. Factors that affect women’s representation in on-site construction occupations in the construction industry include negative stereotypes about women’s ability to perform construction work and pervasive sexual harassment. These factors, together, act as a significant barrier to women entering the construction trades.<sup>12</sup> Women also may be the victims of discriminatory recruitment and selection procedures.

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<sup>12</sup>See, e.g., Permanent Commission on the Status of Women, “Pre-Apprenticeship Construction Training Manual for Women.” Hartford, CT, (2007); Byrd, B., “Women in Carpentry Apprenticeship: A Case Study,” 24 *Labor Studies Journal*, at 8 (Fall 1999); Ericksen, J., and Palladino Schultheiss D., “Women Pursuing Careers in Trades and Construction,” 36 *Journal of Career Development* at 69-70 (September 2009); Moir, S., Thomson, M., and Kelleher, C., “Unfinished Business: Building Equality for Women in the Construction Trades,” *Labor Resource Center Publications*, Paper 5 at 10-12 (2011); and “Women in the Construction Workplace: Providing Equitable Safety and Health Protection,” Health and Safety of Women in Construction (HASWIC) Workgroup, Advisory Committee on Construction Safety and Health (ACCSH), submitted to Occupational Safety and Health Administration (OSHA), Department of Labor (June 1999).

The construction trades have traditionally used informal networks and referrals and word of mouth to recruit for open apprenticeships. Similarly, personal introductions and recommendations (as well as nepotism policies in the past) continue to be significant factors in selection for construction apprenticeships and work.<sup>13</sup> The problem of underrepresentation then perpetuates itself; because women have historically been underrepresented in construction apprenticeships and jobs, many of them may not have the connections necessary to receive information concerning these opportunities and be selected for them.<sup>14 15</sup>

In addition to low enrollment rates, women complete apprenticeships in the construction industry at lower rates than men. As shown in Table 6 below, the 2011 completion rate indicates that women completed apprenticeships at a rate of 33.6 percent compared to 39.2 percent for men. Of the cohort of apprentices that completed in 2013, the most recent cohort for which the Department has completion rates, women's completion rate improved to a rate of 39.3 percent compared to 42.7 percent for men.

**Table 6<sup>16</sup>**  
**Apprentice Completion Rates in Construction Apprenticeship Programs,  
By Sex**

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<sup>13</sup>See, e.g., Bilginsoy, C., "The Hazards of Training: Attrition and Retention in Construction Industry Apprenticeship Programs," 57 Industrial & Labor Relations Review, at 54-67 (Oct. 2003); Byrd, B., "Women in Carpentry Apprenticeship: A Case Study," 24 Labor Studies Journal, at 8-10 (Fall 1999).

<sup>14</sup>Bilginsoy, C., "The Hazards of Training: Attrition and Retention in Construction Industry Apprenticeship Programs," 57 Industrial & Labor Relations Review, at 54-67, at 65 (Oct. 2003).

<sup>15</sup>The author of a study on women in carpentry apprenticeships suggests that apprenticeship programs in construction need to make a concerted effort to recruit females if they want to increase the number of female applicants. Byrd, B., "Women in Carpentry Apprenticeship: A Case Study," 24 Labor Studies Journal, at 10 (Fall 1999).

<sup>16</sup>RAPIDS data. Completion rate means the percentage of an apprenticeship cohort who receives a certificate of apprenticeship completion within 1 year of the expected completion date. For more information see Bulletin FY 2011-07 - Program Performance—Calculation of Registered Apprenticeship Program Completion Rates ([http://doleta.gov/OA/bul10/Bulletin\\_2011-07\\_Completion\\_Rates.pdf](http://doleta.gov/OA/bul10/Bulletin_2011-07_Completion_Rates.pdf))

<b>2013 Completion Rate Cohort of Apprentices that Completed in FY 2012</b>			
	<b>Females</b>	<b>Males</b>	<b>Total</b>
Number of Completions	379	16,510	16,889
Completion Rate	39.3%	42.7%	

<b>2011 Completion Rate Cohort of Apprentices that Completed in FY 2011</b>			
	<b>Females</b>	<b>Males</b>	<b>Total</b>
Number of Completions	340	16,662	17,002
Completion Rate	33.6%	39.2%	

Women can succeed in construction apprenticeship programs when provided equal opportunity. For example, a study of apprentices in Washington State during the 2005-2006 program year indicated that the participation rate of women apprentices in construction trades was 36 percent, much higher than the National Registered Apprenticeship System’s average of 2.3 in construction apprenticeship programs.<sup>17</sup>

In conclusion, the data and literature about female participation in registered apprenticeship confirms:

- Significantly lower than expected enrollment rates for women in registered apprenticeship in general, as compared to the number of women in the workforce for industries that sponsor apprenticeships;
- Lower than expected completion rates for women relative to the rates for men; and
- Concentration of women in apprenticeship programs for the lowest paying occupations.

### Minorities in Apprenticeship

<sup>17</sup>Washington State Workforce Training and Education Coordinating Board, “Workforce Training Results: Apprenticeship,” at 13 (Dec. 2008). A copy of the report is available at [http://www.wtb.wa.gov/Documents/WTR\\_Apprenticeship.pdf](http://www.wtb.wa.gov/Documents/WTR_Apprenticeship.pdf).

Progress for racial minority groups and Hispanics or Latinos has been uneven and varies by group. Analyses reveal that tailored affirmative action efforts are necessary to ensure equal opportunity for racial minority groups and Hispanics or Latinos, who continue to face barriers to full participation in registered apprenticeship.

At the most macro level, a review of the nationwide enrollment data by industry reveals significant underutilization for some minority groups in some industries. For instance, in 2014, in manufacturing, Hispanics or Latinos comprised 15.8 percent of the civilian labor force, yet only represented 6.3 percent of the apprentice workforce.<sup>18</sup> Similarly, in the transportation industry, Hispanics or Latinos were 17.2 percent of the civilian labor force, but only 9.1 percent of the apprentice workforce. In utilities, Blacks or African Americans represented 8.9 percent of the civilian labor force, but only 5.9 percent of the apprentice workforce. In public administration and homeland security, Asians comprised 4.8 percent of the civilian labor force, but only 1.0 percent of the apprentice workforce.

More detailed analyses at the occupation level reveal further disparities. For instance, Hispanics or Latinos comprise 35.7 percent of active apprentices as painters yet represent 42.6 percent of painters in the civilian labor force.<sup>19</sup> Likewise, Hispanics or Latinos represent 11.1 percent of active apprentices as operating engineers, yet represent 16.5 percent of operating engineers in the civilian labor force. These disparities exist at the occupation level for Blacks or African Americans as well. For example, Blacks or African Americans represent 2.3 percent of active apprentices as building inspectors, yet

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<sup>18</sup> Source: Labor Force Statistics from the Current Population Survey, BLS (<http://www.bls.gov/cps/cpsaat18.htm>)

<sup>19</sup> Source: Query of RAPIDS database—February 2014 and Labor Force Statistics from the Current Population Survey, BLS (<http://www.bls.gov/cps/cpsaat11.htm>)

represent 6.2 percent of building inspectors in the civilian labor force.<sup>20</sup> Likewise, Blacks or African Americans represent 2.4 percent of active apprentices as emergency medical technicians, yet represent 5.5 percent of these workers in the civilian labor force. The underrepresentation of Black or African American males in registered apprenticeship at the occupational level may be reflective of problems in the industry at large. Blacks or African Americans are underrepresented in many of the largest and highest paying apprenticeable occupations when compared to their utilization in similar occupations in other industries. In an analysis of 2005-2007 ACS data that drills down to the occupational level in the construction, extraction, and maintenance sector, researchers found that Black or African American men experience underrepresentation in 81 percent of the 67 precisely defined occupations that comprise this sector.<sup>21</sup>

In addition, minority groups tend to be concentrated in lower paying occupations. RAPIDS data for major occupations (those with the greatest numbers of total apprentices) for which earnings data are readily available show that both Hispanics or Latinos and Blacks or African Americans, for example, account for a smaller percentage of apprentices enrolled in apprenticeship programs in the highest paid apprenticeable occupations, and have a relatively greater representation in the lower paying apprenticeable occupations. Specifically, Blacks or African Americans make up less than 8 percent of the apprentice workforce for the highest paying apprenticeable occupations, such as electricians and plumbers, which earn on average \$23.80/hour, but comprise 14.0

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<sup>20</sup> Source: Query of RAPIDS database—February 2014 and Labor Force Statistics from the Current Population Survey, BLS (<http://www.bls.gov/cps/cpsaat11.htm>)

<sup>21</sup> Hamilton, D, Algernon A., and William D., Jr., “Whiter Jobs, Higher Wages: Occupational Segregation and the Lower Wages of Black Men.” Economic Policy Institute, Washington, DC (Feb. 2011).

percent and 21.7 percent of lower paying occupations, such as construction laborers and correctional officers, which earn on average \$12.31/hour and \$18.77/hour, respectively. Likewise, Hispanics or Latinos make up less than 23 percent of higher paying apprenticeable occupations, such as elevator installers and repairers, which earn on average \$36.85/hour, but comprise 35.7 percent and 45.1 percent of lower paying apprenticeable occupations, such as roofers and painters, which earn on average \$16.95/hour.<sup>22</sup>

Furthermore, RAPIDS data reveal that there are challenges for minority groups in completion rates as well. For example, the 2013 completion rate for Blacks or African Americans in the construction industry, was 30.3 percent. This rate was significantly lower compared to Whites, who completed their apprenticeship programs at a rate of 46.7 percent. In conclusion, the data about minority participation in apprenticeship indicates the following:

- Progress has been made over the last 30 years for minority participation in registered apprenticeship, but it has been uneven across minority groups;
- Disparities continue to exist for some groups depending on industry, occupation, and geographic area;
- Minority groups are concentrated in apprenticeship programs in the lower paying occupations; and
- Completing apprenticeship programs has been a challenge for some minority groups.

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<sup>22</sup>Mean hourly earnings from the 2012 National Occupational Employment and Wage Estimates, BLS ([http://www.bls.gov/oes/current/oes\\_nat.htm](http://www.bls.gov/oes/current/oes_nat.htm))

These findings indicate that affirmative action, while necessary to ensure that minorities have an equal opportunity to apprentice, must be tailored to address the specific disparities by minority group, and by occupation, industry, and geographic area.

### People with Disabilities in Apprenticeship

The Department believes strongly that including people with disabilities in apprenticeship affirmative action efforts is crucial to affording them equal opportunity in registered apprenticeship. Individuals with disabilities experience high levels of unemployment. According to the Survey of Income and Program Participation (SIPP) by the U.S. Census Bureau that collected data from May through August 2010, individuals with disabilities comprise approximately 16.6 percent (one sixth) of the working age population.<sup>23</sup> Yet, the unemployment rate of working age individuals with disabilities and the percentage of working age individuals with disabilities who are not in the labor force remain significantly higher than for those without disabilities.<sup>24</sup> According to 2012 data from BLS, 17.8 percent of working age people with disabilities were in the labor force in March 2011, compared with 63.9 percent of working age people with no disability.<sup>25</sup> The unemployment rate for working age people with disabilities was 13.4 percent, compared with a 7.9 percent unemployment rate for working age individuals without a disability. Ensuring individuals with disabilities have fair access to the employment training opportunities offered by registered apprenticeship programs through

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<sup>23</sup> Matthew W. Brault, “Americans With Disabilities: 2010,” U.S. Census Bureau (2012), <http://www.census.gov/prod/2012pubs/p70-131.pdf>

<sup>24</sup> The working age population consists of people between the ages of 16 and 64, excluding those in the military and people who are in institutions.

<sup>25</sup> Source: Persons with a disability: labor force characteristics (June 2013), BLS (<http://www.bls.gov/news.release/disabl.nr0.htm>)

inclusion in affirmative action efforts can be important in opening doors to good jobs for people with disabilities.

The detailed Section-by-Section Analysis below identifies and discusses all proposed changes in each section. The Department welcomes comments on all of the provisions discussed below.

## **II. Section-by-Section Analysis**

### Title of the Rule

The current title of the rule is Equal Employment Opportunity in Apprenticeship and Training. The Department proposes to delete the phrase “and Training” to clarify that the rule applies specifically to apprenticeship programs registered under the National Apprenticeship Act, and not to other training programs for which the Department has responsibility. This updated title is consistent with recent revisions to the name of the Department’s agency with responsibility for registration of apprenticeship programs, and implementation of the National Apprenticeship Act. Currently, this agency is ETA’s OA. In 1963, when the part 30 regulation was first promulgated, and then in 1978, when it was last amended, the Department’s apprenticeship agency was entitled the Bureau of Apprenticeship and Training. In recent years, the agency’s name was formally changed to the Office of Apprenticeship (OA).

### Purpose, applicability, and relationship to other laws (§ 30.1)

In general, § 30.1 of the current part 30 condenses scope and purpose in one paragraph and outlines the general topics covered by part 30 in the same paragraph. The Department proposes several minor revisions to enhance the readability of this section.

First, the title of proposed § 30.1 would be revised to read “Purpose, applicability, and relationship to other laws” to better inform the public about what this section addresses. Second, proposed § 30.1 is divided into three paragraphs: § 30.1(a) would set forth the purpose of the rule; § 30.1(b) would address to whom the rule applies; and § 30.1(c) would discuss how this regulation relates to other laws that may apply to the entities covered by this regulation. In addition, proposed § 30.1 would delete the text indicating that part 30 addresses the registration of apprenticeship programs, because the registration of apprenticeship programs is covered only by part 29. Proposed § 30.1 also would add in § 30.1(a) that the required contents of a sponsor’s affirmative action program are covered under part 30.

Proposed § 30.1(a) would add age (40 or older), genetic information, sexual orientation, and disability to the list of bases set forth in the rule upon which sponsors of registered apprenticeship programs must not discriminate. As discussed above, since 1978, when this rule was last amended, EEO law has evolved with the application of the ADEA and GINA to apprenticeship programs, the passage of the ADA, the issuance of Executive Order 13672, and the legal developments with respect to discrimination related to sexual orientation. By adding age (40 or older), genetic information, sexual orientation, and disability to the list of protected bases, the Department is better able to fulfill its charge to protect the welfare of apprentices and ensure admission to apprenticeship is on a “completely non-discriminatory basis,” as directed by President

Kennedy. Moreover, the addition of these bases to the list of those upon which a sponsor must not discriminate ensures that the National Registered Apprenticeship System's regulatory framework affords the same protections to these individuals as it does for others, and it will bring the National Registered Apprenticeship System into alignment with the protected bases identified in the various Federal, State, and local laws already applicable to many apprenticeship sponsors.

For greater clarity and to establish parity with parallel provisions in the ADA, proposed § 30.1(c) also would include a paragraph explaining that part 30 does not invalidate or limit the remedies, rights, and procedures under any Federal law, or the law of any State or political subdivision, that provides greater or equal protection for individuals based on race, color, religion, national origin, sex, sexual orientation, age (40 or older), genetic information, or disability. Proposed § 30.1(c) additionally recognizes as a defense to a charge of violation of this part that a challenged action is required or necessitated by another Federal law or regulation, or that another Federal law or regulation prohibits an action that would otherwise be required by this part.

The Department recognizes that program sponsors and Registration Agencies may need technical assistance with implementing these proposed regulations with respect to individuals with disabilities. Therefore, ETA will partner closely with the Department's Office of Disability Employment Policy (ODEP) to provide significant technical assistance tools and sub-regulatory policy and program guidance to assist program sponsors with improving their EEO practices with respect to individuals with disabilities and Registration Agencies with enforcing the EEO requirements set forth in this proposed rule. There are many resources immediately available to assist apprenticeship program

sponsors in meeting their proposed EEO obligations for individuals with disabilities. For instance, the Job Accommodation Network, a free service provided by ODEP, provides one-on-one guidance to employers with expert and confidential guidance on workplace accommodations and disability employment issues.

#### Definitions (§ 30.2)

Proposed § 30.2 would revise and re-designate existing definitions and would add certain terms used in part 29 that apply also to part 30. The terms added from part 29 are: “administrator,” “apprentice,” “apprenticeship committee,” “apprenticeship program,” “electronic media,” “employer,” “journeyworker,” “Office of Apprenticeship,” “Registration Agency,” “sponsor,” and “State Apprenticeship Agency.” The proposed definitions for these terms are identical to those set forth in part 29.

In addition, because the Department proposes to include disability among the list of protected bases covered by part 30, proposed § 30.2 would add several new terms relevant to defining disability and disability discrimination standards. These are: “direct threat,” “disability,” “major life activities,” “physical or mental impairment,” “qualified applicant or apprentice,” “reasonable accommodation,” and “undue hardship.” The proposed definitions for these terms are taken directly from title I of the ADA, as amended by the ADAAA (effective January 1, 2009), and from the EEOC regulations implementing the ADA at 29 CFR part 1630, to the extent the ADAAA did not provide the definition. The Department intends that these proposed terms will have the same meaning as what was set forth in the ADAAA and implemented by the EEOC in 29 CFR part 1630. 76 FR 16978.

Likewise, because the Department proposes to add genetic information to the list of protected bases, proposed § 30.2 would include a definition of the term “genetic information”. This proposed definition is taken directly from GINA and from the EEOC’s implementing regulations at 29 CFR part 1635. The Department intends that this term will have the same meaning as what is set forth in GINA and implemented by the EEOC in 29 CFR part 1635.

Proposed § 30.2 also would add definitions for several new terms: “pre-apprenticeship program,” “ethnicity,” “race,” and “selection procedure.” The current part 30 regulations refer to “programs of pre-apprenticeship” in the requirements for AAPs in § 30.4. However, there is no standard definition or even application of the term “pre-apprenticeship.” Over the past several decades, pre-apprenticeship programs have been structured in numerous ways, depending on the partnerships, funding availability, and geographic area. The Aspen Institute recently completed a survey of pre-apprenticeship programs in the construction industry<sup>26</sup> and found a wide range of models, including those focused on placing participants into registered apprenticeship programs, while others are basically job preparation/readiness or career exploration programs oriented toward placing participants into a wide range of positive outcomes (job placement, placement into higher education) not formally linked to a registered apprenticeship program. On November 30, 2012, the Department circulated a Training and Employment Notice (TEN 13-12), Defining a Quality Pre-Apprenticeship Program and Related Tools and Resources, to inform the public workforce system about the pre-apprenticeship program definition and quality framework, as well as to promote tools and materials to

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<sup>26</sup>Available on-line at <http://www.aspenwsi.org/WSIwork-sector.asp>.

improve the consistency and quality of pre-apprenticeship programs. The pre-apprenticeship definition and quality framework incorporated the following elements: approved training and curriculum; strategies for long-term success; access to appropriate support services; promoting greater use of registered apprenticeship to increase future opportunities; meaningful hands-on training that does not displace paid employees; and facilitated entry and/or articulation.

The definition for “pre-apprenticeship” in the proposed rule would provide greater clarity and uniformity by establishing required components and suggested elements for pre-apprenticeship programs consistent with the TEN 13-12. The required components would be: provision of structured workplace education and training; collaboration among apprenticeship program sponsors, community-based organizations, and educational institutions; and formal instruction that introduces participants to competencies, skills, and materials used in one or more apprenticeable occupations. This proposed definition also would include an optional provision for the offering of supportive services such as transportation, child care, and income support to assist participants to successfully complete the program.

Regarding the terms “ethnicity” and “race,” for purposes of recordkeeping and affirmative action, the terms “ethnicity” and “race” would have the same meaning as under the Office of Management and Budget’s standards for the classification of Federal data on race and ethnicity found at

[http://www.whitehouse.gov/omb/fedreg\\_1997standards/](http://www.whitehouse.gov/omb/fedreg_1997standards/), or any successor standards.

“Ethnicity” would refer to the following designations: Hispanic or Latino; and Not Hispanic or Latino. The term “race” would refer to the following designations: White;

Black or African American; Native Hawaiian or Other Pacific Islander; Asian; and American Indian or Alaska Native.

Regarding the term “selection procedure,” for consistency, the Department proposes to use the parallel definition found in the Uniform Guidelines on Employee Selection Procedures (UGESP) at 41 CFR part 60-3, because program sponsors are already required to comply with those regulations under the current part 30 and should be familiar with that definition.

Proposed § 30.2 would remove several terms that are no longer encompassed within the part 30 regulation itself. These are: “Secretary,” “state apprenticeship council,” “state apprenticeship program,” and “state program sponsor.”

#### Equal opportunity standards applicable to all sponsors (§ 30.3)

Section 30.3 of the current part 30 is divided into five paragraphs and sets forth the required equal opportunity standards for registered apprenticeship programs. As currently structured, § 30.3 requires that a sponsor: not discriminate on the basis of race, color, religion, national origin, and sex (§ 30.3(a)(1) and (2)); engage in affirmative action (§ 30.3(a)(3)); incorporate an equal opportunity pledge into its apprenticeship program standards (§ 30.3(b)); and, for programs with five or more apprentices, adopt an affirmative action program, as required by § 30.4, and a selection procedure, as required by § 30.5 (§ 30.3(c)).

Current § 30.3 also provides an exemption from the affirmative action program and selection procedure requirements for those programs already subject to an approved EEO program (§ 30.3(e)) and for those programs with fewer than five apprentices (§

30.3(f)). In addition, § 30.3 discusses the impact of part 30 on programs “presently registered” as of the effective date of the regulations, and sets forth the registration requirements relating to sponsors seeking a new program registration (§ 30.3(c)). The Department finds the current regulatory structure confusing and in need of reorganization. The proposed rule seeks to reorganize § 30.3 for clarity purposes.

Proposed § 30.3 would remove paragraphs (c) through (f) and would incorporate them elsewhere in the rule, because these paragraphs do not pertain to the equal opportunity standards set forth in § 30.3. Instead, they pertain to: the effective date of the part 30 regulations for programs presently registered (current § 30.3(c)); the registration requirements for sponsors seeking registration of new programs (current § 30.3(d)); and the bases for exemption from the requirement to develop an affirmative action program (current § 30.3(e) and (f)). The reason behind removing these paragraphs and placing them elsewhere in the rule will be discussed in detail later in the preamble.

Proposed § 30.3 is divided into three paragraphs, each paragraph addressing an equal opportunity standard required of sponsors. Proposed § 30.3(a) would set forth the general prohibition against discrimination on the basis of race, color, religion, national origin, and sex—the bases listed in the current part 30—and would add a prohibition against discrimination on the basis of age (40 or older), genetic information, sexual orientation, and disability. The addition of these bases to the types of discrimination already prohibited by part 30 would align the Department’s EEO regulations for registered apprenticeship with the Federal, State, and local anti-discrimination laws already applicable to many apprenticeship program sponsors, as discussed previously. These laws apply to many employers, including labor organizations and joint labor-

management committees operating registered apprenticeship programs or other training or retraining programs, including an on-the-job training program, provided that the employer (and in this case the sponsor) employs the requisite threshold of individuals for coverage. Further, many employer's internal EEO policies already prohibit discrimination on these grounds, legal requirements notwithstanding.

Proposed § 30.3(a) also would incorporate the concepts set forth in the current regulation (§ 30.3(a)(1) and (2)) in a framework similar to that used in other equal opportunity laws. Section 30.3(a)(1) and (2) of the current part 30 address the sponsor's duty to not discriminate; therefore, these paragraphs would be consolidated. The Department proposes this change to clarify that the discrimination standards and defenses applied under part 30 are the same as those applied under the other major EEO laws that apply to sponsors in determining whether a sponsor has engaged in an unlawful employment practice, including title VII of the Civil Rights Act of 1964 (title VII), the ADEA, GINA, and the ADA. In enforcing the nondiscrimination obligations of sponsors set forth in this part, OA follows Title VII legal principles and case law, and will do the same with regard to ADEA, GINA, and the ADA

Proposed § 30.3(b) requires that all sponsors, regardless of size, take affirmative steps to provide equal opportunity in apprenticeship. Under § 30.3(a)(3) of the current part 30, all sponsors are required to engage in affirmative action to provide equal opportunity, and those with five or more apprentices also are required to adopt an AAP. The current part 30 also articulates affirmative action obligations for those developing AAPs; however, the regulation is silent as to what is required of sponsors in order to fulfill these general obligations.

Proposed § 30.3(b) fills this gap by identifying the minimum affirmative steps that all sponsors, regardless of size, must take in order to ensure equal opportunity in apprenticeship programs. By clearly specifying the requirements, this revised regulatory structure is intended to ensure that all sponsors take the necessary steps to ensure that they fulfill their EEO obligations under part 30, and become more aware of the effect their employment practices have on EEO. This revised framework furthers the Department's strategic vision of promoting and protecting opportunity for all workers and employers by ensuring that apprenticeship program sponsors develop and fully implement a program that seeks to break down the barriers to fair workplaces.

Proposed § 30.3(b)(1) requires sponsors to designate an individual to be responsible and accountable for overseeing the sponsor's commitment to equal opportunity in apprenticeship, including the development of the sponsor's affirmative action program, as required by § 30.4. This designation is expected to facilitate a sponsor's compliance with part 30 by creating a self-monitoring mechanism within each registered apprenticeship program, therefore institutionalizing each sponsor's commitment to equal opportunity. The Department anticipates that this requirement would be fulfilled by individuals who are currently providing coordination and administrative oversight functions for the program sponsor. For example, in the Department's experience, many program sponsors identify a specific individual to serve as an apprenticeship coordinator, who oversees and manages the apprenticeship program, including the EEO components.

Proposed § 30.3(b)(2) requires the sponsor to develop internal procedures to communicate its equal opportunity and affirmative action obligations to apprentices,

applicants for apprenticeship, and personnel involved in the recruitment, screening, selection, promotion, training, and disciplinary actions of apprentices. This requirement would be similar to that set forth in § 30.4(c)(4) of the current part 30, which addresses internal communication of the sponsor's equal opportunity policy. However, proposed § 30.3(b)(2) would be required of all sponsors, regardless of size, and would make this communication mandatory; under the current part 30, internal communication of the sponsor's equal opportunity policy is merely a suggested activity for meeting the sponsor's outreach and recruitment obligations.

Furthermore, proposed § 30.3(b)(2) also identifies the specific minimum activities that a sponsor is required to undertake to satisfy the obligation to disseminate internally the sponsor's equal opportunity policy. Compliance with this requirement should not be particularly onerous or burdensome, given that the increasingly standard use of technology—particularly regarding the use of electronic media for communications and records maintenance—would readily enable a program sponsor to comply with these requirements. Proposed § 30.3(b)(2) requires a sponsor to: (i) publish its equal opportunity pledge in apprenticeship standards and in appropriate publications; (ii) post the pledge on bulletin boards, including through electronic media, accessible to apprentices and applicants for apprenticeship; (iii) conduct orientation and periodic information sessions for apprentices and all of a program sponsor's personnel involved in the recruitment, screening, selection, promotion, training, and disciplinary actions of apprentices to inform, remind, and ensure that these individuals understand how to implement the sponsor's equal opportunity policy with regard to apprenticeship; and (iv) maintain records necessary to demonstrate compliance with this requirement.

Proposed § 30.3(b)(2)(i) carries forward the existing requirement in current § 30.3(b) for program sponsors to include the equal opportunity pledge in their apprenticeship standards, and slightly expands the provision by requiring sponsors to also post the pledge in other appropriate publications such as apprentice and employee handbooks, policy manuals, newsletters, and web sites. Proposed § 30.3(b)(3)(iii) also requires program sponsors to include the equal opportunity pledge in the notification of apprenticeship openings to be provided to recruitment sources.

Proposed § 30.3(c) updates the specific language of the equal opportunity pledge, as discussed below. Therefore, sponsors will need to make a one-time revision of the apprenticeship standards to incorporate the revised equal opportunity pledge. With regard to posting the pledge in other appropriate publications and including the pledge in the notification of apprenticeship openings to recruitment sources, the Department expects that program sponsors would insert the revised equal opportunity pledge, if it is not already included in such publications, or would update the existing pledge that may already be included as they routinely update these materials. Cost and burden associated with the updating and/or inserting the equal opportunity pledge would be incorporated in program sponsors' existing efforts to maintain these publications and notifications, and therefore will not require frequent updates or changes. Many apprenticeship program sponsors' web sites, apprenticeship handbooks, and existing publications already include the equal opportunity pledge. Therefore, the Department anticipates very little additional burden would result from compliance with proposed § 30.3(b)(2)(i) and (ii).

The orientation and information sessions required by proposed § 30.3(b)(2)(iii) underscore the sponsor's commitment to equal opportunity and its affirmation action

obligations. These sessions would also institutionalize a sponsor's EEO policies and practices, providing a mechanism by which the sponsor may inform everyone connected with the apprenticeship program of the sponsor's obligations under part 30, and ensure that all individuals involved in the program understand these obligations and the policies instituted to implement them.

Given that sponsors operate apprenticeship programs in numerous industries and occupations, involving a wide range of working conditions and environments, the Department recognizes that it is unrealistic to prescribe in the proposed rule the exact nature and frequency of these sessions. This specificity would be contrary to the industry-driven nature of registered apprenticeship. Accordingly, the recordkeeping requirement in proposed § 30.3(b)(2)(iv) would allow the program sponsor and the Registration Agency a more industry-driven, effective review, to ensure that a sponsor is in compliance with its general obligation to engage in affirmative steps to ensure equal opportunity in registered apprenticeship.

Proposed § 30.3(b)(3) requires a sponsor, regardless of size, to ensure that its outreach and recruitment efforts for apprentices extend to all persons available and qualified for apprenticeship within the sponsor's recruitment area regardless of race, sex, ethnicity, or disability status. This universal recruitment and outreach requirement would foster awareness of opportunities for apprenticeship among all individuals regardless of their race, sex, ethnicity, and disability status. This requirement, which is consistent with the corresponding requirement in current part 30, is intended to meet the Department's vision of promoting and protecting opportunity for all workers and employers. Sponsors would be required to develop a list of recruitment sources that would generate referrals

from all demographic groups, including women, minorities, and individuals with disabilities, with contact information for each source and would be required to notify these sources in advance of any apprenticeship opportunities. The proposal does not specify how far in advance this notification must be, understanding that unique circumstances may affect the amount of advance notice that can be given, but states that at least 30 days advance notice is preferred. Examples of relevant recruitment sources include, but are not limited to, the public workforce system's One-Stop career centers and local workforce investment boards, community-based organizations, community colleges, vocational and technical education schools, pre-apprenticeship programs, and Federally-funded, youth job-training programs such as YouthBuild and Job Corps or their successors. A sponsor's notification to these recruitment sources could be conducted through a number of mechanisms, including but not limited to in-person meetings, distribution of form letters sent via email and/or postal mail, social media networks, and other options that may develop as the use of technology for information distribution continues to evolve. These specific requirements are meant to institutionalize a sponsor's commitment to affirmative action and to ensure that the sponsor is fulfilling its general obligation to engage in affirmative action.

Proposed § 30.3(b)(4) would introduce a section entitled, "Maintain workplace free from harassment, intimidation, and retaliation," which requires a sponsor to develop and implement procedures to ensure that its apprentices are not harassed because of their race, color, religion, national origin, sex, sexual orientation, age (40 or older), genetic information, or disability, and to ensure that its workplace is free from harassment, intimidation, and retaliation. In support of this requirement and to ensure an environment

in which all apprentices feel safe, welcomed, and treated fairly, sponsors would be required to: (i) communicate to all personnel that harassing conduct will not be tolerated; (ii) provide anti-harassment training to all personnel; (iii) make all facilities and apprenticeship activities available without regard to race, color, religion, national origin, sex, sexual orientation, age (40 or older), genetic information, and disability, except that if the sponsor provides restrooms or changing facilities, the sponsor must provide separate or single-user rest rooms and changing facilities to assure privacy between the sexes; and (iv) establish and implement procedures for filing, processing, and timely resolving complaints about harassment based on race, color, religion, national origin, sex, sexual orientation, age (40 or older), and disability. Because harassment is a form of employment discrimination that violates Federal laws applicable to most sponsors, including title VII, the ADEA, GINA, ADA, and Executive Order 11246 (as amended by Executive Order 13672), the steps outlined above will not impose any new burdens on sponsors who already must take the necessary action to prevent and eliminate harassment in the workplace.

The intent of proposed § 30.3(b)(4) would be to reduce workplace harassment and retaliation. The Department expects that sponsors' compliance with the obligations of proposed § 30.3(b)(4) ultimately will lead to an improvement in the retention rates of apprentices that are currently under-represented in apprenticeship programs so that they not only begin but also complete apprenticeships, and continue on as skilled journeyworkers in their respective occupations.

Proposed § 30.3(b)(5) requires all sponsors to comply with all applicable Federal and State laws and regulations requiring EEO without regard to race, color, religion,

national origin, sex, sexual orientation, age (40 or older), genetic information, or disability. A sponsor who fails to comply ultimately would be subject to enforcement actions, including possible deregistration. In essence, proposed paragraph (b)(5) merely carries forward the current § 30.10.

The Department does not expect that the steps outlined in proposed § 30.3(b) will increase a sponsor's compliance burden. Rather, these proposed steps are representative of the kinds of good faith efforts the Department has required to date for a sponsor to meet its EEO and affirmative action obligations under the current part 30.

Finally, proposed § 30.3(c) would carry forward the requirement set forth in the current § 30.3(b) for an equal opportunity pledge, but would make three important changes to this pledge. First, consistent with the expanded scope of the proposed regulation, proposed § 30.3(c) revises the pledge by adding age (40 or older), genetic information, sexual orientation, and disability to the list of bases upon which a sponsor must not discriminate. Second, it adds a parenthetical after sex discrimination specifying that pregnancy and gender identity discrimination are included within sex discrimination. Third, the proposed paragraph clarifies that a sponsor may include additional protected bases in the pledge, but must not exclude any of the bases protected under part 30.

#### Affirmative action programs (§ 30.4)

Current § 30.4 of part 30 sets forth the regulatory requirements with respect to affirmative action programs, addressing: the adoption of an affirmative action program in § 30.4(a); the definition of affirmative action in § 30.4(b); the requirements for broad outreach and recruitment in § 30.4(c); the mandate that a sponsor include goals and

timetables where underutilization occurs in § 30.4(d); the factors for determining whether goals and timetables are needed in § 30.4(e); the establishment and attainment of goals and timetables in § 30.4(f); and that the Secretary of Labor will make available to program sponsors data and information on minority and female labor force characteristics in § 30.4(g). Exemptions from the requirement to adopt an affirmative action program are found in the current part 30 at § 30.3(e) and (f).

The proposed rule substantially restructures § 30.4 to streamline, clarify, update, and strengthen the affirmative action requirements.

Proposed § 30.4(a) would set forth the definition of and purpose for an affirmative action program, so that sponsors understand at the outset what the Department means by the term “affirmative action program.” This proposed definition is consistent with how the Department has defined the term in its regulations implementing the affirmative action requirements of Executive Order 11246 at 41 CFR part 60-2 applicable to supply and service Federal contractors and subcontractors. Current § 30.4(b) defines an affirmative action program as “not mere passive non-discrimination” and states that “[i]t is action which will equalize opportunity in apprenticeship so as to allow full utilization of the work potential of minorities and women.” Proposed § 30.4(a) elaborates on that definition and states that the premise underlying an affirmative action program is that absent discrimination, a sponsor’s apprenticeship program generally will reflect the sex, race, ethnicity, and disability profile of the labor pools from which the sponsor recruits and selects. Proposed paragraph (a) explains that, in addition to identifying and correcting underutilization, affirmative action programs also are intended to institutionalize the sponsor’s commitment to equality by establishing procedures to

monitor and examine the sponsor's employment practices and decisions with respect to apprenticeship, so that the practices and decisions are free from discrimination and barriers to equal opportunity are identified and addressed.

Proposed § 30.4(a) also makes clear that the commitments contained in an affirmative action program are not intended and must not be used to discriminate against any applicant or apprentice on the basis of race, color, religion, national origin, sex, sexual orientation, age (40 or older), genetic information, or disability. This proposed definition is more expansive than the one in § 30.4(b) of the current part 30, and is intended to explain in more detail what constitutes an affirmative action program.

While the development and maintenance of an affirmative action program under these regulations is an integral tool in the pursuit of equal employment opportunity for all, it need not be an unduly burdensome undertaking. Thousands of employers, including large employers, have established apprenticeship programs with affirmative action plans under the existing regulations, and many have maintained and grown the number of apprenticeships, the diversity of their workforce, and the skill of their individual workers as a result. While these proposed regulations add some new obligations to the affirmative action program, they greatly streamline and clarify the AAP as a whole, making it simpler to understand what compliance means and easier to measure and achieve meaningful success – both for existing apprenticeship programs and for the many companies looking to create apprenticeship programs now and into the future.

Having established the definition and purpose of an affirmative action program, proposed § 30.4(b) sets forth who must adopt an affirmative action program. This

proposed paragraph would require that unless otherwise exempted by proposed § 30.4(d), each sponsor must develop and maintain an affirmative action program, and set forth its program in a written plan. This language differs from current § 30.4(a), which does not indicate that some sponsors may be exempted from this requirement. The timeframe for preparing and submitting the written plan is set forth in proposed § 30.20. The details of the timing are discussed in greater detail in the discussion of that section, but in general, sponsors will have at least one year for the preparation and approval of the first plan under these proposed regulations, allowing ample time for sponsors to understand and implement their obligations. Further, during this period, the Registration Agency will provide technical assistance to sponsors seeking advice or clarification on the creation, drafting, and submission of its written plan.

The submission of the written plan to the Registration Agency is not an annual obligation; rather, the regulations specify that sponsors need only submit their current written plan to OA upon request. Thus, while sponsors will generally need to maintain and update their written AAPs annually for internal purposes (or potentially every two years, if the conditions in § 30.4(e), discussed below, are met), reviews will be less frequent. Further, the written AAP need not be a lengthy document. Sample written AAPs under the current regulations are available for review on OA's website as a model for sponsors to use in creating their own written plans, and many of the elements in this model can be readily adopted by new sponsors.<sup>27</sup> While these proposed regulations add a disability component to the AAP, this will not significantly expand the length of the written AAP.

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<sup>27</sup> See [http://www.doleta.gov/oa/bul10/Bulletin%202010-11a\\_AppendixC\\_inj.pdf](http://www.doleta.gov/oa/bul10/Bulletin%202010-11a_AppendixC_inj.pdf) (last accessed Sept. 10, 2015).

The Department proposes to replace the current § 30.4(c) requirements related to outreach and positive recruitment with proposed § 30.8, discussed later in the preamble, which addresses the regulatory requirements related to targeted outreach, recruitment, and retention.

Proposed § 30.4(c) instead would provide an outline of the required elements of an affirmative action program in order to provide a roadmap to sponsors at the outset of what is required. Proposed § 30.4(c) would mandate that an affirmative action program include five elements: (1) utilization analyses for race, sex, and ethnicity; (2) establishment of utilization goals for race, sex, and ethnicity, if necessary; (3) establishment of utilization analyses and goal setting for individuals with disabilities; (4) targeted outreach, recruitment, and retention, if necessary; and (5) a review of personnel processes.

Proposed § 30.4(c) also would identify the sections within the larger proposed rule that would address each of these elements. This type of roadmap is lacking in the current part 30. We believe this outline of required elements will help to facilitate a sponsor's compliance with the requirements of proposed § 30.4 by serving as a checklist in determining whether the sponsor has met all of the affirmative action program requirements.

Proposed § 30.4(d) sets forth, in one location, the two existing exemptions to the requirement that a sponsor develop an affirmative action program. These exemptions can be found in the current rule at § 30.3(e) (programs subject to an approved equal employment opportunity program) and § 30.3(f) (programs with fewer than five apprentices). Both exemptions are carried forward into the proposed rule at § 30.4(d)

with one minor revision. Paragraph (e) currently exempts sponsors from the AAP requirement if they have an approved equal employment opportunity program providing for affirmative action under either title VII of the Civil Rights Act or Executive Order 11246. In light of the proposal to add disability to the list of protected bases for nondiscrimination and to the affirmative action requirements, such an exemption without change would fail to recognize that qualified individuals with disabilities are now protected from discrimination under part 30 and will benefit from affirmative action under the proposed rule. Therefore, the Department proposes to revise this exemption by requiring that a sponsor have an approved equal employment opportunity program under title VII of the Civil Rights Act and agree to extend such program to include individuals with disabilities, or have approved affirmative action programs under both Executive Order 11246 and section 503 of the Rehabilitation Act, which are administered by OFCCP and apply to Federal contractors and subcontractors with qualifying contracts. This would ensure that all protected bases set forth in the proposal would be addressed and that the sponsor is taking the appropriate actions to ensure that protected individuals are employed as apprentices and advanced in employment. This particular exemption can now be found in the proposed rule at paragraph (d)(2) of proposed § 30.4, which addresses the requirement to conduct affirmative action programs. This re-designation from § 30.3, which discusses equal opportunity standards, to § 30.4, which addresses affirmative action program requirements, would improve notice to sponsors that some sponsors are not subject to the affirmative action program requirements. Some apprenticeship programs are also qualifying Federal contractors that have developed

AAPs under OFCCP's laws, and thus would not incur any additional burden to create and maintain AAPs under these regulations.

The proposed rule deletes the text in current § 30.4(c) which provides: "the Department may provide such financial or other assistance as it deems necessary to implement the requirements of this paragraph," because the Department does not need a regulatory requirement in order to provide such assistance. Proposed § 30.5, outlined below, replaces the current § 30.4(e). The proposed rule also deletes current § 30.4(f) and addresses the establishment of utilization goals for race, sex, and ethnicity in proposed § 30.6 and for individuals with disabilities in proposed § 30.7.

Finally, the proposed regulation adds a new § 30.4(e) addressing the schedule for the review of affirmative action programs. Under the current regulations, a sponsor is required to complete an internal review of its affirmative action plan, which includes all the elements listed in the proposed § 30.4(c) set out above, on an annual basis. This NPRM incorporates that existing practice, but proposes an alternative schedule of review for those sponsors that can demonstrate their program is fully meeting the objectives set forth in this paragraph. Specifically, if a contractor's AAP demonstrates that it is not underutilized in any of the protected bases for which measurements are kept (race, sex, and disability) and that its review of personnel practices did not require any necessary modifications to meet nondiscrimination objectives, then the sponsor may wait two years to complete its next internal AAP review and update its written plan. This proposal is intended to provide an incentive to sponsors who have shown success in meeting their AAP and nondiscrimination obligations. We seek comments on this proposal, including specifically whether stakeholders believe such an approach would incentivize AAP

success without compromising the overall goals of promoting and ensuring equal employment opportunity in registered apprenticeship.

Utilization analysis for race, sex, and ethnicity (§ 30.5)

The Department proposes revising the current § 30.5, entitled “Selection of apprentices,” and moving the revised language to § 30.10; the revised language is discussed later in the preamble at § 30.10. In its place, the Department proposes a new § 30.5, which provides guidelines for assessing whether possible barriers to apprenticeship exist for particular groups of individuals by determining whether the race, sex, and ethnicity of apprentices in a sponsor’s apprenticeship program is reflective of the population available for apprenticeship by race, sex, and ethnicity in the sponsor’s relevant recruitment area. Availability is the yardstick against which the actual utilization of individuals by race, sex, and ethnicity in the sponsor’s apprenticeship program workforce is measured. Where a disparity exists between availability and the actual representation in the sponsor’s apprenticeship program, the sponsor would be required to establish a utilization goal. The Department anticipates that grouping these provisions into one specific section that is clearly titled, “Utilization Analysis for Race, Sex, and Ethnicity,” rather than subsuming them in the current part 30 section on affirmative action, also would improve the regulation’s overall organization and readability.

Proposed § 30.5 replaces current § 30.4(e), “Analysis to determine if deficiencies exist,” which requires the sponsor to compute availability separately for minorities and for women, for each particular occupation. The current part 30 requires the sponsor to

consider at least the following five factors in determining availability: (1) the size of the working age minority and female population in the program sponsor's labor market area; (2) the size of the minority and female labor force in the program sponsor's labor market area; (3) the percentage of minority and female participation as apprentices in the particular craft, as compared with the percentage of minorities and women in the labor force in the program sponsor's labor market area; (4) the percentage of minority and female participation as journeyworkers employed by the employer or employers participating in the program, as compared with the percentage of minorities and women in the sponsor's labor market area, and the extent to which the sponsor should be expected to correct any deficiencies through the achievement of goals and timetables for the selection of apprentices; and (5) the general availability of minorities and women with present or potential capacity for apprenticeship in the program sponsor's labor market area.

Under the current part 30, although the sponsor must consider all five factors, it is not required to use each factor in determining the final availability estimate, and may consider other factors not listed in the regulation. Only the factors that are relevant to the actual availability of apprentices for the particular craft in question must be used under the current part 30. As a result, most sponsors actually use only a few of the five factors to compute the final availability estimates. Moreover, how these factors in the current part 30 relate to the availability of qualified individuals for apprenticeship is unclear. Finally, the current part 30 does not indicate how a sponsor should consider or weight each of these factors when determining availability.

Proposed § 30.5 describes the steps required to perform utilization analyses, and would simplify the availability computations by reducing the number of factors from five to two. In addition, proposed § 30.5 would require that a sponsor consider the availability of qualified individuals for apprenticeship by race, sex, and ethnicity, rather than continue the current approach, which requires the sponsor to analyze availability and utilization for women and then for minorities as an aggregate group.

As a first step in determining whether a particular group is being underutilized, proposed § 30.5(b) would require sponsors to identify the racial, sex, and ethnic composition of its apprentice workforce. Rather than review the composition for each occupational title represented in a sponsor's apprenticeship program, the proposed § 30.5(b) would simplify the analysis by requiring the sponsor to group the occupational titles represented in its registered apprenticeship program by industry. If a sponsor has programs in various occupations (e.g., carpenter, electrician, glazier, maintenance technician), but these programs are all in one industry (e.g., construction), then the sponsor conducts the utilization analysis based on that one industry. Grouping by industry permits aggregation of apprenticeable occupations that are sufficiently similar to permit meaningful analysis while being sufficiently refined to identify potential barriers. In addition, these industry groupings would minimize the administrative burden for sponsors performing the analyses, particularly for those sponsors who have apprenticeship programs in which more than one occupational title is represented.

The next step in a sponsor's utilization analysis would be to determine the availability of qualified individuals for apprenticeship by race, sex, and ethnicity. Under

proposed § 30.5(c), the following two factors would be considered in determining the availability of qualified individuals for apprenticeship:

(1) The percentage of individuals available in the sponsor's relevant recruitment area with the present or potential capacity for apprenticeship in each industry, broken down by race, sex, and ethnicity; and

(2) The percentage of the sponsor's current employees with the present or potential capacity for apprenticeship broken down by race, sex, and ethnicity.

That is, the sponsor is to examine two broad sets of people: (1) their current employees who are not in an apprenticeship program, but who have the capacity to be in the apprenticeship program, and (2) the broader labor force in the relevant recruitment area who are qualified and available for apprenticeship.

To determine the availability percentages in proposed § 30.5(c), the benchmark to which the sponsor compares its apprenticeship program, the sponsor must use the most current and discrete statistical information available to derive availability figures by industry. Specifically, sponsors are asked to consult the Bureau of Labor Statistics' Occupational Handbook to review the educational background requirements for relevant occupations.

Examples of other publicly available data sources available for sponsors to use include, but are not limited to, data from the Census Bureau's American Community Survey EEO Tabulation 2006 to 2010 currently available at <http://www.census.gov/people/eeotabulation/data/eeotables20062010.html>; the Census Bureau's Census 2000 EEO Data Tool currently available at <http://www.census.gov/eo2000/index.html>; the Census Bureau's Quick Facts tables

currently available at <http://quickfacts.census.gov>; the Census Bureau's American Fact Finder currently available at <http://factfinder2.census.gov/faces/nav/jsf/pages/index.xhtml>; labor market information data from State workforce agencies; data from vocational education schools, secondary and post-secondary school or other career and employment training institutions; educational attainment data from the Census Bureau; and for sponsors of registered apprenticeship programs in the construction industry, any data provided by OFCCP through their regulations at 41 CFR part 60-4 or otherwise on the potential availability of workers by demographic group for employment in on-site construction occupations. "Potential availability percentage" means an availability estimate that reflects current employment in an on-site construction occupation and current employment in non-construction occupations that employ workers who have similar abilities and interests to the workers in the corresponding on-site construction occupation.

Proposed § 30.5(c)(4) would require a sponsor to define its recruitment area reasonably based on objective criteria and to document how the recruitment area was defined. Proposed § 30.5(c)(4) prohibits sponsors from drawing the relevant recruitment area in such a way as to have the effect of excluding individuals on the basis of race, sex, or ethnicity from consideration.

Finally, proposed § 30.5(d) would require a sponsor to establish a utilization goal in accordance with the procedures set forth in proposed § 30.6 when underutilization occurs. Underutilization is the difference between availability for apprenticeship in a given industry and incumbency (i.e., the sponsor's apprentice workforce in that industry). In other words, the proposed rule would require a sponsor to establish a utilization goal

when the sponsor's utilization of women, Hispanics or Latinos, and/or particular racial minority groups is less than would be expected given their availability for apprenticeship. Sponsors would be permitted to identify underutilization using a variety of methods, including the "any difference" rule, i.e., whether any difference exists between the availability of individuals by race, sex, and ethnicity for apprenticeship in a given industry and the number of such persons actually employed as an apprentice in the industry; the "one person" rule, i.e., whether the difference between availability and the actual employment of individuals as apprentices equals one person or more for a given race, sex, or ethnicity; the "80 percent rule," i.e., whether actual employment of apprentices, broken down by race, sex, and ethnicity, is less than 80 percent of their availability; and a "two standard deviations" analysis, i.e., whether the difference between availability and the actual employment of apprentices by race, sex, and ethnicity exceeds the two standard deviations test of statistical significance. Proposed paragraph 30.5(d) clarifies that utilization goals are not required where no disparity in utilization rates for any particular group has been found.

The methodology in proposed § 30.5 would refine a sponsor's utilization analysis and would help pinpoint whether any particular group is being underutilized, which will in turn aid the sponsor in fashioning a more tailored affirmative action program for addressing the specific underutilization. The Department recognizes that the existence of and access to relevant data sources may vary depending on the sponsor's geographic location and the occupations included in its registered apprenticeship program. The Department has intentionally designed proposed § 30.5 and related provisions for goal-setting in proposed § 30.6 to provide a broad framework that has the flexibility to

accommodate continuing upgrades and improvements in publicly-available data sources appropriate for conducting utilization analyses.

The Department also plans to provide significant technical assistance and sub-regulatory policy and program guidance to assist program sponsors and Registration Agencies to comply with the proposed § 30.5 and proposed § 30.6. We anticipate that such guidance will address, among other things, how best to analyze a sponsor's registered apprenticeship program workforce, including through the use of data aggregation from a range of years of program operations in order to identify a utilization rate that is most meaningful to sponsors, including those with small apprenticeship programs, and a utilization goal for race, sex, and ethnicity that is appropriate to the size and circumstances of each sponsor's program. The Department believes the issuance of examples and technical assistance in guidance documents maintains the flexibility necessary to accommodate the evolving data analysis tools and data sources used for availability analysis and goal-setting. The Department welcomes specific comments and suggestions from the public regarding what data and/or tools exist that would enable program sponsors to determine, within their relevant recruitment area, the availability of individuals with the present or potential capacity for apprenticeship broken down by race, sex, and ethnicity. Also, the Department requests comments specifically addressing what criteria, other than educational attainment, sponsors can use to help distinguish between those individuals in the relevant recruitment area with the present or potential capacity for apprenticeship and those in the relevant recruitment area without such capacity.

Establishment of utilization goals for race, sex, and ethnicity (§ 30.6)

The Department proposes to remove current § 30.6 entitled “Existing list of eligibles,” because the Department is proposing to change the approach to selection procedures. For a discussion of the proposed selection procedures, see proposed § 30.10 discussed later in the preamble.

Proposed § 30.6 describes the procedures for establishing utilization goals and would replace the existing procedures set forth in § 30.4(f) of the current part 30. Under the current § 30.4(f), a sponsor is required to establish goals and timetables based on the outcome of the sponsor’s analyses of its underutilization of minorities in the aggregate and women. It is acceptable for a sponsor to develop a single goal for minorities and a separate single goal for women, unless a particular minority group is employed in a substantially disparate manner in which case separate goals are required for each group. In establishing goals, the sponsor is encouraged to consider the results which could reasonably be expected from its good faith efforts to make its overall affirmative action program work. The current part 30 does not provide specific instructions on how to set a goal nor does it explain what constitutes good faith efforts on the part of a sponsor. In addition, under the current part 30, the form of goal that a sponsor is required to set depends on the nature of the selection procedure used. For selections based on rank from a pool of eligible applicants, for instance, sponsors are required to establish a percentage goal and timetable for the admission of minority and/or female applicants into the eligibility pool. However, if selections are made from a pool of current employees, sponsors are required to establish goals and timetables for actual selection into the apprenticeship program.

The Department proposes several changes to the current goal setting approach. First, for simplification, the proposed rule would require that sponsors adopt just one type of goal regardless of the selection procedure used. Under proposed § 30.6, a sponsor would be required to establish a utilization goal for representation of the particular group in the sponsor's apprenticeship program. Second, proposed § 30.6 would remove any reference to timetables, because the proposed goal setting approach requires that sponsors evaluate annually (or every two years, if it meets the conditions in the proposed § 30.4(e)) whether goals are needed and make adjustments to their goals as needed. Third, proposed § 30.6 would add language explaining that quotas are expressly forbidden; goals may not be used to extend a preference to any individual on the basis of race, sex, or ethnicity; and goals may not be used to supersede eligibility requirements for apprenticeship. Fourth, proposed § 30.6 would clarify that the percentage goal must be at least equal to the availability figure that the sponsor computes. Currently, part 30 is silent as to how a sponsor must calculate its goal, other than to say sponsors must create a goal when underutilization has been found. Finally, to ensure a sponsor's affirmative action program is tailored to address the barriers to EEO it has identified, proposed § 30.6 would require that goals be set only for the particular racial or ethnic group(s) that the sponsor has identified as being underutilized, rather than for minorities in the aggregate.

#### Utilization goals for individuals with disabilities (§ 30.7)

Current § 30.7 is reserved. In keeping with the proposed expanded scope of part 30 and of the affirmative action requirements, this proposed rule would assign a new section entitled "Utilization goals for individuals with disabilities" to § 30.7. In contrast

to the framework set forth for establishing utilization goals for race, sex, and ethnicity, proposed § 30.7 would establish a single, national utilization goal of 7 percent for individuals with disabilities that applies to all sponsors subject to proposed § 30.4, Affirmative Action Programs. Proposed § 30.7 (a) sets forth this goal.

Proposed § 30.7(b) states that the purpose of this section is to establish a benchmark against which the sponsor must measure the representation of individuals with disabilities in the sponsor's apprentice workforce by industry, in order to assess whether any barriers to EEO remain. The goal serves as an equal opportunity objective that should be attainable by complying with all of the affirmative action requirements of part 30.

Proposed § 30.7(c) provides that the Administrator of OA will periodically review and update, as appropriate, the utilization goal established in proposed § 30.7(a).

Proposed § 30.7(d) sets out the steps that the sponsor must use to determine whether it has met the utilization goal. Proposed § 30.7(d)(1) states that the purpose of the utilization analysis is to evaluate the representation of individuals with disabilities in the sponsor's apprentice workforce grouped by industry and compare the rate against the utilization goal set forth in proposed § 30.7(a). If individuals with disabilities are represented in the sponsor's apprentice workforce in a given industry at a rate less than the utilization goal, the sponsor must take specific measures to address this disparity.

Proposed § 30.7(d)(2) explains that the utilization analysis is a two-step process. First, the sponsor is required to group all occupational titles represented in its apprenticeship program by industry. As discussed above, if a sponsor has apprenticeship programs in various occupations (e.g., carpenter, electrician, glazier, maintenance

technician), but these programs are all in one industry (e.g., construction), then the sponsor conducts the utilization analysis based on that one industry. Next, for each industry represented, the sponsor must identify the number of apprentices with disabilities based on voluntary self-identification by the individual apprentices. Proposed § 30.7(d)(3) requires that the sponsor evaluate its utilization of individuals with disabilities in each industry group annually (or every two years, if it meets the conditions set forth in the proposed § 30.4(e)).

When the percentage of apprentices with disabilities in one or more industry groups is less than the utilization goal proposed in § 30.7(a), proposed § 30.7(e) requires that the sponsor take steps to determine whether and where impediments to equal opportunity exist. Proposed § 30.7(e) explains that when making this determination, the sponsor must look at the results of its assessment of personnel processes and the effectiveness of its outreach and recruitment efforts as required by proposed § 30.9. If, in reviewing its personnel processes, the sponsor identifies any barriers to equal opportunity, then proposed § 30.7(f) requires that the sponsor undertake action oriented programs designed to correct any problem areas that the sponsor identified. Only if a problem or barrier to equal opportunity is identified, must the sponsor develop and execute an action-oriented program.

Proposed § 30.7(g) clarifies that the sponsor's determination that it has not attained the utilization goal in one or more industry groups does not constitute either a finding or admission of discrimination in violation of part 30. It is important to note, however, that such a determination, whether by the sponsor or by the Registration Agency, will not impede the Registration Agency from finding that one or more unlawful

discriminatory practices caused the sponsor's failure to meet the utilization goal. In such a circumstance, the Registration Agency will take appropriate enforcement measures.

Lastly, proposed § 30.7(h) states that the goal proposed in this section must not be used as a quota or ceiling that limits or restricts the employment of individuals with disabilities as apprentices.

The establishment of a utilization goal for individuals with disabilities would be a new requirement, which the Department believes is warranted in light of the long-term and intractable nature of the substantial employment disparity between those with and without disabilities. Little Government data measuring the unemployment and workforce participation rates of individuals with disabilities exists prior to the 2000 Census.

However, illustrative data can be found in the 1989 legislative history of the ADA.

Explaining the need for inclusion of employment provisions in the then-pending legislation, the Senate reported that individuals with disabilities "experience staggering levels of unemployment."<sup>28</sup> More specifically, the Senate reported that two-thirds of all disabled Americans of working age were not working at all, even though a large majority of those not working (66 percent) wanted to work.<sup>29</sup>

Today, more than 20 years later, there continues to be a substantial discrepancy between the workforce participation and unemployment rates of working age<sup>30</sup> individuals with and without disabilities. As explained earlier in this preamble, both the unemployment rate and the percentage of working age individuals with disabilities who

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<sup>28</sup> Senate Committee on Labor and Human Resources, S. Rep. No. 101-116, 101<sup>st</sup> Cong, 1<sup>st</sup> Sess. (1989) at 9.

<sup>29</sup> *Id.* (citing a poll by the Lou Harris company).

<sup>30</sup> The working age population consists of people between the ages of 16 and 64, excluding those in the military and people who are in institutions.

are not in the labor force remain significantly higher than that of the working age population without disabilities.

The establishment of a utilization goal for individuals with disabilities is not, by itself, a “cure” for this longstanding problem. We believe, however, that the goal proposed in this section is a vital element that, in conjunction with other requirements of this part, will enable sponsors and Registration Agencies to assess the effectiveness of specific affirmative action efforts with respect to individuals with disabilities, and to identify and address specific workplace barriers to employment as an apprentice.

This adoption of a single, national goal of 7 percent would establish consistency among the Department’s regulations requiring covered entities to engage in nondiscrimination and affirmative action for qualified individuals with disabilities. The Department’s OFCCP recently published a Final Rule implementing section 503 of the Rehabilitation Act of 1973 (section 503) which establishes for the first time a single, national utilization goal of 7 percent for individuals with disabilities for all covered contractors. 78 FR 58682, Sept. 24, 2013.

As detailed in that Final Rule, the OFCCP derived this utilization goal in part from the disability data collected as part of the American Community Survey (ACS). The ACS was designed to replace the census “long form” of the decennial census, last sent out to U.S. households in 2000, to gather information regarding the demographic, socioeconomic and housing characteristics of the nation. Whereas the Census Bureau now only administers a very short survey for the decennial census, a more detailed view

of the social and demographic characteristics of the population is provided by the ACS, which collects data from a sample of 3 million residents on a continuing basis.<sup>31</sup>

The ACS was first launched in 2005, after a decade of testing and development by the Census Bureau. Refinement of the questions designed to characterize disability status has been continuous, with the current set of disability-related questions incorporated into the ACS in 2008. Taken together, the six dichotomous (“yes” or “no”) disability-related questions<sup>32</sup> comprise the function-based definition of “disability,” used in the ACS and by most of the other major surveys administered by the Federal Statistical System.

The definition of disability used by the ACS, however, is clearly not as broad as that in the ADA and proposed here. For example, since the ACS questions do not say that one should respond without considering mitigating measures (e.g., medication or aids), some individuals with disabilities that are well-controlled by medication (e.g., depression or epilepsy) or in remission might respond to the ACS in a way that leads them not to be coded as “disabled.” Likewise, since the ACS questions do not include major bodily functions, an individual who has a disability that substantially limits a major bodily function such as HIV, cancer, or diabetes but does not limit an activity such as hearing, seeing or walking, might respond that he or she does not have a disability on the

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<sup>31</sup> A national sample of approximately 3 million addresses nationwide receives the ACS each year, with a portion of this total receiving the survey each month. For more information on the American Community Survey visit the Census Bureau’s ACS web page at [www.census.gov/acs](http://www.census.gov/acs).

<sup>32</sup> The six questions are: Is this person deaf or does he/she have serious difficulty hearing? Is this person blind or does he/she have serious difficulty seeing even when wearing glasses? Because of a physical, mental, or emotional condition, does this person have serious difficulty concentrating, remembering, or making decisions? Does this person have serious difficulty walking or climbing stairs? Does this person have difficulty dressing or bathing? Because of a physical, mental, or emotional condition, does this person have difficulty doing errands alone such as visiting a doctor’s office or shopping? 2009 American Community Survey, Questions 17-19.

ACS. Despite its limitations, the ACS is the best source of nationwide disability data available today, and, thus, an appropriate starting place for developing a utilization goal.

Consistent with OFCCP's approach set forth in its Final Rule implementing section 503, OA proposes to set a single, national goal for individuals with disabilities, based on the most recent 2009 ACS disability data for the "civilian labor force" and the "civilian population,"<sup>33</sup> first averaged by EEO-1 job category, and then averaged across EEO-1 category totals. Specifically, the Department used the mean across these EEO-1 groups (5.7 percent) as a starting point for deriving a range of values upon which we will take comment; 5.7 percent is the Department's estimate of the percentage of the civilian labor force that has a disability as defined by the ACS. However, the Department acknowledges that this number does not encompass all individuals with disabilities as defined under the broader definition in the ADA, as amended, and this part. Further, this figure most likely underestimates the percent of individuals with disabilities with the present or potential capacity for apprenticeship because it reflects the percentage of individuals with disabilities who are currently in the labor force with an occupation and individuals need not have an occupation or be in the labor force in order to be eligible for apprenticeship. Therefore, 5.7 percent should not be construed as an affirmative action goal for individuals with disabilities under these authorities, nor convey a false sense of precision. Even if the 5.7 percent represented a complete availability figure for all individuals with disabilities as defined under the ADA, we are concerned that such an availability figure does not take into account discouraged workers, or the effects of

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<sup>33</sup>The civilian labor force is the sum of people who are employed and those who are unemployed and looking for work. The civilian population is the civilian labor force plus civilians who are not in the labor force, excluding those in institutions.

historical discrimination against individuals with disabilities that has suppressed the representation of such individuals in the workforce. Discouraged workers are those individuals who are not now seeking employment, but who might do so in the absence of discrimination or other employment barriers. There are undoubtedly some individuals with disabilities who, for a variety of reasons, would not seek employment even in the absence of employment barriers. However, given the acute disparity in the workforce participation rates of those with and without disabilities, it is reasonable to assume that at least a portion of that gap is due to a lack of equal employment opportunity.

One way to go about estimating the size of the discouraged worker effect would be to compare the percent of the civilian population with a disability (per the ACS definition) who identified as having an occupation to the percent of the civilian labor force with a disability who identified as having an occupation. Though not currently seeking employment, it might be reasonable to believe that those in the civilian population who identify as having an occupation, but who are not currently in the labor force, remained interested in working should job opportunities become available. Using the 2009 ACS EEO-1 category data, the result of this comparison is 1.7 percent. Again, we believe this figure underestimates the percentage of discouraged workers who may be eligible for apprenticeship because it measures who in the current population, with an occupation, may be discouraged from employment, and individuals eligible for apprenticeship need not have had an occupation at any time.<sup>34</sup>

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<sup>34</sup>This number was derived from an updated 2009 version of Table 24 in Affirmative Action for People with Disabilities – Volume I: Data Sources and Models, Economic Systems, Inc. (April 30, 2010) at 64. The original table uses ACS data from 2008.

Adding this figure to the 5.7 percent availability figure above results in the 7.4 percent.<sup>35</sup> OFCCP uses this level, rounded to 7 percent in its Final Rule to revise section 503 to avoid implying a false level of precision, as it is an initial approximation of the availability for employment of individuals with disabilities. OA adopts this approach in this proposed rule to revise part 30.

The Department recognizes that registered apprenticeship program sponsors who are subject to the utilization goal for individuals with disabilities (i.e., those with five or more registered apprentices who are not otherwise exempt under proposed § 30.4(d)) often have programs that are quite small, some with less than twenty registered apprentices. The purpose of the utilization goal requirement is to encourage sponsors to be more aware of how effective their employment practices are in ensuring equal employment opportunity for individuals with disabilities.

Under this proposed rule, a sponsor who failed to meet the utilization goal for individuals with disabilities required in proposed § 30.7—for example, a sponsor with 14 apprentices, none of whom is an individual with a disability—would be required to determine whether and where impediments to equal opportunity exist, and if such problem areas are identified, to implement targeted outreach, recruitment, and retention activities to ensure that individuals with disabilities are, in fact, learning about registered apprenticeship opportunities. These targeted activities would be done in addition to the universal outreach and recruitment that is required of all sponsors and not in lieu of, with the end result being that the sponsor is, in fact, reaching the broadest pool of applicants and apprentices. In contrast, if the same sponsor with 14 apprentices had one or more

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<sup>35</sup> As it is derived from ACS data, the 1.7 percent is also a limited number that does not fully encompass all individuals with disabilities as defined in the ADA and this NPRM.

apprentices with a disability, the sponsor would achieve the proposed utilization goal for individuals with disabilities, and would not be required to engage in targeted outreach, recruitment, and retention activities for individuals with disabilities. Instead, the sponsor would simply be required to continue to engage in universal outreach and recruitment that is required under § 30.3(b)(3) of this part.

The Department recognizes that many sponsors of registered apprenticeship programs and Registration Agencies will require assistance with implementing proposed § 30.7. We plan, therefore, to provide significant technical assistance and sub-regulatory policy and program guidance that will address, among other things, how best to analyze a sponsor's registered apprenticeship program workforce, including through the use of data aggregation from a range of years of program operations, in order to identify a utilization rate that is most meaningful to the sponsor; how to ensure equal employment opportunity through best practices; and how to ensure a work environment inclusive of individuals with disabilities.

The Department welcomes specific comments and suggestions from the public regarding what data and/or tools exist that would enable program sponsors to determine, within their relevant recruitment area, the availability of individuals with disabilities with the present or potential capacity for apprenticeship, recognizing that individuals need not be in the current labor force to be eligible for apprenticeship. In addition, the Department invites public comment on the methodology used to calculate the utilization goal for individuals with disabilities and whether there might be other approaches for setting a utilization goal, particularly approaches to setting ranges that recognize that in some geographic areas and for some occupations, there may be fewer people with disabilities

qualified and eligible for apprenticeship. The Department also seeks comment on whether and, if so, how to take into account discouraged workers in assessing the availability of individuals with disabilities for registered apprenticeship. The Department is also very interested in public comment on whether there are empirically-based approaches that recognize that there are many more people who have disabilities as characterized by the ADA than the ACS and that there is likely a discouraged worker effect.

The Department further invites public comment on the impact of this proposal on sponsors, and on the impact a fixed goal would have on sponsors of smaller apprenticeship programs who are required to establish an affirmative action program and comply with the utilization goal requirement for individuals with disabilities.

#### Targeted outreach, recruitment, and retention (§ 30.8)

The Department proposes to revise current § 30.8 entitled “Records” and to move that language to proposed § 30.11, as discussed later in the preamble. Proposed § 30.8 instead would replace the current requirements related to outreach and positive recruitment discussed in § 30.4(c) of the current part 30 by addressing the regulatory requirements related to targeted outreach, recruitment, and retention.

Under proposed § 30.8, where a sponsor has made a finding of underutilization and established a utilization goal for a specific group or groups pursuant to proposed § 30.6, and/or where a sponsor has determined, pursuant to proposed § 30.7(f), that there are problem areas with respect to its outreach, recruitment, and retention activities for individuals with disabilities, the sponsor must undertake targeted outreach, recruitment,

and retention activities that are likely to generate an increase in applications for apprenticeship and improve retention of apprentices from the targeted group or groups and/or from individuals with disabilities as appropriate. These targeted activities would be in addition to the sponsor's universal outreach and recruitment activities that now would be required under proposed § 30.3(b)(3). As discussed earlier in the preamble to the proposed rule, these proposed universal outreach and recruitment activities require development of a list of recruitment sources and notification of these sources at least 30 days in advance of any apprenticeship opportunities, whereas proposed § 30.8 sets forth four broad categories of minimum, specific activities required to address underutilization. These four categories are discussed below.

The Department specifically mentions retention activities in proposed § 30.8 to highlight that a sponsor's retention efforts are an important part of the EEO regulatory framework for the National Registered Apprenticeship System. The Department does not require program sponsors to retain an apprentice who does not demonstrate sufficient progress in his or her apprenticeship simply because the individual is from the specific group or groups. The Department would incorporate retention activities in proposed § 30.8 to emphasize that the requirements for EEO in registered apprenticeship extend to the entire term of apprenticeship, not just to the recruitment and selection of apprentices. By including retention activities in proposed § 30.8, the Department further emphasizes that all apprentices should receive fair and equitable treatment regardless of race, sex, ethnicity, or disability so that each can progress through a full term of apprenticeship.

Finally, the Department does not expect the specific mention of retention activities in proposed § 30.8 to increase a sponsor's burden of complying with this rule.

Rather, these retention activities are representative of the kinds of good faith efforts the Department has required to date for a sponsor to meet its EEO obligations required in §§ 30.3 and 30.4 of the current part 30, such as use of journeyworkers to assist with affirmative action efforts; establishing pre-apprenticeship programs to prepare candidates for apprenticeship; cooperating with local schools and vocational education systems to develop programs to prepare students for entry into apprenticeship programs; and education and outreach to the education and workforce systems to raise awareness about apprenticeship opportunities.

Proposed § 30.8(a)(1) would set forth the minimum, specific targeted outreach, recruitment, and retention activities required of a sponsor that has found underutilization of a particular group or groups pursuant to § 30.6 and/or who has determined pursuant to § 30.7(f) that there are problem areas with respect to its outreach, recruitment, and retention activities. These activities include, but need not be limited to: (1) dissemination of information to community-based organizations, local high schools, local community colleges, local vocational, career and technical schools, career centers at minority serving institutions (including Historically Black Colleges and Universities, Hispanic-Serving Institutions, and Tribal Colleges and Universities), and other groups serving the underutilized group; (2) advertising openings for apprenticeship opportunities by publishing advertisements in newspapers and other media, electronic or otherwise, that have wide-spread circulation in the relevant recruitment area; (3) cooperating with local school boards and vocational education systems to develop and/or establish relationships with pre-apprenticeship programs inclusive of students from the underutilized groups, preparing them to meet the standards and criteria required to

qualify for entry into apprenticeship programs; and (4) establishing linkage agreements enlisting the assistance and support of pre-apprenticeship programs, community-based organizations and advocacy organizations in recruiting qualified individuals for apprenticeship and in developing pre-apprenticeship programs. We believe that these four activities should be attainable for all programs but request comment on whether there are any exceptional circumstances under which it might be difficult to complete them.

Consistent with a recommendation from the ACA to align requirements for outreach and recruitment activities with established national best practices, the Department conducted a literature review and examined technical assistance tools and materials issued by various stakeholders in the National Registered Apprenticeship System, including SAAs, advocacy organizations, and program sponsors. In the Department's experience with the grant projects authorized by Women Apprenticeship Nontraditional Occupations (WANTO),<sup>36</sup> and in the reports and materials from career and technical education organizations,<sup>37</sup> the California Apprenticeship Council,<sup>38</sup> and research and advocacy organizations focusing on women,<sup>39 40</sup> these outreach activities

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<sup>36</sup>Information about WANTO grants is available on-line: <http://www.dol.gov/wb/programs/family2.htm>; <http://www.dol.gov/wb/03awards.htm>; and <http://www.dol.gov/opa/media/press/wb/wb20100817.htm>.

<sup>37</sup>Programs and Practices That Work: Preparing Student for Nontraditional Careers Project, Joint project sponsored by the Association of Career and Technical Education, the National Alliance for Partnerships in Equity, the National Association of State Directors of Career Technical Education Consortium, and the National Women's Law Center (Washington D.C. 2006).

<sup>38</sup>California Apprenticeship Council, Blue Ribbon Committee on Women in Apprenticeship Final Report and Recommendations (California 2006).

<sup>39</sup> See, e.g., Brown, J.K., and Jacobsohn, F., "From the Ground Up: Building Opportunities for Women in Construction." Legal Momentum, New York, NY, (2008); Skidmore, E., and Moir, S., "Designing a Pre-apprenticeship Model for Women Entering and Succeeding in The Construction Trades: A Report to YouthBuild Providence," (September 2004); and Moir, S., Thomson, M., and Kelleher, C., "Unfinished Business: Building Equality for Women in the Construction Trades," Labor Resource Center Publications (April 2011): Paper 5.

have proven key in assisting sponsors to recruit female and minority applicants for apprenticeship who may not have otherwise learned about apprenticeship opportunities, and in retaining them once they are enrolled in registered apprenticeship. Given the usefulness of these specific activities, we also believe they provide the most efficient way for sponsors to meaningfully address underutilization. Such activities, including linkage agreements, need not be highly formal, detailed arrangements, but rather are intended to be straightforward, dynamic partnerships that can be easily tailored to meet sponsors' needs. Therefore, the Department proposes these types of activities to support program sponsors' efforts to meet utilization goals established under proposed §§ 30.6(a) and 30.7(e). Additionally, the Department welcomes specific comments and suggestions from the public regarding what specific employment practices have been verifiably effective in recruiting, hiring, advancing, and retaining women, minorities, and individuals with disabilities in registered apprenticeship.

In terms of conducting both universal outreach and recruitment required under proposed § 30.3(b), and targeted outreach and recruitment for individuals with disabilities that might be required under proposed § 30.8, the Department would recommend program sponsors contact the following types of organizations: State Vocational Rehabilitation Agencies, the State Workforce System (including State Workforce Investment Boards, Local Workforce Investment Boards, and One-Stop Career Centers), Centers for Independent Living, Goodwill and other community rehabilitation and

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<sup>36</sup> See, e.g., Port Jobs, "Building the Foundation: Opportunities and Challenges Facing Women in Construction in Washington State," Study prepared through a contract with Apprenticeship and Nontraditional Employment for Women and Men with funding support from the Workforce Development Council of Seattle-King County, (Seattle, WA November 2006); and Hard Hatted Women, "A Toolkit for the Recruitment and Retention of Women," funded by a WANTO grant from the U.S. Department of Labor (Cleveland, OH 2009).

employment service providers, Community College Disability Centers, Community College Career Centers, Alternative Schools, Community Mental Health programs, and the Social Security Administration's Employment Networks.

In addition, to foster awareness of the usefulness of a sponsor's outreach, recruitment, and retention activities, proposed § 30.8(a) would also require the sponsor to evaluate and document the overall effectiveness of its outreach, recruitment, and retention activities after every selection cycle for registering apprentices. While the proposal does not specify the precise contents of this evaluation, OA expects that it would include at a minimum the criteria used to evaluate the effectiveness of each activity and the sponsor's subsequent conclusion as to its effectiveness. This review will allow the sponsor to refine these activities as needed, as set forth in the proposed § 30.8(a)(3). Finally, the proposal requires the sponsor to maintain records of its outreach, recruitment, and retention activities and any evaluation of these activities (§ 30.8(a)(4)). This approach is designed to help sponsors identify barriers to apprenticeship, prevent discrimination, and ensure equal opportunity for all.

In addition to the activities required in § 30.8(a), as a matter of best practice, proposed § 30.8(b) encourages but does not require sponsors to consider other outreach, recruitment, and retention activities that may assist them in addressing any barriers to equal opportunity in apprenticeship. Such activities include but are not limited to: (1) use of journeyworkers and apprentices from the underutilized group or groups to assist in the implementation of the sponsor's affirmative action program; (2) use of individuals from the underutilized group or groups to serve as mentors and to assist with the sponsor's targeted outreach and recruitment activities; and (3) conducting exit interviews

of each apprentice leaving the sponsor's apprenticeship program prior to receiving his/her certificate of completion to understand better why the apprentice is leaving and to help shape the sponsor's retention activities.

#### Review of personnel processes (§ 30.9)

The Department proposes to revise and rename the current § 30.9 entitled "Compliance reviews," and to move that language to § 30.12, as discussed below in the preamble.

Proposed § 30.9 requires that any sponsor who is subject to the affirmative action program requirements in this proposed rule (i.e., those with five or more apprentices who are not otherwise exempt) must review its personnel processes on at least an annual basis to ensure that it is meeting its obligations under part 30, unless it qualifies for a bi-annual review as set forth in § 30.4(e), in which case the review would take place every two years. As part of this review, proposed § 30.9 would require that the sponsor review all aspects of its apprenticeship program, including but not limited to the qualifications for apprenticeship, wages, outreach and recruitment activities, advancement opportunities, promotions, work assignments, job performance, rotations among all work processes of the occupation, disciplinary actions, handling of requests for reasonable accommodations, and the program's accessibility to individuals with disabilities (including accessibility of information and communication technology) and make all necessary modifications to ensure compliance with the equal opportunity obligations of this part. Essentially, this review is simply a good business practice that most employers should already be doing as a matter of course – examining the personnel decisions they make to ensure that they are

free from unlawful discrimination. Such a review ultimately inures to the benefit of the employer, as, done appropriately, it can ferret out potential discrimination proactively, rather than in response to employee complaints and litigation and their attendant costs. Proposed § 30.9 would also require a sponsor to include a description of its review in its written AAP, and to identify in the plan any modifications that the sponsor has made or plans to make as a result of this review. In conjunction with this NPRM, OA will post on its website specific examples of what a successful review of personnel processes would entail, how it could be completed most efficiently, and how these steps could be easily documented in the written AAP.

This proposed requirement is similar to one set forth in the current part 30 at § 30.4(c)(10), which suggests that a sponsor audit periodically its affirmative action program and activities to ensure that its employment activities with respect to recruitment, selection, employment, and training of apprentices is without discrimination because of race, color, religion, national origin, and sex. Proposed § 30.9 emphasizes the philosophy the Department intends to convey throughout the regulation that affirmative action is not only a requirement on paper, but also a dynamic part of the sponsor's management approach, requiring ongoing monitoring, reporting, and revising to address barriers to EEO and to ensure that discrimination does not occur. Sponsors are required to create and sustain affirmative action programs that incorporate: (1) proactive measures designed to actively welcome all qualified individuals, including women, minorities, and individuals with disabilities, to participate in registered apprenticeship; (2) thorough, systematic efforts to prevent discrimination from occurring; and (3) methods to detect and eliminate discrimination. The Department requests comments specifically addressing

how to ensure that these reviews remain a dynamic part of the management approach that is effective in preventing, ferreting out, and correcting any discrimination in employment. The Department is also interested in receiving comments on whether it would be beneficial to involve apprentices and journeyworkers in the review.

#### Selection of apprentices (§ 30.10)

The Department proposes to revise current § 30.10 entitled “Noncompliance with Federal and [S]tate equal opportunity requirements,” and to move that language to § 30.3(b)(5), as discussed above.

As described earlier in this preamble, under the current § 30.5, sponsors may select any one of four methods of selecting apprentices: (1) selection on the basis of rank from pool of eligible applicants; (2) random selection from pool of eligible applicants; (3) selection from pool of current employees; or (4) an alternative selection method which allows the sponsor to select apprentices by means of any other method including its present selection method, subject to approval by the Registration Agency. An alternative selection method could be, for example, the use of interviews as one of the factors to be considered in selecting apprentices. Another alternative method could use pre-apprenticeship programs as a source of candidates. A sponsor also may combine two or more selection methods.

One common method that sponsors have used regularly, which would fall under this fourth category, is referred to as “direct entry.” Under this selection method, the application process would be waived so that qualified applicants can enter directly into an apprenticeship program, where the individual applicant demonstrates specific education

and/or skills previously attained. In order for sponsors to use “direct entry,” this method must be defined clearly in the selection procedure component of the sponsor’s apprenticeship standards, and must be approved by the Registration Agency. Provisions for “direct entry” in an apprenticeship program sponsor’s registered standards enable the development of formal relationships between an apprentice sponsor and other organizations or entities that prepare individuals to meet the sponsor’s requirements for selection into apprenticeship. Examples of organizations for which many apprenticeship program sponsors may have “direct entry” provisions in their apprenticeship standards include graduates from Job Corps Centers and YouthBuild sites; as well as veterans participating in the AFL-CIO Building and Construction Trades Department’s “Helmets to Hard Hats” or the United Association of Journeymen and Apprentice of the Plumbing and Pipe Fitting Industry of the United States and Canada (UA)’s Veterans in Piping (VIP) Program.

Proposed § 30.10 would simplify the regulatory requirements related to selection procedures by allowing a sponsor to adopt any method for selection of apprentices, including direct entry, provided that the method used: (1) complies with the UGESP at 41 CFR part 60-3; (2) is uniformly and consistently applied to all applicants for apprenticeship and apprentices; (3) complies with the qualification standards set forth in title I of the ADA; and (4) is facially neutral in terms of race, color, religion, national origin, sex, sexual orientation, age (40 or older), genetic information, and disability . The Department believes this approach would greatly simplify the regulatory structure currently governing selection procedures and would distill the current requirements to their essence. This proposed approach for selection procedures also would be consistent

with how other equal opportunity laws regulate an employer's use of selection procedures.

Invitation to self-identify as an individual with a disability (§ 30.11)

The Department proposes to revise current § 30.11 entitled "Complaint procedure," and to move that language to § 30.14, as discussed later in the preamble.

This section of the proposed rule is new and proposes to require sponsors, as part of their general duty to engage in affirmative action, to invite applicants for apprenticeship to voluntarily self-identify as an individual with a disability protected by this part at three stages: (1) at the time they apply or are considered for apprenticeship; (2) after they are accepted into the apprenticeship program but before they begin their apprenticeship; and (3) once they are enrolled in the program. Thereafter, proposed § 30.11 would require sponsors to remind apprentices yearly that they may voluntarily update their disability status, thereby allowing those who have subsequently become disabled or who did not wish to self-identify during the application and enrollment process to be counted.

The purpose of this section is to collect important data pertaining to the participation of individuals with disabilities in the sponsor's applicant pools and apprenticeship program. This data will allow the sponsor and OA to better identify and monitor the sponsor's enrollment and selection practices with respect to individuals with disabilities. Data related to the pre-offer stage will be particularly helpful, as it will provide the sponsor and OA with valuable information regarding the number of individuals with disabilities who apply for apprenticeship with sponsors. This data will

enable OA and the sponsor to assess the effectiveness of the sponsor's recruitment efforts over time, and to refine and improve the sponsor's recruitment strategies, where necessary. In addition, data from the application stage, post-offer, will allow sponsors and OA to assess the impact selection procedures and qualification standards may have on individuals with disabilities. And finally, data related to apprentices once they are in the program will help sponsors assess whether there may be barriers to equal opportunity in all aspects of apprenticeship and may inform the effectiveness of retention strategies or whether such strategies are necessary.

Proposed § 30.11(a)(1) requires that the sponsor invite each applicant to voluntarily self-identify as an individual with a disability whenever the applicant applies for or is considered for apprenticeship. The invitation may be included with the application materials, but must be separable or detachable from the application for apprenticeship.

The requirement to give applicants and employees the opportunity to self-identify is consistent with the ADA. Although the ADA generally prohibits inquiries about disability prior to an offer of employment, it does not prohibit the collection of this information by a sponsor in furtherance of its part 30 affirmative action obligation to provide equal opportunity in apprenticeship for qualified individuals with disabilities.<sup>41</sup> The EEOC's regulations implementing the ADA state that the ADA "does not invalidate or limit the remedies, rights, and procedures of any Federal law . . . that provides greater

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<sup>41</sup> This issue was addressed in the course of OFCCP's rulemaking revising its Section 503 regulations to, among other things: include a pre-offer disability self-identification requirement. The EEOC's Office of Legal Counsel issued a letter stating that the Section 503 self-identification requirement was lawful under the ADA; the legal rationale in that letter would apply with equal force to the self-identification requirement in this proposal as well. A copy of the letter is available at [http://www.dol.gov/ofccp/regs/compliance/sec503/Self\\_ID\\_Forms/OLC\\_letter\\_to\\_OFCCP\\_8-8-2013\\_508c.pdf](http://www.dol.gov/ofccp/regs/compliance/sec503/Self_ID_Forms/OLC_letter_to_OFCCP_8-8-2013_508c.pdf) (last accessed Sept. 8, 2015).

or equal protection for the rights of individuals with disabilities” than does the ADA. 29 CFR 1630.1(c)(2). The OA part 30 rule is one such law.

Proposed § 30.11(a)(2) requires that the sponsor invite applicants to self-identify “using the language and manner prescribed by the Administrator and published on the OA Web site.” This requirement will ensure consistency in all pre-offer invitations that are made, and will reassure applicants that the request is routine and executed pursuant to obligations created by OA. It will also minimize any burden on sponsors resulting from compliance with this responsibility as they will not be required to develop suitable self-identification invitations individually. This, in turn, we believe, will facilitate sponsor compliance with this proposed section.

The inquiry that OA will prescribe for sponsors is a limited one and will be narrowly tailored. To minimize privacy concerns and the possibility of misuse of disability-related information, the Department is proposing that the required invitation ask only for self-identification as to the existence of a “disability,” not as to the general nature or type of disability the individual has, or the nature or severity of any limitations the individual has a result of their disability. Below is the language OA proposes to prescribe that the sponsor use when inviting applicants to self-identify at the pre-offer stage. To ensure consistency across Departmental programs, the language is modeled on the invitation to self-identify that Federal contractors are required to use when complying with the requirements of section 503, but is adapted for use in the Registered Apprenticeship context. In all other respects, it is identical to what OFCCP requires of Federal contractors under section 503:

1. Why are you being asked to complete this form? Because we are a sponsor of a registered apprenticeship program and participate in the

National Registered Apprenticeship System that is regulated by the U.S. Department of Labor, we must reach out to, enroll, and provide equal opportunity in apprenticeship to qualified people with disabilities.<sup>42</sup> To help us measure how well we are doing, we are asking you to tell us if you have a disability or if you ever had a disability. Completing this form is voluntary, but we hope that you will choose to fill it out. If you are applying for apprenticeship, any answer you give will be kept private and will not be used against you in any way.

If you already are an apprentice within our registered apprenticeship program, your answer will not be used against you in any way. Because a person may become disabled at any time, we are required to ask all of our apprentices at the time of enrollment, and then remind them yearly, that they may update their information. You may voluntarily self-identify as having a disability on this form without fear of any punishment because you did not identify as having a disability earlier.

2. How do I know if I have a disability? You are considered to have a disability if you have a physical or mental impairment or medical condition that substantially limits a major life activity, or if you have a history or record of such an impairment or medical condition.

Disabilities include, but are not limited to: blindness, deafness, cancer, diabetes, epilepsy, autism, cerebral palsy, HIV/AIDS, schizophrenia, muscular dystrophy, bipolar disorder, major depression, multiple sclerosis (MS), missing limbs or partially missing limbs, post-traumatic stress disorder (PTSD), obsessive compulsive disorder, impairments requiring the use of a wheelchair, intellectual disability (previously called mental retardation).

Please check one of the boxes below:

YES, I HAVE A DISABILITY (or previously had a disability)

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<sup>42</sup> Section 503 of the Rehabilitation Act of 1973, as amended. For more information about this form or the equal employment obligations of Federal contractors, visit the U.S. Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) website at [www.dol.gov/ofccp](http://www.dol.gov/ofccp).

**PUBLIC BURDEN STATEMENT:** According to the Paperwork Reduction Act of 1995 no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. This survey should take about 5 minutes to complete.

- NO, I DON'T HAVE A DISABILITY
- I DON'T WISH TO ANSWER

Your name:  
Date:

OA invites public comment on this potential self-identification text and whether there are any reasons, programmatic or otherwise, as to why OA should not adopt a similar form to the one used by OFCCP and covered Federal contractors.

Proposed § 30.11(b)(1) requires that the sponsor invite applicants, after acceptance into the apprenticeship program, but before they begin their apprenticeship, to voluntarily self-identify as individuals with disabilities. The Department proposes to include a post-offer invitation to self-identify requirement, in addition to the invitation at the pre-offer stage, so that individuals with hidden disabilities who fear potential discrimination if their disability is revealed prior to being accepted into the program will, nevertheless, have the opportunity to provide this valuable data.

Proposed § 30.11(b)(2) requires that the sponsor invite self-identification using the language and manner prescribed by the Administrator and published on the OA Web site. Again, the Department believes that this requirement will ensure consistency in all post-offer invitations that are made, minimize any burden to sponsors of compliance with this responsibility, and consequently, facilitate such sponsor compliance.

Proposed § 30.11(c) requires that the sponsor invite each of its apprentices to voluntarily self-identify as an individual with a disability at the time the sponsor becomes subject to the requirements of part 30 and then remind apprentices yearly that they may update their disability status at any time. Allowing apprentices enrolled in a registered

apprenticeship program to update their status will ensure that the sponsor has the most accurate data possible.

Proposed § 30.11(d) emphasizes that the sponsor is prohibited from compelling or coercing individuals to self-identify. While proposed § 30.11(e) emphasizes that all information regarding self-identification as an individual with a disability shall be kept confidential and maintained in a data analysis file in accordance with proposed § 30.12. Proposed § 30.11(e) also states that self-identification must be provided to the Registration Agency upon request and that the information may only be used in accordance with this part.

Proposed § 30.11(f) states that nothing in this section may relieve the sponsor of its obligation to take affirmative action with respect to those applicants and apprentices of whose disability the sponsor has knowledge.

Finally, proposed § 30.11(g) clarifies that nothing in this proposed section may relieve the sponsor from liability for discrimination in violation of this part.

#### Recordkeeping (§ 30.12)

The Department proposes to remove current § 30.12 entitled “Adjustments in schedule for compliance review or complaint processing” because the information contained within this section has been incorporated into the proposed sections addressing EEO compliance reviews and complaints.

Proposed § 30.12 prescribes the recordkeeping requirements that would apply to registered apprenticeship program sponsors, and concludes that a sponsor’s failure to comply with these requirements would constitute noncompliance with the part 30

regulations. Proposed § 30.12 retains, in large part, the recordkeeping requirements currently in § 30.8, subject to basic editing, and updates them to reflect the development and use of electronic recordkeeping, and the broadened scope of the proposed rule to provide for equal opportunity, affirmative action, and nondiscrimination for applicants and apprentices with disabilities.<sup>43</sup> Proposed § 30.12, therefore, includes a new provision regarding the confidentiality and use of medical information that is obtained pursuant to part 30, including information regarding whether an applicant or apprentice is an individual with a disability. Proposed § 30.12(e) provides that any information collected that concerns the medical condition or history of an applicant or apprentice must be maintained in separate forms and in separate medical files and treated as confidential. Furthermore, proposed § 30.12(e) makes clear that any information obtained by a sponsor regarding the medical condition or history of any applicant or apprentice must not be used for any purpose inconsistent with part 30.

In addition, proposed § 30.12 would remove any reference to the recordkeeping requirements of State Apprenticeship Councils. The Department proposes to move these requirements to proposed § 30.18, the section addressing SAAs. This proposed change would ensure that all requirements specific to SAAs can be found in one location.

Finally, proposed § 30.12(d) would decrease the amount of time that sponsors are required to keep documentation from five to three years. This decreases the amount of

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<sup>43</sup> OA maintains guidance that provides more explanation on exactly what documents must be maintained, and how sponsors should maintain it. See Bulletin 2010-11a Apprenticeship Program Standards Section XVIII Maintenance of Records and Appendix D, Section VI Maintenance of Records <http://www.doleta.gov/OA/bul10/Bulletin%202010-11%20Revised%20Boilerplates.pdf>. (last accessed September 10, 2015).. In addition, OA will provide publicly available materials in conjunction with this NPRM that will update this guidance consistent with this proposal.

data contractors must store while maintaining the general purposes of allowing sponsors and OA the ability to review previous records for necessary information.

Equal employment opportunity compliance reviews (§ 30.13)

The Department proposes to revise current § 30.13 entitled “Sanctions”, re-title the section “Enforcement actions,” and move the revised language to § 30.15, as discussed later in this preamble.

Proposed § 30.13 would carry forward the current provision at § 30.9 addressing compliance reviews and would include several modifications to improve readability. In addition to improving the readability of the rule and ensuring uniformity in compliance reviews, proposed § 30.13 is intended to convey the Department’s strong commitment to supporting apprenticeship program sponsors’ compliance with OA’s EEO regulations through the compliance review process.

First, proposed § 30.13 would revise the title from “Compliance reviews” to “Equal employment opportunity compliance reviews,” clarifying that the reviews are to assess compliance with part 30 and not the companion regulations at part 29. Second, the term “Registration Agency” would be used throughout proposed § 30.13 instead of the term “Department,” because this section applies to both the Department and to SAAs when conducting an EEO compliance review. Third, proposed § 30.13 would provide more specificity for the procedures Registration Agencies must follow in conducting compliance reviews.

This increased specificity would provide for greater consistency and standardization of procedures across the National Registered Apprenticeship System. For

instance, proposed § 30.13(b) would require the Registration Agency to notify a sponsor of the Agency's findings through a written Notice of Compliance Review Findings within 45 business days of completing a compliance review. The Notice of Compliance Review Findings must include whether any deficiencies (i.e., failures to comply with the regulatory requirements) were found, how they are to be remedied, and the time frame within which the deficiencies must be corrected. The Notice of Compliance Review Findings also must notify a sponsor that sanctions may be imposed for failing to correct deficiencies. The current part 30 at § 30.9(d) simply states that the Department must notify the sponsor in writing of its results from a compliance review.

Finally, proposed § 30.13(c) addresses what is expected of sponsors who receive a Notice of Compliance Review Findings indicating a failure to comply with the part 30 regulations. Specifically, proposed § 30.13(c) requires that a sponsor implement a compliance action plan within 30 business days of receiving the Notice of Compliance Review Findings and notify the Registration Agency of that action. The compliance action plan must contain a specific written, action-oriented program that demonstrates a commitment to correct or remediate the identified deficiencies. The compliance action plan also must set forth the specific actions the sponsor plans to take, and must indicate the time period within which the corrections will be taken. Specifically, the compliance action plan would need to include information such as who is the responsible party for the action, what action will be taken, how the action would be implemented, and the time period within which the action would be implemented or completed. A sponsor that fails to implement its compliance action plan would be subject to enforcement action under proposed § 30.15.

### Complaints (§ 30.14)

The Department proposes to revise current § 30.14 entitled “Reinstatement of program registration” and to move that language to § 30.16, as discussed later in the preamble.

Section 30.11 of the current part 30 addresses the procedures for filing and processing complaints. The proposed rule would move individual complaint procedures to proposed § 30.14, and would include additional revisions to improve readability and clarify requirements of program sponsors and Registration Agencies for addressing complaints. For instance, proposed § 30.14 would incorporate subheadings so that an apprentice or applicant for apprenticeship who wishes to file a complaint of discrimination under this part with a Registration Agency may easily identify the required components. Specifically, proposed § 30.14(a)(1) through (3) describe who has standing to file a complaint, the time period for filing a complaint, and the required contents of the complaint.

Proposed § 30.14 would delete the provisions concerning private review bodies in the current part 30, at § 30.11(a) and (b). Through feedback from the SAAs, stakeholders at the town hall meetings, and the administration of the National Registered Apprenticeship System, the Department has found that apprenticeship program sponsors generally do not have or use private review bodies. Additionally, stakeholders expressed the opinions that such bodies could not objectively evaluate or prescribe remedies for complaints of discrimination. Thus, the proposed rule would eliminate the use of private review bodies.

Proposed § 30.14(b) requires sponsors to provide notice to all applicants for apprenticeship and apprentices of their right to file a discrimination complaint with the Registration Agency and the procedures for doing so. Proposed § 30.14(b) also specifies the required wording for this notice. A sponsor may combine this notice and its equal opportunity pledge in a single posting for the purposes of this proposed section and proposed § 30.3(b)(2)(ii).

Also, in an effort to ensure consistency in how Registration Agencies process complaints and conduct investigations, proposed § 30.14(c) would add uniform procedures that Registration Agencies must follow. These uniform procedures would ensure that: the Registration Agency acknowledges and thoroughly investigates complaints in a timely manner; parties are notified of the Registration Agency's findings; and the Registration Agency attempts to resolve complaints quickly through voluntary compliance.

Proposed § 30.14(c)(3) provides that a Registration Agency may, at any time, refer a complaint to an appropriate EEO enforcement agency. This provision would allow Registration Agencies to safeguard the welfare of apprentices by making use of existing Federal and State resources and authority. For example, a Registration Agency might refer a complaint to the EEOC if it finds a violation of title VII, the ADA, or the ADEA, but does not think it could achieve a complete remedy for the complainant through voluntary compliance procedures or enforcement action under proposed § 30.15. Additionally, ETA plans to develop a Memorandum of Understanding with the EEOC, which will describe the complaint processing and referral procedures between the two agencies in more detail. This coordination will further the purpose of Executive Order

12067, by helping to eliminate duplicative and/or conflicting investigations or compliance reviews. 43 FR 28967, June 30, 1978.

Proposed § 30.14(c)(4) would allow a SAA to adopt slightly different complaint procedures, but only if it submits the proposed procedures to OA and receives OA's approval. This provision would codify the Department's current practice and would be consistent with § 29.12(f) of this title.

#### Enforcement actions (§ 30.15)

The Department proposes to revise current § 30.15 entitled "State Apprenticeship Councils" and to move that language to § 30.18, as discussed later in the preamble.

Section 30.13 of the current part 30, entitled "Sanctions," states that when the Department has reasonable cause to believe that an apprenticeship program is not operating in accordance with part 30, and where the sponsor fails to voluntarily take corrective action, the Department will initiate deregistration proceedings or refer the matter to the EEOC or the United States Attorney General with a recommendation for initiation of a court action. The rest of the section describes the procedures for deregistration proceedings.

Proposed § 30.15 would make several revisions to the requirements that are outlined in the current § 30.13. First, proposed § 30.15 would be entitled "Enforcement actions" to demonstrate the Department's emphasis on enforcing regulations governing discrimination in the workplace. Second, as a housekeeping measure, the term "Department" would be replaced throughout proposed § 30.15 with the term

“Registration Agency” to clarify that both the Department (more specifically, OA) and SAAs have the authority to take enforcement action against a non-complying sponsor.

Third, proposed § 30.15(b) would introduce a new enforcement procedure in which a Registration Agency would suspend registration of new apprentices until the sponsor has achieved compliance with part 30 through the completion of a compliance action plan or until a final order is issued in formal deregistration proceedings. In the Department’s experience, many sponsors have found it beneficial to have cohorts or groups of apprentices enter and start their apprenticeship at different times so that at any given point, the sponsor may have first, second, third, and fourth year apprentices, rather than one cohort of apprentices scheduled to complete their apprenticeship at the same time. These sponsors have been more willing to remedy violations when they find that they will be unable to register new apprentices until they have demonstrated compliance with part 30, including the remedying of any discrimination. Expanding the range of enforcement actions to include this suspension option is also consistent with a recurring theme for stricter enforcement of EEO obligations raised by stakeholders in OA’s listening sessions and in consultations with stakeholders in Spring 2010, as discussed above in the overview of the NPRM. Suspension is intended as a temporary, remedial measure to spur return to compliance with the proposed part 30 regulations; it is not intended to be punitive. If a sponsor has not taken the necessary corrective action within 30 days of receiving notice of suspension, the Registration Agency will initiate deregistration proceedings as provided in part 29.

Fourth, proposed § 30.15(c) would adopt the deregistration procedures of §§ 29.8(b)(5) through (8) of this title, including the hearing procedures in § 29.10, for

consistency and simplicity. This revision would allow SAAs to follow a single set of procedures for all matters arising from management of the National Registered Apprenticeship System.

Finally, proposed § 30.15(d) would authorize Registration Agencies to refer a matter involving a potential violation of equal opportunity laws to appropriate Federal or State EEO agencies, whether the Registration Agency becomes aware of the potential violation through a complaint investigation, compliance review, or other means.

#### Reinstatement of program registration (§ 30.16)

Current § 30.16 entitled “Hearings” would be removed. As explained earlier in the preamble, the Department proposes to incorporate the part 29 procedures for hearings into part 30, so that a sponsor need only follow one set of procedures regardless of whether the issue at hand addresses the labor standards set forth in part 29 or the equal opportunity standards set forth in part 30. Current § 30.14 states that any apprenticeship program that has been deregistered pursuant to part 30 may be reinstated by the Secretary, upon presentation of adequate evidence that the program is operating in accordance with part 30. Proposed § 30.16 would be revised to align with part 29, which provides that requests for reinstatement must be filed with and decided by the Registration Agency.

These proposed revisions, which are consistent with §§ 29.8, 29.9, 29.10 and 29.13 of this title, implement Secretary’s Order 1-2002, 67 FR 64272, Oct. 17, 2002.<sup>44</sup>

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<sup>44</sup>Secretary’s Order 1-2002 delegated authority and assigned responsibility to the Administrative Review Board to act for the Secretary of Labor in review or appeal of decisions and recommended decisions by

Accordingly, the proposal provides that requests for reinstatement must be filed with and decided by the Registration Agency.

Intimidation and retaliation prohibited (§ 30.17)

The Department proposes to revise the title of the current § 30.17 from “Intimidatory or retaliatory acts” to “Intimidation and retaliation prohibited,” as well as to make other stylistic changes to improve the readability of the rule. In addition, proposed § 30.17 would expand the bases upon which a sponsor must not intimidate or retaliate in order to protect more fully the rights of apprentices.

The current § 30.17 states that a sponsor must not intimidate, threaten, coerce, or retaliate against any person for the purpose of interfering with any right or privilege secured by title VII or Executive Order 11246. Proposed § 30.17 revises this language by stating that sponsors would be prohibited from intimidating or retaliating against any individual because he or she has opposed a practice prohibited by this part or any other Federal or State equal opportunity law or participated in any manner in any investigation, compliance review, proceeding, or hearing under part 30 or any Federal or State equal opportunity law.

State apprenticeship agencies (§ 30.18)

The Department proposes to revise current § 30.18 entitled “Nondiscrimination,” which states that the commitments contained in a sponsor’s affirmative action programs must not be used to discriminate against an apprentice or applicant for apprenticeship on

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Administrative Law Judges as provided for or pursuant to National Apprenticeship Act, 29 U.S.C. 50; 29 CFR parts 29 and 30.

the basis of race, color, religion, national origin, and sex, and to incorporate those revisions into proposed § 30.4, as discussed earlier in the preamble.

Proposed § 30.18 revises current § 30.15, which requires State Apprenticeship Councils to adopt State plans. These proposed revisions are necessary to make proposed part 30 consistent with the part 29 procedures for recognition of SAAs.

Proposed § 30.18 differs significantly from the current § 30.15, because proposed § 30.18 does not include State Apprenticeship Councils as entities eligible for recognition. As provided in § 29.13 of this title, the Department will only recognize an SAA that complies with the specified requirements, granting that agency authority to register apprenticeship programs and apprentices for Federal purposes. Therefore, proposed § 30.18 would delete references to “State Apprenticeship Councils” as the entities required to submit a State EEO plan and the entities eligible for recognition, and replace it with the appropriate term, “State Apprenticeship Agency.”

Proposed § 30.18(a) sets forth requirements for a State EEO plan. The proposed rule would require, within one year of the effective date of the final rule, with no extensions permitted, that SAAs provide to OA a State EEO plan that includes the State apprenticeship law that corresponds to the requirements of this part and requires all apprenticeship programs registered with the State for Federal purposes to comply with the requirements of the State’s EEO Plan within 180 days from the date that OA provides written approval of the State EEO plan. The Department’s determination of compliance with this part is separate from submission of the State EEO plan. Therefore, proposed § 30.18(a) also specifies a collaborative, iterative process whereby SAAs seeking recognition can achieve conformity with this part. Proposed § 30.18(a) also would

provide clarity regarding requirements for demonstration of conformity, while maintaining flexibility to accommodate the unique circumstances of a particular SAA.

Proposed § 30.18(b) carries forward existing recordkeeping requirements at current § 30.8(d), using the term “State Apprenticeship Agency” instead of “State Apprenticeship Council.” Proposed § 30.18(c) also carries forward provisions in § 30.15(a)(4), which state that OA retains full authority to conduct EEO compliance reviews of apprenticeship programs, investigate complaints, deregister for Federal purposes an apprenticeship program registered with a recognized SAA, and refer any matter pertaining to these EEO compliance reviews or these complaints to the EEOC, the U.S. Attorney General, or the Department’s OFCCP. In addition, proposed § 30.18(c) clarifies that OA retains authority to conduct complaint investigations to determine whether any program sponsor registered for Federal purposes is operating in accordance with this part.

Proposed § 30.18(d) clarifies that SAAs will be subject to the derecognition procedures established in § 29.14 of this title, for failure to comply with the requirements of this part.

#### Exemptions (§ 30.19)

Section 30.19 of the current rule addresses exemptions. Under current § 30.19, a sponsor may submit a written request to the Secretary for an exemption from part 30, or any part thereof, and such a request may be granted by the Secretary for good cause. State Apprenticeship Councils are required to notify the Department of any such

exemptions granted that affect a substantial number of employers and the reasons therefore.

The Department proposes minor revisions to this section. First, proposed § 30.19 requires that requests for exemption be submitted to the Administrator, rather than the Secretary, to reflect a shift in Departmental decision-making. Second, proposed § 30.19 requires that SAAs, not State Apprenticeship Councils, request and receive approval from the Administrator to grant an exemption from these regulations. As discussed above, State Apprenticeship Councils are not eligible for recognition under § 29.13 of this title. This proposed regulatory requirement is to ensure consistency with respect to when exemptions may be granted.

#### Effective date (§ 30.20)

Proposed § 30.20 is a new section. It provides the dates by which all apprenticeship programs registered with a Registration Agency must comply with this part. Proposed § 30.20(a) would require all apprenticeship program sponsors to amend its Standards of Apprenticeship to include the equal opportunity pledge prescribed by § 30.3(c), and to comply with the non-discrimination requirements prescribed by § 30.3(a).

Proposed § 30.20(b) and 30.20(c) set forth the deadlines by which sponsors must comply with their affirmative action program related obligations. Section 30.20(b) addresses deadlines for sponsors and potential sponsors in states with State Apprenticeship Agencies, and paragraph (c) addresses deadlines in states without SAAs, in which sponsors register directly with OA. The deadlines for each are slightly different because upon publication of the final regulation, SAAs must amend their EEO plans and

OA must approve that amendment. The deadlines for each must also take into account whether a program is new or existing as of the time the final regulation would go into effect.

As such, proposed § 30.20(b) addressing SAA states provides that sponsors with programs that are existing as of the effective date must adopt an AAP that complies with these regulations, and submit it to the SAA for approval, within 180 days after OA approves of the state's EEO plan revised in light of these regulations. While we cannot say for sure how long the state EEO plan revision and approval process will take, it will likely take at least several months, and perhaps a year or longer. For programs registered with an SAA after the effective date, the deadline will be the same up until the point that the state has approved the State's EEO plan. If a program is registered after the State's EEO plan has been approved, that program will have one year from registration to adopt a compliant AAP and submit it for approval. The intent is that this will provide ample time for all sponsors to understand and comply with their AAP obligations. As stated previously in this preamble, the Registration Agencies will provide technical assistance during this time to any sponsor seeking advice or clarification on the creation, drafting, and submission of its written plan.

The deadlines in § 30.20(c) are somewhat simpler given that sponsors registering directly with OA do not have to wait for a revised state EEO plan from an SAA. Accordingly, § 30.20(c) provides that, for programs existing as of the effective date of the final rule, they have one year from that effective date to adopt a compliant AAP. For programs that are registered after the effective date of the final rule, they have one year from registration to adopt and comply with the AAP obligations. Again, this should

provide ample time for new and existing sponsors to understand the new obligations and receive any technical assistance from OA they might need to aid in the creation and submission of the written plan.

Finally, to repeat a point made in the discussion of § 30.4, the submission of the written plan to the Registration Agency is not an annual obligation; after the first plan under these proposed regulations, sponsors need only submit their current written plan to OA upon request. Thus, while sponsors will generally need to maintain and update their written AAPs annually for internal purposes (or potentially every two years, if the conditions in § 30.4(e), discussed below, are met), reviews will be less frequent.

#### Proposed Amendments to part 29 regulations, Labor Standards for Registration of Apprenticeship Programs

The part 29 regulations governing Labor Standards for Registration of Apprenticeship Programs include references to sections in part 30 that are changed through this proposed rule. This NPRM would make these technical, non-substantive changes for consistency and conformity with the proposed changes to part 30.

Section 29.5(b)(21), “Standards of Apprenticeship,” would incorporate three revisions. First, the reference to an equal opportunity pledge required by part 30 would be revised by deleting the reference to § 30.3(b) and replacing it with an updated reference to § 30.3(c). Second, the reference to the part 30 section on selection of apprentices would be revised by deleting the reference to § 30.5, where this reference sits in current part 30, and replacing it with a reference to § 30.10, where this reference now would sit under this NPRM. Third, the reference to requirements in § 30.4 would use the

updated term “affirmative action program” in place of current term “affirmative action plan.”

This NPRM would institute procedures to deregister programs in accordance with the deregistration proceedings of § 29.8(b)(5) through (8), and would delete separate proceedings for deregistration proceedings for violations of part 30. Therefore, the final sentence in § 29.8(b)(1)(i), which refers to processing of deregistration proceedings for violations of equal opportunity requirements in accordance with 29 CFR part 30, would be deleted.

This NPRM also would require procedures for deregistration of SAAs established in part 29 regulations, rather than maintaining separate procedures under the part 30. The reference to part 30 would be deleted from § 29.14(a).

Additionally, this NPRM proposes three substantive changes to § 29.7, which sets the requirements for apprenticeship agreements. An apprenticeship agreement, as defined in § 29.2, is the written agreement between an apprentice and either the apprentice’s program sponsor or committee acting as agent for the program sponsor(s), which contains the terms and conditions of the employment and training of the apprentice. Consistent with nondiscrimination based on age (40 or older), genetic information, sexual orientation, or disability proposed in § 30.3(a), the proposed changes to § 29.7(j) would add age (40 or older), genetic information, sexual orientation, and disability to the list of protected bases for which the apprentice will be accorded equal opportunity in all phases of the apprenticeship employment and training without discrimination. Proposed additions to § 29.7 also update the apprenticeship agreement to accommodate recordkeeping requirements in proposed § 30.12(b), in which the sponsor

must be able to identify the race, ethnicity, and when known, disability status, of each apprentice. Proposed § 29.7(1) would add space on the agreement in which an apprentice would voluntarily provide information about his or her race, sex, ethnicity, and disability status.

### **III. Regulatory Procedures**

#### Executive Order 12866

Under Executive Order 12866, the Office of Information and Regulatory Affairs must determine whether this regulatory action is “significant” and, therefore, subject to the requirements of the Executive Order and subject to review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a “significant regulatory action” as an action likely to result in a rule that may: (1) Have an annual effect on the economy of \$100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or Tribal governments, or communities in a material way (also referred to as an “economically significant” rule); (2) create serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The Department has determined that this NPRM is not an economically significant regulatory action under paragraph 3(f)(1) of Executive Order 12866. This

rulemaking would not adversely affect the economy or any sector thereof, productivity, competition, jobs, the environment, or public health or safety in a material way. In fact, this NPRM is being proposed to increase the effectiveness and efficiency of EEO compliance within apprenticeship programs and to reduce the burden imposed on sponsors in several respects. The Department, however, has determined that this NPRM is a significant regulatory action under paragraph 3(f)(4) of the Executive Order and, accordingly, OMB has reviewed this NPRM.

#### 1. Need for Regulation

As explained in the preamble, the Department is proposing to update the equal opportunity regulations that implement the National Apprenticeship Act of 1937. These regulations set forth at part 30 prohibit discrimination in apprenticeship on the basis of race, color, religion, national origin, and sex, and require that sponsors take affirmative action to provide equal opportunity in such programs. This NPRM proposes to update the part 30 regulations by including age (40 or older), genetic information, sexual orientation, and disability among the list of protected bases upon which a sponsor must not discriminate, and by detailing mandatory actions a sponsor must take to satisfy its affirmative action obligations.

In part, the Department is proposing this update so that the part 30 regulations align with 2008 revisions made to the Department's other set of regulations governing the National Registered Apprenticeship System at part 29. In addition, the part 30 regulations have not been amended since 1978 and EEO law has evolved since that time. The changes proposed in this NPRM are to ensure that the National Registered

Apprenticeship System is consistent and in alignment with EEO laws as they have developed over the past 30 years, as discussed in Section I of the NPRM, and to ensure that apprentices and applicants for apprenticeship receive equal opportunity in apprenticeship programs.

The Department is concerned that women, Blacks or African Americans, Hispanics or Latinos, other racial minorities, individuals with disabilities, and older workers (40 or older) continue to face substantial barriers to equal opportunity in apprenticeship. Accordingly, a principal goal for this NPRM is to strengthen the EEO for the National Registered Apprenticeship System, and improve the effectiveness of an apprenticeship program sponsor's required affirmative action efforts, as well as improve sponsors' compliance with part 30. To achieve this goal, the Department has proposed the following changes to part 30:

(1) Updating the equal opportunity standards to include age (40 or older), genetic information, sexual orientation, and disability to the list of protected bases upon which sponsors of registered apprenticeship programs must not discriminate;

(2) Requiring all sponsors, regardless of size, to take certain affirmative steps to provide equal opportunity in apprenticeship;

(3) Streamlining the utilization analysis required of sponsors with five or more apprentices to determine whether any barriers to apprenticeship exist for individuals based on race, sex, or ethnicity, and clarifying when and how utilization goals are to be established;

(5) Requiring targeted outreach, recruitment, and retention activities when underutilization of a protected group or groups have been found and a utilization goal

established per § 30.6 and/or where a sponsor has determined pursuant to § 30.7(f) that problem areas exist with respect to its outreach, recruitment, and retention activities for individuals with disabilities;

(6) Simplifying procedures for selecting apprentices;

(7) Standardizing procedures Registration Agencies<sup>45</sup> must follow for conducting compliance reviews;

(8) Clarifying requirements of program sponsors and Registration Agencies for addressing complaints;

(9) Adopting 29 CFR part 29 procedures for deregistration of SAAs, derecognition of apprenticeship programs, and hearings; and

(10) Requiring an invitation to self-identify as an individual with a disability.

These provisions are proposed to ensure that all individuals, including women, minorities, and individuals with disabilities, are afforded equal opportunity in registered apprenticeship programs. Moreover, the addition of age (40 or older), genetic information, sexual orientation, and disability to the list of those bases upon which a sponsor must not discriminate ensures that the National Registered Apprenticeship System's regulatory framework affords the same protections to individuals with disabilities and those 40 or older as it does for other protected groups, and the addition of these protected bases, including genetic information and sexual orientation, will bring the National Registered Apprenticeship System into alignment with the protected bases identified in the various Federal laws applicable to most apprenticeship sponsors. The

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<sup>45</sup>As explained in Section I of the NPRM, part 29 prescribes procedures concerning the recognition of State Apprenticeship Agencies as Registration Agencies that can then register, cancel, and deregister apprenticeship programs within that State with the same authority as the Department and in accordance with the policies and procedures in part 29.

Department's interest in updating part 30 to improve the effectiveness of sponsors' affirmative action efforts, as well as Registration Agencies' efforts to enforce and support compliance with this rule, lies in assuring that the Department's approval of a sponsor's apprenticeship program does not serve to support, endorse, or perpetuate private discrimination.

## 2. Economic Analysis

The Department derives benefit and cost estimates by comparing the baseline (the program benefits and costs under the 1978 Final Rule<sup>46</sup>) with the benefits and costs of implementing the provisions proposed in this NPRM. Only the additional benefits and costs that would be incurred due to the changes in this proposed regulation are included in the analysis. The Department requests comments on this analysis, including potential sources of data or information on the costs and benefits of the provisions in this proposed rule.

The Department sought to quantify and monetize the benefits and costs of this NPRM where feasible. Where we were unable to quantify benefits and costs—for example, due to data limitations—we describe them qualitatively. The analysis covers a 10-year period (2015 through 2024) to ensure it captures major benefits and costs that accrue over time. In this analysis, we have sought to present benefits and costs both undiscounted and discounted at 7 and 3 percent, respectively, following OMB guidelines.<sup>47</sup>

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<sup>46</sup>43 FR 20760, May 12, 1978 (requiring the inclusion of female apprentices in AAPs).

<sup>47</sup>OMB Circular No. A-4, "Regulatory Analysis," M-03-21 (Sept. 2003).

The 10-year monetized costs of this NPRM range from \$109.61 million to \$134.98 million (with 7 and 3 percent discounting, respectively). The 10-year monetized benefits of this NPRM range from \$4.21 million to \$5.28 million (with 7 and 3 percent discounting, respectively). The annual average costs of this NPRM range from \$10.96 million to \$13.49 million (with 7 and 3 percent discounting, respectively). The annual average benefits of this NPRM range from \$0.42 million to 0.53 million (with 7 and 3 percent discounting, respectively)

In addition, we expect this NPRM to result in several overarching benefits to apprenticeship programs as well as some specific benefits resulting from a clearer, more systematic rule. As discussed below, equal opportunity policies may lead to both efficiency gains and distributional impacts to society. The proposed rule may reduce barriers to entry in apprenticeship programs for women, minorities, and persons with disabilities, fostering a distributional effect, and may alleviate the inefficiencies in the job market these barriers potentially create.

In the remaining sections, we first present the overall benefits of the proposed rule, followed by a subject-by-subject analysis of the benefits and costs. We then present a summary of the costs and benefits of this NPRM, including total costs over the 10-year analysis period. Finally, we conclude with a benefit-cost analysis of five alternatives (including the proposed rule).

a. Potential overall benefits and distributional effects of the proposed rule

This subsection presents the potential economic benefits and distributional effects of policy interventions related to equal opportunity employment. Claims about these impacts are derived from an extensive body of empirical labor market research published

over the last two decades in peer-reviewed publications. We assume that similar effects would be attributable to this rule's combination of proposed provisions, not necessarily to a single provision. Some additional benefits associated with specific provisions of the rule are presented in the next section.

This NPRM proposes to clarify and improve the regulations on equal opportunity employment from the 1978 Final Rule by encouraging better recruiting and hiring practices. These enhanced affirmative action policies may lead to both efficiency effects and distributional effects. OMB Circular A-4 directs the consideration of both the efficiency and distributional effects of regulations.<sup>48</sup>

Job market efficiencies and other efficiency gains from affirmative action policies have been found to result from improvements of human resource functions. Human resource functions become more formal and more systematic, while incorporating impartial screening practices.<sup>49</sup> Firms subject to these types of policies tend to provide training and contribute to a more qualified workforce.<sup>50</sup> A policy that utilizes an outreach program resulting in more recruits raises the competition for job openings and thus increases efficiency by employing the highest qualified individuals. A study by Schotter and Weigelt (1992) showed that equal opportunity policies increase the efforts of all workers, not just the underutilized workers.<sup>51</sup> The proposed rule may reduce barriers to entry in apprenticeship programs for women, minorities, and persons with disabilities, and may alleviate the inefficiencies in the job market that these barriers potentially create.

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<sup>48</sup> OMB Circular No. A-4, p. 14.

<sup>49</sup>Holzer, H. and Neumark, D., "Assessing Affirmative Action," Journal of Economic Literature, Vol. XXXVII (2000).

<sup>50</sup>Id.

<sup>51</sup>Schotter, A., and Weigelt, K., "Asymmetric Tournaments, Equal Opportunity Laws and Affirmative Action: Some Experimental Results," The Quarterly Journal of Economics, (May 1992).

Without more specific affirmative action policies, women and minorities may have fewer job opportunities or invest in less education and training.<sup>52</sup> If underrepresented groups believe that certain jobs are unattainable, they may have little incentive to invest in training. Personal education and training investments not only help the individual but may have positive externalities in the long run because they can be mentors for future apprentices from underrepresented groups.<sup>53</sup> When more individuals invest in training and education in the short run, productivity and efficiency are likely to increase in labor markets over the long run.

In addition to its effect on efficiency, the proposed rule would result in a distributional effect. The direct beneficiaries of this proposed rule would be underrepresented workers: women, minorities, and persons with disabilities. According to Holzer and Neumark (2000), “affirmative action policies offer significant redistribution towards women and minorities, with relatively small efficiency consequences.”<sup>54</sup>

Although true for all low income populations, evidence indicates that women are more likely to be classified as working poor and that Blacks or African Americans and Hispanics or Latinos are more than twice as likely as their Caucasian counterparts to be among the working poor.<sup>55</sup> In addition, persons with disabilities are almost three times

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<sup>52</sup> Holzer, H. and Neumark, D., “Assessing Affirmative Action,” Journal of Economic Literature, Vol. XXXVII (2000).

<sup>53</sup> Dabke, S.; Salem, O.; Genaidy, A., et al. “Job Satisfaction of Women in Construction Trades,” Journal of Construction Engineering and Management, (March 2008).

<sup>54</sup> Holzer, H. and Neumark, D., “Assessing Affirmative Action,” Journal of Economic Literature, Vol. XXXVII (2000).

<sup>55</sup> See “A Profile of the Working Poor, 2008” Report 1022, published by BLS annually, for a breakdown of the working poor.

more likely to live in poverty than other groups.<sup>56</sup> Construction, the largest represented industry sector in the National Registered Apprenticeship System, offers a higher median wage than traditionally female-dominated jobs and other jobs that do not require a college education for advancement, thus providing opportunity to move out of poverty or working poor status.<sup>57</sup>

To estimate the number of people with disabilities who will be affected by this proposed rule, we first obtained estimates of the prevalence of disabilities among workers in different industries. This tabulation gives the industry hiring rates for people with disabilities. Next, we assume that in a given industry, the apprenticeship programs enroll people with disabilities at the same rate as the industry hiring rate. Exhibit 1 shows these rates for 18-64 working age populations between 2008 and 2012. We see, for example that in Construction, 5.4 percent of all workers have a disability. Assuming that employers enroll new apprentices with disabilities at the same rate as they fire people with disabilities, this implies that the current prevalence of Construction apprentices with disabilities is also 5.4 percent. The utilization goal for individuals with disabilities set forth in the proposed rule is 7 percent of enrollees, so this means that 1.6 percent of enrollees (7 percent goal minus the 5.4 percent currently enrolled) would be enrolled who otherwise would not be. Since the number of new apprentices in 10 year span in Construction is projected by ETA to be x 660,718, this means that the proposed rule

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<sup>56</sup>World Institute on Disability, <http://www.wid.org/about-wid>.

<sup>57</sup>Median weekly earnings in construction are \$611. For some women-dominated occupations, such as receptionists, hairdressers, and child care workers, the median weekly earnings are significantly lower: \$480, \$409, and \$360, respectively. Source: U.S. Census Bureau, 2006 American Community Survey.

requiring a 7% enrollment rate will result in  $(.07-.054) \times 660,718=10,373$  more people with disabilities as new apprentices.<sup>58</sup>

This calculation, when repeated over all industries, gives a total estimate of an additional 22,080 individuals with disabilities who will be enrolled out of the total of 1,293,772 new apprentices projected over the next 10 years (2015- 2024).

**Exhibit 1** Potential Impact Estimates

<b>Industry</b>	<b>Industry Hiring Rate</b>	<b>Projected new Apprentices</b>	<b>Target (7%-current)</b>	<b>Projected new Apprentices with disabilities</b>
Administrative-Support	5.5%	5,708	1.5%	86
Agriculture	6.2%	1,813	0.8%	14
Construction	5.4%	660,718	1.6%	10,373
Education	4.3%	154,521	2.7%	4,172
Oil, Gas, Mineral Extraction	5.7%	636	1.3%	8
Finance	3.9%	521	3.1%	16
Information	4.8%	2,430	2.2%	53
Medical Services	5.1%	21,045	1.9%	398
Manufacturing	5.3%	146,950	1.7%	2,439
Professional	4.8%	2,617	2.2%	58
Retail	5.9%	11,339	1.2%	130
Personal Service & Care	8.7%	1,890	-1.7%	-33
Service	6.0%	7,135	1.0%	73
Transportation	6.2%	152,924	0.8%	1,223
Utilities	4.5%	114,982	2.5%	2,886
Wholesale	4.9%	8,543	2.1%	180
<b>Total</b>		<b>1,293,772</b>		<b>22,080</b>

*Source: OASP Tabulations, November 2014, ACS 2008-2012*

<sup>58</sup> We note here that ETA projections use growth rates between 5 percent and 20% for all industries. This is an estimated growth rate that would be required to meet or exceed the goal of doubling the number of apprentices. We believe this is highly unrealistic, because BLS employment projection 10-year average growth rates are between -1.1 percent and 2.6 percent. In many industries, notably Public Service, Agriculture, Forestry, Fishing, Hunting, Advanced manufacturing, Information and telecommunications, the growth rates are negative, meaning these industries are losing workers. When the 10-year average growth rate is used, the projected number of new apprentices becomes considerably smaller.

As noted above, the Department seeks specific comments on all aspects of the economic analysis presented here. In particular, the Department encourages the public to provide possible sources of data on the efficiency and distributional effects of the proposed rule, including the monetary gains from employing and retaining underrepresented groups, and the extent to which human resource and labor market functions are impacted by affirmative action policies.

### 3. Subject-by-Subject Analysis

The Department's analysis below considers the expected benefits (beyond those discussed above) and costs of the proposed changes to part 30. The analysis below considers the impacts of each proposed change to part 30 separately.

#### a. Familiarization with the rule

To estimate the cost of rule familiarization, we multiplied the number of apprenticeship sponsors by the amount of time required to read the new rule (ranging from 2 to 6 hours, depending on how familiar the program sponsor is with the current part 30 requirements) and by the average hourly compensation of a private-sector human resources manager (\$68.55).<sup>59</sup> In the first year of the rule, the cost to sponsors amounts to approximately \$6.3 million in labor costs, for an average annual cost of \$1.34 million over the 10-year analysis period.<sup>60</sup>

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<sup>59</sup>We calculated the hourly compensation rate for a human resource manager by multiplying the median hourly wage of \$47.94 (as published by the Department's OES survey, O\*NET Online) by 1.43 to account for private-sector employee benefits (source: BLS). The hourly compensation rate for a human resource manager is thus \$68.55 ( $\$47.94 \times 1.43$ ).

<sup>60</sup>To calculate the labor burden, we multiplied the time to complete the task by the hourly compensation rate for sponsors ( $\$68.55 \times 4 = \$274.2$ ). The total cost for sponsors in 2015 is the labor cost multiplied by the total number of sponsors (23,014), or \$6.3 million ( $\$274.2 \times 23,014$ ). This burden occurs in the first year of the analysis period for existing sponsors, and every year thereafter only for new sponsors.

- b. Addition of age (40 or older), genetic information, sexual orientation, and disability to the list of protected bases

This NPRM would update the EEO standards to include age (40 or older), genetic information, sexual orientation, and disability to the list of protected bases upon which sponsors of registered apprenticeship programs must not discriminate (proposed § 30.3(a)). As explained in the preamble above, the addition of these bases to the types of discrimination prohibited by part 30 should not result in significant additional burden to sponsors as many of the National Registered Apprenticeship System's sponsors must already comply with Federal, State, and local laws and regulations prohibiting or otherwise discouraging discrimination against applicants and employees based on age (40 or older), genetic information, sexual orientation, and disability. Even among those sponsors not covered by such laws, many have internal EEO policies that prohibit discrimination on these bases. Therefore, the Department does not expect that the addition of age (40 or older), genetic information, sexual orientation, and disability to the list of protected bases in proposed §§ 30.1(a) and 30.3(a) would result in significant burdens to sponsors. The Department requests data or information on the percentage and type of sponsors, if any, who are not currently required to comply with the ADEA, GINA, Executive Order 11246 as amended by Executive Order 13672, the Americans with Disabilities Act, section 503 of the Rehabilitation Act, or any other law prohibiting discrimination against individuals on the basis of age (40 or older), genetic information, sexual orientation, or disability.

- c. Specific affirmative steps to provide equal opportunity

The proposed rule would require all sponsors, regardless of size, to take certain affirmative steps to provide equal opportunity in apprenticeship. Proposed § 30.3(b) would, for the first time, obligate sponsors to take the following basic steps to ensure EEO in apprenticeship.

First, sponsors would be required to designate an individual to be responsible and accountable for overseeing the sponsor's commitment to EEO (proposed § 30.3(b)(1)). The Department expects the burden of this requirement on sponsors to be minimal. Our understanding is that most, if not all, sponsors have an apprenticeship coordinator who is in charge of the apprenticeship program. The Department anticipates that this proposed requirement would be fulfilled by individuals currently providing coordination and administrative oversight functions for the program sponsor. We expect that the designation will be a relatively minor administrative matter, but one that will result in institutionalizing a sponsor's commitment to equal opportunity.

Second, the proposed rule would require for the first time that sponsors post their equal opportunity pledge on bulletin boards, including through electronic media, such that it is accessible to all apprentices and applicants to apprenticeship programs (proposed § 30.3(b)(2)). The cost of this proposed requirement is expected to be minimal. The Department assumes that it would take a sponsor 5 minutes (0.08 hours) to post the pledge and that this task would be performed by an administrative assistant at an hourly compensation rate of \$22.28.<sup>61</sup> We multiplied the time estimate for this provision by the hourly compensation rate to obtain a total labor cost per sponsor of \$1.84 ( $\$22.28 \times 0.08$ ).

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<sup>61</sup>We calculated the hourly compensation rate for an administrative assistant by multiplying the median hourly wage of \$15.58 (as published by the Department's OES survey, O\*NET Online) by 1.43 to account for private-sector employee benefits (source: BLS). Thus, the hourly compensation rate for an administrative assistant is \$22.28 ( $\$15.58 \times 1.43$ ).

However, updating the EO pledge to include age (40 or older), genetic information, sexual orientation, and disability will not create any new burden because it is already covered by the existing requirements.

To estimate the materials cost, the Department assumed that the pledge is one page, and that the cost per page for photocopying is \$0.15, resulting in a materials cost of \$0.15 ( $\$0.15 \times 1$ ) per sponsor. Summing the labor and materials costs and multiplying this sum by the total number of sponsors in the first year results in a cost of \$46,009 for this provision for the first year and an average annual cost of \$73,939 over the 10-year analysis period.<sup>62</sup> The posting of the equal opportunity pledge is a one-time cost; costs after the initial year only occur for new sponsors.

Proposed § 30.3(b)(2) also requires each sponsor to conduct orientation and periodic information sessions for apprentices and journeyworkers who directly supervise apprentices, and other individuals connected with the administration or operation of the sponsor's apprenticeship program to inform and remind such individuals of the sponsor's equal employment opportunity policy with regard to apprenticeship. The orientation and information sessions required by proposed § 30.3(b)(2)(iii) underscore the sponsor's commitment to equal opportunity and its affirmation action obligations. These sessions would also institutionalize a sponsor's EEO policies and practices, providing a mechanism by which the sponsor may inform everyone connected with the apprenticeship program of the sponsor's obligations under part 30, and ensure that all

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<sup>62</sup>We estimated the 2015 labor cost by multiplying the estimated time to complete the task by the hourly compensation rate of an administrative assistant and by the total number of sponsors in 2015 to obtain a total labor cost of \$42,557 ( $0.08 \times \$22.28 \times 23,014$ ). We then estimated the materials cost by multiplying the per-sponsor materials cost by the total number of sponsors in 2015 to obtain a total materials cost of \$3,452 ( $\$0.15 \times 23,014$ ). We summed the two costs to obtain a total cost in 2015 of \$46,009 ( $\$42,557 + \$3,452$ ) for this provision. We repeated this calculation for each year of the analysis period, using the projected number of new sponsors.

individuals involved in the program understand these obligations and the policies instituted to implement them.

The Department first estimated that some of the 23,014 sponsors in the first year (2015) will hold one 30-minute regular orientation and periodic information session with on average 5 apprentices (\$18.59)<sup>63</sup> and 5 journeyworkers (\$36.47).<sup>64</sup> The Department estimated that a human resource manager (\$68.55) would need to spend 4 hours to develop and prepare written materials for the session in the first year (\$1.58 million = 23,014 sponsors × 4 hours × \$68.55 × 25 percent). The Department also estimated that approximately 25 percent of the 23,014 sponsors would need to incur additional costs to comply with this provision. Most sponsors have already implemented this provision and would not incur any additional cost. This calculation results in a total cost for this provision of approximately \$2.57 million in the first year (2015). The average annual cost over the 10-year analysis period is \$1.44 million.

Third, under the current § 30.4(c) sponsors with 5 or more apprentices are required to engage in appropriate outreach and recruitment activities to organizations that serve women and minorities, and the regulations list the types of appropriate activities a sponsor is expected to undertake. The exact mix of activities depends on the size and type of the program and its resources, however each sponsor is “required to undertake a

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<sup>63</sup> We calculated the hourly compensation rate for an apprentice by multiplying the median hourly wage \$13 (as published by PayScale for apprentice electrician) by 1.43 to account for private-sector employee benefits (source: OES survey). Thus, the hourly compensation rate for an apprentice is \$18.59 (\$13 x 1.43).

<sup>64</sup> We calculated the hourly compensation rate for a journeyworker by multiplying the median hourly wage \$25.50 (for a journeyworker electrician) by 1.43 to account for private-sector employee benefits (source: OES survey). Thus, the hourly compensation rate for a journeyworker electrician is \$36.47 (\$25.50 x 1.43).

significant number of appropriate activities” under the current § 30.4. Under the proposed rule, all sponsors would be required to reach out to a variety of recruitment sources, including organizations that serve individuals with disabilities, to ensure universal recruitment (proposed § 30.3(b)(3)). Including individuals with disabilities among the groups of individuals to be recruited would be a new focus for sponsors. Sponsors would be required to develop a list of recruitment sources that would generate referrals from all demographic groups, including women, minorities, and individuals with disabilities, with contact information for each source. Further, sponsors would be required to notify these sources in advance of any apprenticeship opportunities; while a firm deadline is not proposed, the proposal prefers 30 days notice if possible under the circumstances. This may incur costs to employers due to the additional days of delay in the hiring process resulting from this rule. However, the Department does not have enough information to allow for an estimate of this potential cost.

The kinds of activities we anticipate the sponsor engaging in to satisfy this requirement would include, at a minimum, fostering a relationship with organizations that serve individuals with disabilities, distributing announcements and flyers detailing the job prospects, and may include visiting sites that would likely provide access to individuals with disabilities, and holding seminars. The Department assumed that the cost to sponsors to distribute information to persons with disabilities will be the labor cost of complying with this provision. We also assumed that the labor for this provision will be performed by a human resource manager and an administrative assistant with hourly compensation rates of \$68.55 and \$22.28, respectively. We assumed that this task will take 30 minutes (0.5 hours) of a human resource manager’s time and 30 minutes (0.5 hours) of an

administrative assistant's time per targeted location. A sensitivity analysis for a range of time spent conducting outreach to organizations that serve individuals with disabilities was conducted and is presented below. This outreach is expected to include seminars at job sites, webinars, and other forms of outreach. We calculated the cost of this provision per affected sponsor by multiplying the time each staff member devotes to this task by their associated hourly compensation rates. We then multiplied the total labor cost by the number of locations (five) and by the total number of sponsors.<sup>65</sup> The resulting cost for this proposed provision is \$5.2 million in the first year, with an average annual cost of \$8.4 million over the 10-year analysis period.

Because the universal outreach may involve several different types of activities, the Department included a sensitivity analysis on the total time allocated to universal outreach. Mirroring the calculation above, the Department estimated a low allocation of time (15 minutes, or 0.25 hours) and a high allocation of time (1 hour and 15 minutes, or 1.25 hours) for both the administrative assistant and the human resource manager. The resulting range of costs for the first year is \$2.6 million to \$13.0 million with an average annual cost ranging from \$4.2 to \$21 million.<sup>66</sup> The Department requests data from the

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<sup>65</sup>To estimate the cost of this provision, we calculated the labor cost per affected sponsor by multiplying the time required for the task by the hourly compensation rate for both a human resource manager ( $\$68.55 \times .5 = \$34.27$ ) and an administrative assistant ( $\$22.28 \times .5 = \$11.14$ ). We then multiplied the total per-sponsor labor cost by the total number of sponsors in 2015 (23,014) and by the five sites for which each sponsor is to provide outreach. This results in a total cost of \$5.2 million ( $(\$34.27 + \$11.14) \times 23,014 \times 5$ ) in 2015. We repeated this calculation for each year of the analysis period, using the projected number of sponsors for each year.

<sup>66</sup>To estimate the range of costs for this provision, we calculated the labor cost per affected sponsor by multiplying the time required for the task by the hourly compensation rate for both a human resource manager ( $\$68.55 \times .25 = \$17.14$  for the low cost and  $\$68.55 \times 1.25 = \$85.69$  for the high cost) and an administrative assistant ( $\$22.28 \times .25 = \$5.57$  for the low cost and  $\$22.28 \times 1.25 = \$27.85$  for the high cost). We then multiplied the total per-sponsor labor cost by the total number of sponsors in 2015 (23,014) and by the five sites for which each sponsor is to provide outreach. This results in a total cost of \$2.6 million for the low time assumption ( $(\$17.14 + \$5.57) \times 23,014 \times 5$ ) and \$13.0 million for the high time assumption ( $(\$85.69 + \$27.85) \times 23,014 \times 5$ ) in 2015. The Department used the growth rate of apprenticeship

public on how the addition of universal outreach to organizations that serve individuals with disabilities is expected to impact sponsors.

Fourth, the proposed rule would require that all sponsors develop and implement procedures to ensure that its apprentices are not harassed because of their race, color, religion, national origin, sex, sexual orientation, age (40 or older), genetic information, or disability and to ensure that the workplace is free from harassment, intimidation, and retaliation (proposed § 30.3(b)(4)(iv)). As explained in the preamble above, this proposed requirement should not result in any new burdens on sponsors who are already subject to Federal laws that prohibit harassment in the workplace. Because title VII, Executive Order 11246 as amended by Executive Order 13672, the ADEA, GINA, and the ADA prohibit these actions, and most sponsors are already subject to these laws, many sponsors are already undertaking these actions.

### Benefits

By hiring more workers from underrepresented groups, firms naturally create mentors and expand networking opportunities for these groups.<sup>67</sup> Mentors are essential not only for recruiting purposes but also as a retention strategy since they provide a support mechanism for new hires.<sup>68</sup> Retention is a direct benefit to sponsors since they will not lose their initial investment in recruiting and training the apprentice. Education and training investments help individuals from underrepresented groups and have positive overall effects, since they improve job performance. Improved job performance

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programs ranging from 5% to 20% by industry to achieve a goal of doubling the number of sponsors in 5 years.

<sup>67</sup> Blau and Winkler (2005), "Does Affirmative Action Work?", Countering Stereotypes by Changing the Rules, Regional Review Q1.

<sup>68</sup> Dabke, S; Salem, O; Genaidy, A, et al. (2008). "Job Satisfaction of Women in Construction Trades," *Journal of Construction Engineering and Management*, March 2008.

and retention due to investments in training and education yields better productivity and efficiencies in labor markets.

d. Revised methodology for utilization analysis and goal setting

The proposed rule would streamline the utilization analysis required of sponsors with five or more apprentices and clarify when and how utilization goals are to be established (proposed §§ 30.5 through 30.7). Specifically, the proposed rule would require sponsors to consider just two factors when determining the availability of individuals for apprenticeships rather than the five currently listed in the part 30 regulations. In addition, the proposed rule explains in clear terms the steps required to determine whether any particular groups of individuals are being underutilized and would provide direction as to when and how goals are to be established.

Benefits

The proposed methodology for utilization analysis and goal setting represents a benefit to sponsors because it would reduce the time a sponsor would need to complete it. To estimate the benefits of the proposed methodology as compared to the current methodology, the Department conducted an informal simulation to determine the difference in time to complete the analysis and goal setting by each methodology.<sup>69</sup> According to the simulation, the baseline methodology takes about two hours to complete while the proposed methodology takes one hour to complete. Thus, there is one hour of

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<sup>69</sup>An employee who had no prior experience gathering demographic data completed this simulation to accurately estimate the time that would be spent on this task by a sponsor who is not familiar with retrieving the required data.

time savings associated with the proposed methodology for utilization analysis and goal setting.

To monetize the benefits of this time savings, we multiplied this one hour of time savings by the hourly compensation rate of a human resource manager (\$68.55) and by the number of active sponsors who employ five or more apprentices (23,014 x 25 percent = 5,754). This calculation results in a benefit to sponsors of \$0.39 million in the first year due to the time savings from the proposed methodology and an average annual benefit of \$0.58 million over the 10-year analysis period.<sup>70</sup>

e. Requiring targeted outreach, recruitment, and retention for underutilized groups

In addition to the normal outreach, recruitment, and retention activities required of all sponsors under proposed § 30.3(b), this NPRM would require a sponsor of an apprenticeship program, whose utilization analyses revealed underutilization of a particular group or groups of individuals pursuant to proposed § 30.6 and/or who has determined pursuant to proposed § 30.7(f) that there are problem areas with respect to its outreach, recruitment, and retention activities, to engage in targeted outreach, recruitment, and retention for all underutilized groups in proposed § 30.8. We assume that this additional outreach will happen in the same manner as the universal outreach discussed above.

We further assume that this targeted outreach, recruitment, and retention would be newly required for individuals with disabilities of all sponsors who employ five or more

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<sup>70</sup>To calculate the benefits of this provision for 2015, we multiplied the hourly compensation rate for a human resource manager (\$68.55) by the time saved per sponsor (1 hour), by the total number of sponsors, and by the percent that employ five or more apprentices (25%). This calculation resulted in a total benefit to sponsors of \$0.33 million ( $\$68.55 \times 1 \times 23,014 \times 25\%$ ) for 2015. We repeated this calculation for the nine remaining years in the analysis period using the projected number of active sponsors for each year. Because the number of apprenticeship sponsors is projected to increase from 23,014 in 2015 to 56,655 in 2014, the annual benefit would also increase over time.

apprentices, failed to meet the 7 percent utilization goal, and their current recruitment efforts are not effective and need to be revised, since the proposed rule would now require that such sponsors engage in affirmative action of individuals with disabilities. The Department recognizes, however, that some sponsors may already be meeting the 7% utilization goal for persons with disabilities. Others may be employing them at less than 7%, but nevertheless do not need to engage in targeted outreach and recruitment because their review of their activities did not reveal any barriers to equal opportunity. Therefore, the analysis below may be overestimating those who need to engage in targeted outreach and recruitment. Unfortunately, there are no available data for us to determine how many sponsors are or are not utilizing individuals with disabilities at a rate to be expected. The Department requests data or information from the public on the number of sponsors who employ five or more apprentices as well as the number of sponsors who currently employ individuals with disabilities.<sup>71</sup>

### Costs

We assumed that the cost to sponsors to distribute information about apprenticeship opportunities to organizations serving individuals with disabilities will be the labor cost. We also assumed that the labor for this provision will be performed by a human resource manager and an administrative assistant with hourly compensation rates of \$68.55 and \$22.28, respectively. Lastly, we assumed that this additional outreach will first occur three years after the rule goes into effect.

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<sup>71</sup>For this analysis, we assumed that the percent of all sponsors employing five or more apprentices (25 percent) remains constant throughout the 10-year analysis period. In reality, this percentage will fluctuate as sponsors take on new apprentices and as apprentices complete their programs. We also expect that, over time, successful outreach will lead to more hiring of persons with disabilities and that sponsors will meet their recruitment goals and not be required to complete this additional outreach.

The Department estimated that this dissemination task will take 30 minutes (0.5 hours) of a human resource manager's time and 30 minutes (0.5 hours) of an administrative assistant's time per targeted location. A sensitivity analysis for a range of time spent conducting targeted outreach to organizations that serve individuals with disabilities was conducted and is presented below. The cost of this provision per affected sponsor is the time each staff member devotes to this task multiplied by their associated hourly compensation rates. This calculation resulted in a labor cost of \$45.41  $((\$68.55 \times 0.5) + (\$22.28 \times 0.5))$  per location. We then multiplied this total labor cost by the number of locations (5) and by the number of sponsors with five or more apprentices (2.5 percent of the total number of sponsors whose utilization analyses revealed underutilization of a particular group or groups of individuals in the third year , or 757 (30,291 x 2.5 percent)).

Finally, we assumed that this additional outreach will occur when sponsors who underutilize persons with disabilities are identified by the Department from the results of random audits and that this process will begin in 2018 giving sponsors the opportunity to meet these EEO requirements. This calculation results in a total cost for this provision of approximately \$0.17 million in 2018. The average annual cost over the 10-year analysis period is \$0.24 million.

The Department requests data from the public on how the targeted outreach to organizations that serve individuals with disabilities is expected to impact sponsors.

The proposed rule would require sponsors to review personnel processes annually (proposed § 30.9), or every two years if it meets the requirements set forth in proposed §

30.4(e)). As required by the 1978 Final Rule (the analysis baseline), sponsors with five or more apprentices in a registered apprenticeship program are required to develop and maintain an affirmative action program. The scope of each sponsor's program depends on the size and type of its program and resources. However, each sponsor is required, under the current rule, to undertake a significant number of appropriate activities to satisfy its affirmative action obligations. The 1978 Final Rule lists examples of the kinds of activities expected, including "periodic auditing of the sponsor's affirmative action programs and activities" (29 CFR 30.4(c)(10)). We assume that, at the very least, these program sponsors currently conduct this audit on an annual basis because elsewhere in the 1978 Final Rule, sponsors are required to review their affirmative action programs annually and update them where necessary (29 CFR 30.8). Accordingly, we do not believe that this proposed requirement will result in any additional cost to the sponsor. For sponsors who meet the requirements for biannual review under proposed § 30.4(e), there may be a cost reduction; however, we cannot accurately quantify it due to data limitations on the number of sponsors who would meet the annual requirements for review.

This NPRM proposes that sponsors be required to review their personnel activities at least annually (or every two years, per proposed § 30.4(e)). Requiring this scheduled review of personnel processes would emphasize the philosophy the Department intends to convey throughout the regulation that affirmative action is not a mere paperwork exercise but rather a dynamic part of the sponsor's management approach. Affirmative action requires ongoing monitoring, reporting, and revising to address barriers to EEO and to ensure that discrimination does not occur.

g. Simplified procedures for selecting apprentices

Under the 1978 Final Rule, selection of apprentices must be made using one of four specific selection methods. Under this NPRM (proposed § 30.10), a sponsor would be required to adopt any method for the selection of apprentices provided that the method (1) complies with UGESP; (2) is uniformly and consistently applied to all applicants and apprentices; (3) complies with the qualification standards set forth in title I of the ADA; and (4) is facially neutral in terms of race, color, religion, national origin, sex, sexual orientation, age (40 or older), and disability. This approach greatly simplifies the regulatory structure currently governing selection procedures and affords sponsors with greater flexibility in fashioning a selection procedure; it also would align this provision of part 30 with how other equal opportunity laws regulate an employer's use of selection procedures.

Benefits

This provision aimed at simplifying selection procedures should reduce the sponsor's cost of compliance because we expect that sponsors will be able to more quickly and easily adopt a method for selection consistent with how they are selecting applicants or employees under other EEO laws. The Department requests data or information on the extent the simplification of selection procedures benefits sponsors.

h. Standardizing compliance review procedures for Registration Agencies

The proposed rule would standardize procedures Registration Agencies must follow for conducting compliance reviews (proposed § 30.13). The proposed provision on compliance reviews would carry forward the current provision at § 30.9 addressing compliance reviews and would include several modifications to improve readability.

First, the proposed rule would revise the title from “Compliance reviews” to “Equal employment opportunity compliance reviews” to clarify that the reviews are to assess compliance with the part 30 regulations and not the companion regulations at part 29.

Second, the term “Registration Agency” would be used throughout proposed § 30.13 instead of the term “Department,” because this section applies to both the Department and to SAAs when conducting an EEO compliance review.

Third, the proposed rule would provide more specificity for the procedures Registration Agencies must follow in conducting compliance reviews. This increased specificity would provide for greater consistency and standardization of procedures across the National Registered Apprenticeship System. For instance, proposed § 30.13(b) would require the Registration Agency to notify a sponsor of the Agency’s findings through a written Notice of Compliance Review Findings within 45 days of completing a compliance review. The Notice of Compliance Review Findings must include whether any deficiencies (i.e., failures to comply with the regulatory requirements) were found, how they are to be remedied, and the timeframe within which the deficiencies must be corrected. The Notice of Compliance Review Findings also must notify a sponsor that sanctions may be imposed for failing to correct the aforementioned deficiencies.

These changes would add clarity to the procedures but would not fundamentally change the process and, therefore, would not represent a significant additional burden to sponsors or SAAs. The Department believes the additional specificity will ease some of the burden on States; however the Department requests public comment on how these procedures affect the burden for sponsors and SAAs.

Sponsors are subject to random onsite or offsite compliance reviews by either the SAA or OA where the corresponding agency is expected to notify the sponsor of the review findings. Although the notice of compliance reviews already occurs with SAAs and OA, this NPRM would make the practice standard and common among all entities. Under this NPRM, the notice of review findings would be required to be sent via registered or certified mail, with return receipt requested within 45 days of the completed equal opportunity compliance review.

### Costs

The costs associated with this provision would be limited to the use of registered mail, the cost of materials, and the labor cost to send the letter. The actual review process remains unchanged from the 1978 Final Rule. To determine the cost of the notice of compliance reviews, we estimated the labor cost to mail and compile the notice (assumed to be completed by an administrative assistant) and the cost of materials to send the notice. The labor cost is comprised of the time an administrative assistant dedicates to the task (15 minutes, or 0.25 hours) multiplied by the hourly compensation rate (\$28.33 for SAAs and \$31.50 for OA).<sup>72</sup> The total materials cost is the cost to send a letter via registered mail (\$11.25) plus the cost of the envelope (\$0.07) plus the cost to photocopy the one-page document (\$0.15), or \$11.47 (\$11.25 + \$0.07 + \$0.15).

To estimate the total cost of this provision in the first year, we summed labor and material costs and then multiplied by the total number of reviewed sponsors resulting in

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<sup>72</sup>We calculated the hourly compensation rate for an administrative assistant by multiplying the hourly wage of \$18.64 (GS-7 step 5) by 1.52 for the State agency and 1.69 for the Federal agency to account for public-sector employee benefits. Thus, the hourly compensation rate for an administrative assistant at a State agency is \$28.33 (\$18.64 x 1.52) and \$31.50 (\$18.64 x 1.69) at a Federal agency.

\$18,100 for SAAs and \$18,790 for OA.<sup>73</sup> We then repeated this calculation for each year of the analysis period using the projected number of sponsors for each year. The annual average cost to SAAs amounts to \$0.02 million and the annual average cost to OA amounts to \$0.02 million over the 10-year analysis period.

i. Clarifying complaint procedures

This NPRM would require sponsors to establish and implement procedures for handling and resolving complaints about harassment based on race, color, religion, national origin, sex, sexual orientation, age (40 or older), genetic information, and disability (proposed § 30.3(b)(4)(iv)). Because harassment is a form of employment discrimination that violates Federal laws applicable to most sponsors, including title VII, Executive Order 11246, the ADEA, GINA, and the ADA, we expect that most sponsors already have complaint procedures in place. Thus, this proposed requirement should not impose any new burdens on sponsors who must already take the necessary action to prevent and eliminate harassment in the workplace.

Also, in an effort to ensure consistency with how Registration Agencies process complaints and conduct investigations, proposed § 30.14(c) would add uniform procedures that Registration Agencies must follow. These uniform procedures would ensure that Registration Agencies acknowledge and thoroughly investigate complaints in a timely manner, that parties are notified of the Registration Agency's findings, and that

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<sup>73</sup>To calculate the labor cost, we multiplied the time required by the hourly compensation rate, resulting in a cost of \$7.16 (0.25 x \$28.64) for State Apprenticeship Agencies and \$7.87 (0.25 x \$31.50) for OA. We then multiplied each labor cost by the percentage of sponsors subject to compliance reviews (10 percent) and by 50 percent (we assumed that half of the sponsors respond to State Apprenticeship Agencies and half respond to OA).

the Registration Agency attempts to quickly resolve violations through voluntary compliance. Since the complaint process is not a new process, the Department does not expect that these provisions would add significantly to the burden on Registration Agencies, they simply would standardize the procedures and define a timeline. Therefore, while the Department does not expect significant changes in burden, there may still be one-time costs as Registration Agencies adjust their complaint procedures to reflect newly standardized requirements. These procedures will benefit both sponsors and apprentice complainants since claims will be handled in a clear and consistent fashion. The Department requests more data or information on how these proposed complaint procedures are expected to burden and/or benefit sponsors, apprentices, and Registration Agencies.

j. Adopting uniform procedures under 29 CFR parts 29 and 30 for deregistration, derecognition, and hearings

The proposed rule would adopt 29 CFR part 29 procedures for deregistration of apprenticeship programs, derecognition of SAAs, and hearings (proposed §§ 30.15 through 30.16). For consistency and simplicity, proposed § 30.15(c) would adopt the deregistration procedures of § 29.8(b)(5) through (8) of this title, including the hearing procedures in § 29.10. This revision would allow SAAs to follow a single set of procedures for all matters arising from management of the National Registered Apprenticeship System. As explained in the preamble above, the Department proposes to incorporate the part 29 procedures for hearings into part 30 so that a sponsor need only follow one set of procedures regardless of whether the issue at hand addresses the labor standards set forth in part 29 or the EEO standards set forth in part 30. These provisions

are not expected to impose a burden because SAAs are already following these procedures in part 29.

1. Invitation to self-identify as an individual with a disability

Proposed § 30.11 requires sponsors, as part of their general duty to engage in affirmative action, to invite applicants for apprenticeship to voluntarily self-identify as an individual with a disability protected by this part at three stages: (1) at the time they apply or are considered for apprenticeship; (2) after they are accepted into the apprenticeship program but before they begin their apprenticeship; and (3) once they are enrolled in the program.

The purpose of this section is to collect important data pertaining to the participation of individuals with disabilities in the sponsor's applicant pools and apprenticeship program. This data will allow the sponsor and OA to better identify and monitor the sponsor's enrollment and selection practices with respect to individuals with disabilities and also enable OA and the sponsor to assess the effectiveness of the sponsor's recruitment efforts over time, and to refine and improve the sponsor's recruitment strategies, where necessary. In addition, data related to apprentices once they are in the program will help sponsors assess whether there may be barriers to equal opportunity in all aspects of apprenticeship and may inform the effectiveness of retention strategies or whether such strategies are necessary.

The Department estimated that each of the 23,014 sponsors in the first year (2015) will need to develop a self-identification invitation, which must be separate from the application, for pre-offer, post-offer, and post-enrollment stages. The Department estimated that a human resource manager (\$68.55) will spend 1 hour to develop a self-identification invitation and the burden for this is \$1,577,609 in the first year (2015).

The Department estimated that an applicant (\$18.59) would take on average 5 minutes (0.08 hour) to complete the invitation. The Department also estimated that there will be an average of 10 applicants per job listing, with an average of 5 listings per sponsor per year. The burden at the stage of pre-offer in the first year (2015) is estimated at \$1,738,247 (23,014 sponsors  $\times$  5 listings  $\times$  10 applicants  $\times$  0.08 hour  $\times$  \$18.59). The burden at the stages of post-offer and post-enrollment is estimated at \$173,825 (23,014 sponsors  $\times$  5 listings  $\times$  0.08 hour  $\times$  \$18.59), respectively.

In addition, the Department estimated that an administrative assistant (\$22.28) would spend 0.5 hours to record and keep invitations in a data analysis file. The burden for this is estimated at \$256,376 (23,014 sponsors  $\times$  0.5 hour  $\times$  \$22.28).

Total cost for this provision is approximately \$3.96 million in the first year (2015). The average annual cost over the 10-year analysis period is \$3.93 million.

j. Other

In addition to the changes discussed above, the proposed rule also would result in three additional costs. First, SAAs would be required to revise their State equal opportunity plan to conform to the new requirements. Second, sponsors would need to learn about the new processes and requirements during the first year of the rule's

implementation. Furthermore the NPRM would create an intermediary step between a registered sponsor and a deregistered sponsor (registration suspension). Third, sponsors would likely hire and/or retain more qualified apprentices with disabilities under the proposed rule and this may result in additional costs of providing appropriate job accommodations. The Department seeks comment regarding the amount of additional costs of providing appropriate job accommodations that would not otherwise be captured by sponsors' current accommodation requirements under federal or state disability laws.

#### Revision of State equal opportunity plan

The process of updating a State equal opportunity plan may potentially involve various different people at different stages of implementation. Updating the plan will include drafting the new plan and completing all administrative procedures that may apply, such as revisions to a State's apprenticeship law or policy that may require a public notice and comment period, training for SAA staff on the revised State EEO Plan, and outreach to program sponsors to inform them of the relevant aspects of the revised State EEO plan, once it has been approved by the Department. The updates to State equal opportunity plans would include changing language and current requirements such that they align with the regulatory changes proposed herein. To calculate the costs, the Department assumed that the process to revise the State equal opportunity plan would take a full year of effort (or 2,080 hours) to complete.<sup>74</sup> This is the Department's best estimate for updating the current State equal opportunity plan; the Department requests data or information from the public on the burden for updating State EEO plans. For

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<sup>74</sup> Note that this calculation is only the administrative costs of updating the State equal opportunity plan, as opposed to the costs of implementing the new plan, or any new burdens on State Agencies. Since the updated State equal opportunity plan should reflect the proposed Federal regulations, these costs should be accounted for and addressed elsewhere in the analysis under discussions of costs.

simplicity, we assumed that an SAA human resource manager will complete the task at an hourly compensation rate of \$59.75.<sup>75</sup> This amounts to an initial cost of \$3.11 million and an average annual cost of \$0/31 million over the 10-year analysis period.<sup>76</sup>

Intermediate step between a registered sponsor and a deregistered sponsor

Finally, the NPRM proposes the creation of an intermediary step between a registered sponsor and a deregistered sponsor (proposed § 30.15(b)). Currently, deregistration of an apprenticeship program occurs when the sponsors fails to demonstrate compliance with the 1978 Final Rule. The proposed suspension step would allow sponsors an adequate span of time to update their practices and be in compliance without having to be deregistered and then reregistered at a later date. Under this proposed procedure, a Registration Agency would suspend a registration of new apprentices until the sponsor has achieved compliance with part 30 through the completion of a voluntary compliance action plan or until a final order is issued in formal deregistration proceedings initiated by the Registration Agency.

The intermediary step represents a benefit because it would allow sponsors to become compliant without having to be deregistered and then reregister or abandon their program. The benefits of this proposed provision are difficult to quantify because some programs eligible for deregistration may seek deregistration voluntarily. Voluntary deregistration, however, can occur for several reasons and it would be incorrect to

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<sup>75</sup>We calculated the hourly compensation rate for a human resource manager at a State agency by multiplying the hourly wage of \$33.06 (GS-12 step 5) by 1.52 for the State agency. The hourly compensation rate for a human resource manager at a State agency is thus \$50.25 (\$33.06 x 1.52).

<sup>76</sup>The estimated time to complete the revisions is 12 months (2080 hours). The 2014 calculation used the hourly compensation rate for a state human resource manager (\$59.75) multiplied by 2,080 (the assumed number of work hours in a year) and by the total number of State Apprenticeship Agencies (25) to obtain a total cost of \$3.11 million (2,080 x \$59.75 x 25). This cost only accrues in the first year of the ten-year analysis period.

assume that all voluntary deregistrations directly correlate with sponsors who would have been deregistered.

The Department expects that fewer programs will be required to deregister or voluntarily deactivate as a result of the proposed suspension procedure, enabling more active total sponsors and the associated apprenticeship opportunities. Instead of losing these potential registered apprenticeship programs, they will persist while upholding equal opportunity hiring practices.<sup>77</sup>

#### Workplace accommodations for apprentices with disabilities

The proposed rule prohibits discrimination against individuals with disabilities and requires sponsors to take affirmative action to provide equal opportunity in apprenticeship to qualified individuals with disabilities. With respect to the sponsor's duty to ensure non-discrimination based on disability, the sponsor must provide necessary reasonable accommodations to ensure applicants and apprentices with disabilities receive equal opportunity in apprenticeship. Since most, if not all, sponsors already are subject to the ADA as amended, and if a Federal contractor to section 503 of the Rehabilitation Act, sponsors already have a duty under existing law to provide reasonable accommodations for qualified individuals with disabilities and thus there is no new burden associated with any duty to provide reasonable accommodation under part 30, as that duty already exists under existing Federal law. The Department requests data or information on the percentage and types of sponsors, if any, who are not currently required to comply with the ADA and/or section 503 and provide reasonable

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<sup>77</sup>In addition, this NPRM clarifies the need for recordkeeping (proposed § 30.11). Better recordkeeping will enable sponsors to better understand their current underutilization practices and be able to easily identify recruitment strategies that have worked in the past.

accommodation. For any sponsor who may not already be required under the law to provide such accommodations, we expect the resulting burden to be quite small. A recent study conducted by the Job Accommodation Network (JAN), a service of the Department's Office of Disability Employment Policy (ODEP), shows that the majority of employers in the study (57%) reported no additional accommodation costs and the rest (43%) reported one-time cost of \$500 on average.<sup>78</sup> This study shows that the benefits to employers, such as improving productivity and morale, retaining valuable employees, and improving workplace diversity, outweigh the low cost.

#### 4. Summary of Cost-Benefit Analysis

Exhibit 2 presents a summary of the first year costs of the various proposed rule provisions, as described above. As shown in the exhibit, the total first year costs of the rule provisions are \$21.26 million. The Department was able to only quantify benefits of the proposed rule resulting from time savings to sponsors from the new methodology for utilization and goal setting. As discussed above, the estimated benefits of this provision are \$0.39 million in the first year.

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<sup>78</sup> Beth Loy, "Accommodation and Compliance Series Workplace Accommodations: Low Cost, High Impact," Job Accommodation Network (JAN) (2014), <http://askjan.org/media/lowcosthighimpact.html>



9	2023	0.87	20.30
10	2024	0.97	22.70
<b>Undiscounted total</b>		<b>6.34</b>	<b>160.15</b>
<b>Total with 7% discounting</b>		<b>4.21</b>	<b>109.61</b>
<b>Total with 3% discounting</b>		<b>5.28</b>	<b>134.98</b>

Primary estimates of the 10-year monetized costs of this NPRM are \$109.61 million or \$134.98 million (with 7 and 3 percent discounting, respectively). The 10-year monetized benefits of this NPRM are estimated to be \$4.21 million or \$5.28 million (with 7 and 3 percent discounting, respectively).

The proposed rule includes four general categories of revisions: (1) changes required to make the rule consistent with the Labor Standards for Registration of Apprenticeship Programs set forth in 29 CFR part 29; (2) changes updating the scope of a sponsor’s EEO obligations by including age (40 or older), genetic information, sexual orientation, and disability among the list of protected bases upon which a sponsor must not discriminate; (3) changes to enhance a sponsor’s affirmative action obligations and enforcement efforts by Registration Agencies; and (4) changes to improve the overall readability of the rule. Alignment of the EEO regulations at part 30 with its companion regulations at part 29 is necessary for a cohesive, comprehensive regulatory framework for the National Registered Apprenticeship System.

Due to data limitations, the Department did not quantify several of the important benefits to society provided by the proposed policies. This NPRM is expected to result in several overarching benefits to apprenticeship programs as well as some specific benefits resulting from a clearer, more systematic rule.

As discussed above, equal opportunity policies may lead to both efficiency gains and distributional impacts to society. The proposed rule may reduce barriers to entry in apprenticeship programs for women, minorities, and persons with disabilities, fostering a distributional effect, and may alleviate the inefficiencies in the job market these barriers potentially create.

This NPRM focuses on making the current EEO policy consistent and standard across the National Registered Apprenticeship System. In doing so, several tasks already undertaken by sponsors, apprentices and Registration Agencies have been simplified. For instance, the clarified complaint process better informs apprentices, sponsors, and Registration Agencies of their roles and expectations from the process. This NPRM also develops a simpler methodology for the apprentice selection process and offers sponsors the flexibility to choose a mechanism that aligns with their State's specific equal opportunity regulations. Much of the new language developed provides consistency with current equal opportunity laws and part 29 already applicable to these affected entities. Finally, this NPRM streamlines procedures already in place under the 1978 Final Rule.

The Department did quantify some of the benefits and the various costs associated with the NPRM. The major quantifiable benefit was the reduction in labor hours needed for completing the new methodology for utilization analysis and goal setting. The reduction in labor cost resulted in an average annual savings of \$0.63 million.

## 5. Alternatives

In addition to the proposal set forth in this NPRM, the Department has considered four alternatives. These are: (1) to take no action, that is, to leave the 1978 Final Rule

intact; (2) to increase the Department's enforcement efforts of the 1978 Final Rule; (3) to apply the same affirmative action requirements set forth in this proposed rule to all sponsors, regardless of size; and (4) to rely solely on individuals participating in the National Registered Apprenticeship System to identify and report to Registration Agencies potential cases of discrimination based on race, color, religion, national origin, sex, sexual orientation, age (40 or older), genetic information, and disability.

The Department conducted economic analyses of all five alternatives to better understand their costs and benefits and the implied tradeoffs (in terms of the costs and benefits that would be realized) relative to the proposed rule. Below is a discussion of each alternative along with an estimation of their costs and benefits. All costs and benefits use the 1978 Final Rule as the baseline for the analysis. Finally, we summarize the total costs and benefits of each proposed alternative.

a. Propose the policy changes contained in this NPRM

The analysis presented above lays out the calculations of the benefits and costs of the proposed regulation. The proposed regulation offers a middle ground to spread the burden on the Department, SAAs, and the sponsors. It increases the responsibilities of the sponsors and provides more detailed methods to uphold a nondiscriminatory program. As calculated above, the 10-year monetized costs of this NPRM range from \$105.44 million to \$130.14 million (with 7 and 3 percent discounting, respectively). The 10-year monetized benefits of this NPRM range from \$4.21 million to \$5.28 million (with 7 and 3 percent discounting, respectively).

b. Take no action

This alternative yields no additional costs to society because it does not deviate from the baseline, that is, the 1978 Final Rule. This alternative, however, also yields no additional benefits in terms of ensuring equal opportunities for women, minorities, individuals with disabilities, and those ages 40 or older.

c. Increase enforcement of original regulation

This alternative maintains the original 1978 Final Rule but increases the monitoring of apprenticeship programs. This alternative increases the burden on the SAAs and OA to enforce the equal opportunity standards. To determine the cost of this alternative, we assumed that the compliance reviews will occur at a 50 percent rate, implying that sponsors would be evaluated by the Registration Agency (OA or SAAs) on a more frequent basis.

To calculate the cost of this alternative, the Department assumed that each compliance review takes 40 hours to complete. This estimate includes time for preparation, conducting the review, writing up the findings and guidance to sponsors, reviewing and approving the final documents to be provided to sponsors, and providing technical assistance, where appropriate. We multiplied the 40 hours needed to complete a review by the increase in the annual number of reviews by 10 percent ( $2,301 = 23,014 \times 10\%$  in 2015)) by the hourly compensation rate of an SAA human resource manager (\$59.75) and by the hourly compensation rate of an OA human resource manager (\$66.43).<sup>79</sup> We also multiplied this number by 50 percent, assuming that half of the

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<sup>79</sup>We calculated the hourly compensation rate for a human resource manager at OA by multiplying the hourly wage of \$33.06 (GS-12 step 5) by 1.69 to account for public-sector employee benefits. The hourly compensation rate for a human resource manager at a Federal agency is thus \$55.87 ( $\$33.06 \times 1.69$ ).

sponsors would report to a SAA and half would report to OA. The cost of increased compliance reviews in the first year is \$2.75 million for SAAs (23,014 x 50 percent x \$59.75 x 40 x 10 percent) and \$3.06 million for OA (23,014 x 50 percent x \$55.87 x 40 x 10 percent).<sup>80</sup> The 10-year costs for this alternative range from \$62.0 million to \$77.7 million (with 7 and 3 percent discounting, respectively).

Exhibit 4 presents a summary of the monetized costs of this alternative option over the 10-year analysis period. Costs are presented as undiscounted 10-year totals, and as present values, using 7 and 3 percent discount rates, respectively.

EXHIBIT4: Costs of Increasing Enforcement (\$ millions)				
Year	Costs	Sponsors	SAA	OA
2015	\$ 6	\$ -	\$ 2.75	\$ 3.06
2016	\$ 6.4	\$ -	\$ 3.01	\$ 3.34
2017	\$ 7.0	\$ -	\$ 3.30	\$ 3.66
2018	\$ 7.6	\$ -	\$ 3.62	\$ 4.02
2019	\$ 8.4	\$ -	\$ 3.99	\$ 4.43
2020	\$ 9.3	\$ -	\$ 4.41	\$ 4.90
2021	\$ 10.3	\$ -	\$ 4.88	\$ 5.43
2022	\$ 11.5	\$ -	\$ 5.43	\$ 6.03
2023	\$ 12.8	\$ -	\$ 6.05	\$ 6.73
2024	\$ 14.3	\$ -	\$ 6.77	\$ 7.53
Undiscounted Total	\$ 93.3	\$ -	\$ 44.20	\$ 49.14
Total with 7%	\$ 62.0			
Total with 3%	\$ 77.7			

Increasing monitoring and evaluation of current efforts may not improve compliance, nor would it necessarily result in improved access to apprenticeship opportunities for all qualified applicants.

<sup>80</sup>To estimate the full cost of this alternative, we also considered the cost to read and review the new regulation for both sponsors (\$2.7 million) and State Apprenticeship Agencies (\$2,512 = 2 hours x 25 State Apprenticeship Agencies x \$50.25), as calculated above for the proposed regulation.

d. Apply the same affirmative action policy to all sponsors regardless of size

The 1978 Final Rule and the proposed rule require that all sponsors with five or more apprenticeships maintain and update their AAPs. This alternative would apply the same AAP to all sponsors regardless of size. The Department believes that the incremental benefit of this action would be minimal compared to its incremental cost. This policy directly impacts the segment of the population that both qualifies as a small entity and also has few apprentices. We believe that the original 1978 Final Rule restriction of requiring only those sponsors with five or more apprentices to develop, maintain, and update their AAPs is an appropriate way to not disproportionately burden small entities.

To calculate the cost and benefits of this alternative, the Department completed the same calculations conducted for the proposed rule but increased the number of sponsors who have to establish an AAP. This new calculation assumed that all sponsors must determine utilization rates and participate in targeted outreach and recruitment.. This alternative increases the costs of the regulation, but we do not believe that it significantly increases the benefits because approximately 90 percent of apprentices in OA programs are currently in the 25 percent of programs that employ 5 or more apprentices.

Although the new utilization methodology saves sponsors time as compared to the provisions of the 1978 Final Rule, expanding the requirements to all sponsors increases the compliance burden on those sponsors who have less than five apprentices. For this alternative, the new utilization methodology is now considered an increased burden on those sponsors who employ less than five apprentices. This new utilization methodology

is, however, still considered a benefit to those sponsors who already had to set goals (those with five or more apprentices).

Although this is the only benefit the Department quantifies, expanding the regulations to cover all sponsors should lead to marginal benefits to society. The Department requests data or information from the public on how greatly these benefits would increase, if the regulations were applied to all sponsors, as opposed to only sponsors with five or more apprentices.

To calculate the costs associated with this alternative, we first calculated the cost for those sponsors with fewer than five apprentices to complete the utilization analysis. As discussed above, we assumed this process takes one hour of a human resource manager's time at an hourly compensation rate of \$68.55. We then multiplied this amount by 75 percent (the assumed percentage of sponsors who have fewer than five apprentices) for a total of 17,260 ( $23,014 \times 75$  percent) sponsors in the first year. The resulting cost in the first year is \$1.18 million ( $1 \times \$68.55 \times 17,260$ ). We repeated this calculation for each of the remaining years in the analysis period using the estimated number of sponsors for each year, resulting in an average annual cost of \$2.2 million.

We next calculated the costs of expanding the requirements to all apprentices for the targeted outreach. The cost of targeted outreach and recruitment mirrors the cost above except that we no longer scale it by the 25 percent of sponsors who need to set goals. We again assumed that each sponsor contacts three organizations; that a human resource manager would take 30 minutes (0.5 hours) to complete this task at an hourly compensation rate of \$68.55; and that an administrative assistant would spend 30 minutes (0.5 hours) at an hourly compensation rate of \$22.28. We also multiply this total by the

percent of sponsors reviewed each year by either the corresponding SAA or OA. The resulting cost in the third year after implementation of the rule is \$0.69 million.

The remaining costs for this alternative are the same as was calculated above for the proposed regulation. The total 10-year costs of this alternative range from \$126.55 million to \$157.45 million (with 7 percent and 3 percent discounting, respectively).

Sponsors of small apprenticeship programs are often quite small with few employees. Such sponsors would likely be overly burdened by the targeted outreach, recruitment, and retention requirements in proposed § 30.8. For example, they might not have the staff and resource capacity to adequately handle large numbers of applications for one or two apprenticeship positions.

e. Rely on individuals participating in the National Registered Apprenticeship System to identify and report potential cases of discrimination

Under this alternative, individuals participating in the National Registered Apprenticeship System would be responsible for identifying and reporting to Registration Agencies potential cases of discrimination, in contrast to both the current and proposed part 30 regulatory structures, which require Registration Agencies to monitor and enforce the EEO and affirmative action obligations via regular compliance reviews. This alternative reduces the burden on sponsors by relying on a complaint-based system. Under this alternative, apprentices' rights for non-discrimination would still be protected, but Registration Agencies would have a more passive role in how they monitor and evaluate program sponsors' compliance with the regulations. OA and SAAs would still

conduct compliance reviews (in proposed § 30.11 and current § 30.9) but not as frequently.

Under this alternative, to identify when discrimination may be occurring and whether sponsors are violating the non-discrimination and affirmative action requirements in the part 30 regulations, the Registration Agencies would primarily rely on: (1) the complaints filed under proposed § 30.12 and current § 30.11 and self-evaluations from sponsors, and (2) a process where sponsors conduct a self-evaluation and report back to the Registration Agency.

Registration Agencies would provide sponsors with a format and process to conduct a self-evaluation relative to their compliance with these EEO regulations. Sponsors would then submit their self-evaluation to the Registration Agency for review and analysis. If the Registration Agency is satisfied with the findings from the self-evaluation, the sponsor would be informed accordingly, and no additional actions would be necessary at that time. If the Registration Agency's review of sponsor's self-evaluation identifies deficiencies, then the Registration Agency would conduct an on-site review and provide technical assistance as appropriate.

These complaints and self-evaluations would serve as a "trigger" for Registration Agencies to adopt a more active role of visiting program sites to conduct compliance reviews and provide technical assistance, as appropriate.

To estimate the cost of this alternative, the Department assumes that the SAA and OA reduce the number of compliance reviews by 20 percent. To calculate this cost saving we multiplied the total number of active sponsors (23,014 in 2015) by the percentage decrease in reviews. This results in 4,603 fewer reviews in year 2015. We

then multiplied the total number of reviews by 50 percent assuming that the SAAs handle half the reviews and OA handles the remaining half. Finally, we multiplied the total reduction in reviews by each agency 2,301 ( $0.5 \times 4,603$ ) by the hours needed to complete each review (40 hours) and by the human resource managers' wages (\$59.75 and \$66.43, for the SAAs and OA, respectively). The resulting cost savings in 2015 is \$5.5 million ( $2,301 \times \$59.75 \times 40$ ) for SAAs and \$6.12 million ( $2,301 \times \$66.43 \times 40$ ) for OA. This calculation was repeated for each year using the projected number of sponsors resulting in an average annual savings for the SAAs of \$8.84 million and \$9.83 million for OA.

To estimate the cost of completing the self-evaluations, the Department assumes that each sponsor completes one evaluation each year and that the sponsor will dedicate 8 hours to complete this review. We multiplied this labor time by the hourly compensation rate of a human resource manager (\$66.43) and by the total number of sponsors (23,014). The cost to the sponsors is thus \$12.23 million ( $23,014 \times 1 \times 8 \times \$66.43$ ) in 2015. This calculation was repeated according to the projected number of sponsors each year, with an average annual cost of \$16.0 million.

The self-evaluations will then be reviewed by either the SAAs or OA. The Department calculates this burden by assuming that half of the evaluations are completed by the SAAs and the rest are completed by OA; thus each agency reviews 11,507 ( $23,014/2$ ) evaluations each year. We multiplied the number of self-evaluations by the time needed to review the evaluation, 5 hours, and finally by the corresponding hourly compensation rates (\$59.75 and \$66.43 for the SAAs and OA, respectively). The cost in 2015 is \$3.44 million for the SAAs and \$3.82 million for OA. This calculation was

repeated according to the projected number of sponsors each year, with an average annual cost of \$5.52 million for SAAs and \$6.14 million for OA.

Lastly, the Department estimated the cost of completing and reviewing the individual complaints. The apprentices would be filling out these individual complaints and although the process existed in the 1978 final rule, the Department expects that through general outreach the number of complaints would increase by 100 per year. We assumed that each individual complaint takes 15 minutes to file (0.25 hours). We then multiplied the 0.25 hours by the compensation rate for an apprentice (\$19.85)<sup>81</sup> to estimate a labor cost of \$4.96 and a total cost of \$496 ( $\$4.96 \times 100$ ) each year of the analysis period.

The Department again assumed that half of these complaints go to SAAs and half go to OA, or 50 complaints total for each agency. To calculate the cost, we multiplied the time needed to review each complaint (8 hours) by 50 complaints and by the compensation rate for a human resource manager. The resulting cost in 2013 is \$23,900 ( $50 \times 8 \times \$59.75$ ) for the SAAs and \$26,572 ( $50 \times 8 \times \$66.43$ ) for OA. This calculation was repeated for the nine remaining years in the analysis period.

This alternative also includes costs of reading and reviewing the NPRM totaling \$3.16 million for sponsors and \$2,988 for the SAAs, as calculated above. The complaint based alternative would range between \$184.7 million and \$230.7 million (with 7 and 3 percent discounting, respectively).

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<sup>81</sup>According to the RAPIDS database's FY2013 Performance Score Card Report, the estimated average starting wage for apprentices that completed their programs was \$15.02 and the estimated average exit wage for apprentices that completed their programs was \$24.68. The average of these two wages (\$15.02 and \$24.68) is \$19.85.

The Department believes that this approach to regulating discrimination and non-compliance with the part 30 regulations would not adequately prevent discrimination and promote equal opportunity in apprenticeship programs.

f. Summary of Alternatives

Exhibit 5 below summarizes the monetized benefits, costs, and net present values for the alternatives discussed above. We again use discount rates of 3 and 7 percent, respectively, to estimate the benefits, costs, and net present values of the alternatives over the 10-year analysis period.

**EXHIBIT 5: Summary of Alternatives (\$ million over 2015-2024)**

<b>7-percent discount</b>		<b>Benefits</b>	<b>Costs</b>	<b>Net Benefit (NPV)</b>
	No Action	0.00	0.00	0.00
	Policy Change NPRM	4.21	107.70	-103.49
	Increased Enforcement	0.00	62.00	-62.00
	Same policies regardless of	4.21	125.63	-121.42
	Complaint-based	124.01	211.41	-87.40
<b>3-percent discount</b>		<b>Benefits</b>	<b>Costs</b>	<b>Net Benefit (NPV)</b>
	No Action	0.00	0.00	0.00
	Policy Change NPRM	5.28	132.55	-127.27
	Increased Enforcement	0.00	77.71	-77.71
	Same policies regardless of size	5.28	156.30	-151.02
	Complaint-based	155.41	264.30	-108.89

Note: Net present values may not subtract precisely due to rounding.

Paperwork Reduction Act (PRA)

As part of its continuing effort to reduce paperwork and respondent burden, the Department conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995

(PRA), 44 U.S.C. 3506(c)(2)(A). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

The PRA typically requires an agency to provide notice and seek public comments on any proposed collection of information contained in a proposed rule. 44 U.S.C. 3506(c)(2)(B); 5 CFR 1320.8. Persons are not required to respond to the information collection requirements as contained in this proposal unless and until they are approved by OMB under the PRA at the final rule stage. The Department has submitted the identified information collections associated with this NPRM to the OMB for review under the PRA. 44 U.S.C. 3507(d); 5 CFR 1320.11. ETA will publish a notice of OMB's action, when OMB makes a final determination on these information collections.

Public Comments: The Department is soliciting comments concerning proposed changes to two information collection requests (ICRs) that are associated with proposed changes to part 30. OMB previously approved for these two ICRs: (1) OMB Control Number 1205-0223 for information collection required under part 29, Labor Standards for Registration of Apprenticeship Programs, and (2) OMB Control Number 1205-0224 for information collection required under part 30, Equal Employment Opportunity in Apprenticeship Training. Interested parties may obtain a copy of the ICRs by visiting the <http://www.reginfo.gov/public/do/PRAMain> Web site, or by contacting the Office of Apprenticeship, 200 Constitution Avenue, NW, Room N-5311, Washington, D.C. 20210. Telephone: 202-693-2796; Fax: 202-693-3799. These are not toll-free numbers.

The Department specifically seeks comments regarding the burdens imposed by information collection requests associated with this proposed rule. In particular, the Department seeks comments that evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; enhance the quality, utility and clarity of the information to be collected; and minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Comments about the information collections in this NPRM may be submitted to ETA by using the Federal eRulemaking portal at <http://www.regulations.gov> (follow instructions for submission of comments). In addition to filing comments with ETA, interested parties may address comments about the paperwork implications of the proposed regulations to OMB. Comments to OMB should be directed to: Office of Information and Regulatory Affairs, Attention OMB Desk Officer for ETA, Office of Management and Budget, Room 10235, Washington, D.C. 20503. Telephone: 202-395-7316; Fax: 202-395-6974. These are not toll-free numbers.

OMB requests that comments be received within 30 days of publication of the proposed revisions to the part 30 regulations. Please note that comments submitted to both OMB and DOL are a matter of public record.

Purpose, Use, and Burden Estimate. As previously explained, the part 30 regulations already require apprenticeship program sponsors to provide for equal opportunity for participation in registered apprenticeship programs, and protect apprentices and applicants for apprenticeship from discrimination based on race, color, religion, national origin, and sex. In addition, the regulations require that sponsors of registered apprenticeship programs take affirmative action to provide equal opportunity in such programs.

Under the PRA, information collections include Federal reporting, recordkeeping, and third-party discloser requirements. The existing regulations impose a number of approved information collection requirements that would be unchanged by this NRPM, except as discussed in this preamble. These include information collections related to registration requirements for apprenticeship programs and apprentices, including proper training safeguards; apprenticeship agreements and standards; and recognition requirements for SAAs. The Department obtains OMB approval for this information collection under Control Number 1205-0223 (current expiration date of June 30, 2018).

The NPRM would also continue, except as discussed elsewhere in this preamble, requirements for a sponsor to document that the apprenticeship program conforms to equal opportunity standards required by these regulations, to maintain records necessary to determine compliance with this part (although the length of time required for recordkeeping maintenance has been shortened from five to three years), to provide all applicants and all apprentices written notice of complaint procedures; and to prepare written AAPs, if required. The NPRM would also continue, except as discussed elsewhere in the preamble, the requirements for SAAs to prepare State EEO plans

conforming to these regulations, to maintain adequate records pertinent to compliance with these regulations, and to notify the Department of exemptions from these regulations granted to program sponsors. The Department clears this latter list of information collections with OMB under Control Number 1205-0224 (current expiration date of May 31, 2016).

Recordkeeping requirements described in this NPRM modify previously approved requirements for registered apprenticeship program sponsors and apprentices to submit Apprenticeship Agreement Forms to OA or to the appropriate SAA. These Apprenticeship Agreement Forms include record-keeping information necessary for Registration Agencies to determine if apprenticeship program sponsors are complying with the affirmative steps to ensure non-discrimination required under this NPRM. OMB approved these requirements for the ICR for Apprenticeship Agreement Form (ETA 671) for use under 29 U.S.C. 50 and 29 CFR 29.1 (OMB control number 1205-0223). Responses to this Apprenticeship Agreement Form are required to obtain or retain benefits as registered apprentices. Specifically, this NPRM would add age (40 or older), genetic information, sexual orientation, and disability to the list of bases upon which registered apprenticeship program sponsors must not discriminate.

Therefore, the Department would revise ETA 671, the Apprenticeship Agreement Form, to provide for collection of information, on a voluntary basis, of an apprentice's disability status. Such information would be collected on a separate tear-off sheet that could be maintained separately from the Apprenticeship Agreement Form and treated as confidential. The Department estimates that this modification to ETA 671 will not add any additional response time or cost burden.

The Department has also determined that the proposed rule will not change the paperwork burdens for the first of the three information collections included in the ICR for part 30: “ETA 9039, Compliant Form – Equal Employment Opportunity in Apprenticeship Programs.” As discussed above, the NPRM would add age (40 or older), genetic information, sexual orientation, and disability to the list of bases upon which registered apprenticeship program sponsors must not discriminate. The Complaint Form – Equal Employment Opportunity in Apprenticeship Programs (ETA 9039), does not currently include disability status, genetic information, sexual orientation, and age (40 or older) as bases for discrimination.

Therefore, the Department would revise ETA 9039 to enable complainants to file complaints about discrimination on the basis of age (40 or older), genetic information, sexual orientation, and disability. These additions would not add any new or additional time or cost burden to individuals who voluntarily choose to complete and file a complaint form regarding EEO in registered apprenticeship. Based on agency experience administering the National Registered Apprenticeship System, the Department assumes an annual rate of 50 responses requiring 30 minutes (0.5 hours) per response for a total annual burden of 25 hours for this information collection. Exhibit 6 below summarizes the burden hours for Complaint Forms – Equal Employment Opportunity in Apprenticeship Programs.

<b>Exhibit 6: Information Collection for ETA 9039 Complaint Form - Equal Opportunity in Apprenticeship and Training</b>		
	<b>Currently Approved (Current § 30.11)</b>	<b>Proposed Rule (Proposed § 30.13)</b>
Total Respondents	50	50
Frequency	One-time	One-time
Total Responses	50	50
Average Time Per Response	0.5 hour	0.5 hour

<b>Total Burden Hours</b>	25	25
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The NPRM would make some changes to the second information collection in the ICR for part 30 that pertains to SAAs. Responses to this information collection are required for the SAA to retain recognition status as a Registration Agency. The NPRM would carry forward the current part 30's recordkeeping requirements for SAAs and would update these requirements to reflect the use of electronic recordkeeping, and the broadened scope of the regulation to provide for equal opportunity, nondiscrimination, and affirmative action for applicants or apprentices with disabilities. The proposed revisions would not change the hour and cost burden for SAAs' recordkeeping requirements. Based on historical data for the National Registered Apprenticeship System, the Department estimates that the 25 SAAs will register approximately 11,700 new apprentices annually requiring about 5 minutes (0.083 hours) per response. Therefore, the Department estimates the annual paperwork burden at 975 hours (0.083 hours x 11,700 responses = 975 hours). As discussed above, the estimated number of responses would be lower than the estimates of 12,800 new apprentices currently approved for this information collection under OMB Control Number 1205-0224.

The proposed requirement for submission of a revised State EEO plan (proposed § 30.17) would create a one-time paperwork burden that is not included in the currently approved information collections under OMB Control Number 1205-0224. As discussed in the Executive Order 12866 section of the preamble, the Department estimates that process of updating the State's EEO plan for conformity with the requirements of the proposed rule will take a full year of effort (2,080 hours) to complete. The Department

estimates a one-time burden of 52,000 hours for this information collection (2,080 hours x 25 responses = 52,000 hours).

Exhibit 7 below summarizes the burden hours for SAAs currently approved under OMB Control Number 1205-0224, and displays the burden hours associated with the NPRM and with the estimates of reduced numbers of responses, as discussed above. SAAs’ responses to this information collection are required for the Agency to retain the Department’s recognition of the SAA as the Registration Agency for Federal purposes.

<b>Exhibit 7: Information Collection for SAAs</b>		
<b>Regulatory Requirements</b>	<b>Currently Approved</b>	<b>Proposed Rule</b>
<b>SAA records of apprentices</b>	Current § 30.8	Proposed § 30.17
Total Respondents	25	25
Frequency	On Occasion	On Occasion
Total Responses	12,800	11,700
Average Time Per Response	0.083 hours (5 minutes)	0.083 hours (5 minutes)
Burden	1,067 hours	975 hours
<b>State EEO Plan</b>	Current § 30.15	Proposed § 30.17
Total Respondents	--	25
Frequency	One-time	One-time
Total Responses	--	25
Average Time Per Response	0*	2,080 hours
Burden	Completed in 1978	52,000
<b>Total Burden Hours</b>	<b>1,067</b>	<b>52,975</b>

\* Last completed in 1978.

The NPRM would change the burden hours associated with the third information collection for part 30, “Obligations of apprenticeship program sponsors.” The burden hours for compliance with proposed revisions to equal opportunity standards (proposed § 30.3, Equal opportunity standards applicable to all sponsors) would increase from the currently approved burden of one half-hour to 1.08 hours. This increase is necessary to account for universal outreach to a variety of recruitment sources, including organizations that serve individuals with disabilities, and the 0.08 burden hour required to post the equal opportunity pledge.

The Department estimates that the NPRM would modify the distribution of burden hours for compliance with affirmative action provisions, which ultimately would reduce burden hour estimates for obligations of apprenticeship program sponsors. Under the currently approved paperwork burdens (OMB Control Number 1205-0224), the Department attributes a total of 3,380 burden hours for program sponsors obligations for affirmative action provisions in current § 30.4, affirmative action (1 hour for each new sponsor with five or more apprentices = 180 hours); current § 30.5, selection procedures (0.5 hours for 5,900 active apprenticeship program sponsors with five or more apprentices = 2,950 hours), and § current 30.6, existing list of eligibles and public notice (5 hours for 50 sponsors = 250 hours).

As discussed elsewhere in the preamble, the NPRM would delete the current § 30.6, existing list of eligibles and public notice, and would simplify the regulatory structure governing procedures for selecting apprentices (current § 30.5 and proposed § 30.10). Burden hours for affirmative action obligations in current § 30.5 and 30.6 would be eliminated.

For the proposed rule, the Department estimates five total burden hours for apprenticeship program sponsors' affirmative action obligations in proposed §§ 30.4, 30.5, 30.6, 30.8, and 30.9. These requirements would apply to program sponsors subject to proposed § 30.4(b), the adoption of affirmative action programs. As discussed elsewhere in the preamble, proposed § 30.4(d) carries forward existing exemptions from the requirement to conduct affirmative action programs. Burden hour estimates for these affirmative action obligations are: (1) one hour to develop, maintain, and update a written plan submitted to and approved by the Registration Agency within one year from

the time of registration; (2) 0.5 hours for utilization analysis for race, sex, and ethnicity in proposed § 30.5; (3) 0.5 hours for establishment of utilization goals for race, sex, and ethnicity in proposed § 30.6; (4) one hour for outreach, recruitment and retention for targeted groups in proposed § 30.8; and (5) one hour for targeted outreach, recruitment, and retention for individuals with disabilities in proposed § 30.8; and (6) one hour for the review of personnel processes (proposed § 30.9).

Collection of Voluntary Self-Identification of Disability Information: The system for voluntary self-identification for individuals with disabilities is based on the one used by the Office of Federal Contractor Compliance Programs (OFCCP) (see OMB Control Number 1250-0005). Burden hour estimates for apprenticeship voluntary self-identification for individuals with disabilities follow the reasoning that OFCCP developed for the Section 503 rule. Similar estimates are described in the burden analysis and illustrated in Exhibit 8.

The Department proposes to require sponsors to invite applicants to voluntarily self-identify as part of the apprenticeship application process if they are an individual with a disability at three stages: (1) Pre-offer: at the time they apply or are considered for apprenticeship; (2) Post-offer: after they are accepted into the apprenticeship program but before they begin; and, (3) After-Enrollment: once they are enrolled in the program.

The Department estimates that an applicant would take on average 5 minutes to read and complete a program sponsor's invitation to self-identify a disability. The Department estimates that there will be, on average, 10 applicants per Registered Apprenticeship job listing, and an average of five job openings per year per sponsor. The pre-offer burden is estimated to be 95,508 hours (23,014 sponsors X 10 applicants X 5

job openings per year X 5 minutes). The post-offer burden is estimated to be 9,551 hours based on an average of 5 applicants for the 5 job openings per sponsor per year (23,014 sponsors X 5 applicants per year X 5 minutes). Likewise, the after-enrollment burden is estimated to be 9,551 hours based on an average of 5 apprentices employed in an average of 5 job openings per sponsor per year 23,014 sponsors X 5 new apprentices per year X 5 minutes). The Department also estimates that an administrative assistant will spend 30 minutes per year to record and file the voluntary reporting of disability information related to this rule. This burden is estimated to be 11,507 hours (23,014 X 30 minutes).

Exhibit 8 below summarizes the burden hours for obligations of apprenticeship program sponsors currently approved under OMB Control Number 1205-0224, and displays the burden hours associated with the NPRM. Responses for information collections regarding program sponsors' obligation are required to obtain or retain benefits as registered apprenticeship program sponsors.

<b>Exhibit 8: Information Collection For Obligations of Apprenticeship Program Sponsors</b>		
<b>Regulatory Requirements</b>	<b>Currently Approved</b>	<b>Proposed Rule</b>
<b>Equal opportunity standards</b>	Current § 30.3	Proposed § 30.3
Total Respondents	New sponsors with five or fewer apprentices	860
Frequency	One-time	One-time
Total Responses	1,290	860*
Average Time Per Response	0.5 hour	1.08 hours
Burden	645 hours	929 hours
<b>Affirmative action</b>	Current § 30.4	Proposed § 30.4*
Total Respondents	180	140
Frequency	One-time	One-time
Total Responses	180	140*
Average Time Per Response	1 hour	5 hours
Burden	180 hours	700 hours
<b>Selection of apprentices</b>	Current § 30.3	Proposed § 30.10
Total Respondents	5,900	0
Frequency	One-time	0
Total Responses	5,900	0
Average Time Per Response	0.5 hour	0
Burden	2,950 hours	0

<b>Existing list of eligibles and public notice</b>	Current § 30.6	0
Total Respondents	50	0
Frequency	One-time	0
Total Responses	50	0
Average Time Per Response	5 hours	0
Burden	250 hours	0
<b>Recordkeeping of active apprentices</b>	Current § 30.8	Proposed § 30.11
Total Respondents	26,700	23,014
Frequency	One-time	One-time
Total Responses	26,700	23,014
Average Time Per Response	0.0167 hour	0.0167 hour
Burden	445 hours	384 hours
<b>Voluntary Self-Identification of Disability Information</b>		
<u>Pre-Offer</u>		
Total Respondents	NA	23,014
Total Responses	NA	10 applicants / job opening
Frequency	NA	5 job openings / year
Average Time Per Response	NA	5 minutes
Burden	NA	95,508 hours
<u>Post-Offer</u>		
Total Respondents	NA	23,014
Total Responses	NA	5 applicants / year
Frequency	NA	Annually
Average Time Per Response	NA	5 minutes
Burden	NA	9,551 hours
<u>After-Enrollment</u>		
Total Respondents	NA	23,014
Total Responses	NA	5 new apprentices / year
Frequency	NA	Annually
Average Time Per Response	NA	5 minutes
Burden	NA	9,551 hours
<u>Sponsor Recordkeeping</u>		
Total Respondents	NA	23,014
Total Responses	NA	23,014
Frequency	NA	Annually
Average Time Per Response	NA	30 minutes
Burden	NA	11,507 hours
<b>Total Burden Hours</b>	4,470	128,130

\* If sponsors are not exempt from § 30.4, then total six burden hours are associated with meeting the requirements of proposed §§ 30.5, 30.6, 30.8, and 30.9.

Exhibit 9 illustrates the total burden hour estimates for the three information collections in the ICR for part 30, as currently approved under OMB Control Number 1205-0224, and as proposed under the NPRM.

**Exhibit 9: Burden Summary of Three Information Collections  
For Part 30 (OMB Control Number 1205-0224)**

<b>Information Collection</b>	<b>Currently Approved</b>	<b>Proposed Rule</b>
<b>ETA 9039 Complaint Form - Equal Opportunity in Apprenticeship and Training (Exhibit 6)</b>		
Total Respondents	50	50
Total Responses	50	50
Burden	25	25 hours
<b>Information Collection for SAAs (Exhibit 7)</b>		
Total Respondents	25 SAAs	25 SAAs
Total Responses	12,800	11,725
Aggregated Burden Hours	1,067	52,975 *
<b>Information Collection For Obligations of Apprenticeship Program Sponsors (Exhibit 8)</b>		
Total Respondents	34,120	116,070
Total Responses	34,120	47,088
Aggregated Burden	4,470	128,130
<b>Totals</b>		
Total Respondents	26,778	116,145
Total Responses	46,970	58,863
Aggregated Burden Hours	5,562	181,130

\* SAAs' aggregated burden includes a one-time burden for the process of updating the State EEO plans necessary for conformity with the proposed rule.

Executive Order 13132: Federalism

The Department has reviewed this NPRM in accordance with Executive Order 13132 and found it may have Federalism implications, because it may have substantial direct effects on States and on the relationship between the Federal government and the States. Although matters of Federalism in the National Registered Apprenticeship System are primarily established through part 29, Labor Standards for Registration of Apprenticeship Programs, which establishes the requirements for the recognition of SAAs as Registration Agencies, the proposed revisions to part 30 also have direct effect on a State's method of administering registered apprenticeship for Federal purposes. In particular, this NPRM requires an SAA that seeks to obtain or maintain recognition as the Registration Agency for Federal purposes, to submit a State EEO plan that demonstrates conformity of State apprenticeship law with revised part 30, and requires all program

sponsors registered with the State for Federal purposes to comply with the State EEO plan. This NPRM also requires OA's Administrator to provide written concurrence on any subsequent modifications to the State EEO plan, as provided in § 29.13(b)(9) of this title. The Department has determined that these requirements are essential to ensure that SAAs conform to the new requirements of part 30, as a precondition for recognition.

In the development of this NPRM, the Department included several mechanisms for consultation with State officials. In 2010, OA conducted two listening sessions with members of the National Association of State and Territorial Apprenticeship Directors (NASTAD), the organization representing apprenticeship officials from the District of Columbia, 26 States, and three Territories, to request the members' recommendations for updating part 30. Additionally, as discussed earlier in the preamble, OA gave consideration to recommendations from the ACA, whose membership includes representatives from NASTAD and the National Association of State Government Labor Officials (NAGLO). Finally, OA invited State officials to participate in a series of "town hall" meetings and a webinar conducted in spring 2010 to elicit the agency's stakeholders' recommendations for updating part 30.

The recommendations that State apprenticeship officials provided through these consultations varied considerably as to their specificity and topics. However, the input received in consultations with State apprenticeship officials was similar to that generated in the sessions with other apprenticeship stakeholders. The shared themes included support for a progressive approach to enforcement; increased outreach efforts; focus on equal training for and retention of all apprentices; clarification of complaint procedures;

and simplification of requirements for selection procedures. The Department considered all of these issues, and incorporated them into the proposed rule.

Nevertheless, consistent with Executive Order 13132, the Department specifically solicits comments from State and local government officials on this proposed rule.

#### Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments, and on the private sector. This NPRM does not impose any Federal mandates on any State, local, or tribal governments, or the private sector, within the meaning of the Unfunded Mandates Reform Act of 1995.

#### Assessment of Federal Regulations and Policies on Families

The Department certifies that this NPRM has been assessed according to section 654 of Public Law 105-277, 112 Stat. 2681, for its effect on family well-being. The Department concludes that this NPRM will not adversely affect the well-being of the Nation's families. Rather, it should have a positive effect by safeguarding the welfare of registered apprentices.

#### Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980, as amended (RFA), requires agencies to review regulations for their impact on small businesses and consider less burdensome alternatives. When proposing regulations that will have a significant effect on a

substantial number of small entities, the RFA requires agencies to prepare regulatory flexibility analyses, which describe the impact of the proposed rule on small entities, and make them available for public comment. 5 U.S.C. 603. If the rule is not expected to have a significant economic impact on a substantial number of small entities, the RFA allows an agency to certify this in lieu of preparing the analyses. 5 U.S.C. 605. For the reasons explained in this section, the Department believes this NPRM is not likely to have a significant economic impact on a substantial number of small entities and, therefore, a regulatory flexibility analysis is not required by the RFA.

However, in the interest of transparency and to provide a full opportunity for public comment, we have prepared the following Initial Regulatory Flexibility Analysis to assess the impact of this proposed regulation on small entities, as defined by the applicable Small Business Administration (SBA) size standards. We specifically request comments on the following burden estimates, including the number of small entities affected by the requirements, and on alternatives that could reduce the burden on small entities. The Chief Counsel for Advocacy of the SBA was notified with a draft of this proposed rule upon submission of the proposed rule to OMB under Executive Order 12866, as amended, “Regulatory Planning and Review.” 58 FR 51735, 67 FR 9385, 72 FR 2763; 5 U.S.C. 603(a).

#### 1. Classes of Small Entities

A small entity is one that is independently owned and operated and that is not dominant in its field of operation. 5 U.S.C. 601(3); 15 U.S.C. 632. The definition of small entity varies from industry to industry to properly reflect industry size differences.

13 CFR 121.201. An agency must either use the SBA definition for a small entity or establish an alternative definition for the industry. Using SBA size standards, the Department has conducted a small entity impact analysis on small entities in the five industry categories with the most registered apprenticeship programs and for which data were available: Construction, Manufacturing, Service, Transportation and Communication, and Trade.<sup>82</sup> These top five industry categories account for 86 percent of the total number of apprenticeship sponsors who had active apprenticeships during FY2009.<sup>83</sup>

One industry, Public Administration, made the initial top-five list but is not included in this analysis because no data on the revenue of small local jurisdictions were available. Local jurisdictions are classified as small when their population is less than 50,000. 5 U.S.C. 601(5). The Department requests information from the public regarding possible sources of data or information on the number and revenues of small local jurisdictions sponsoring apprenticeship programs.

Registered apprenticeship program sponsors may be employers, employer associations, industry associations, or labor management organizations and, thus, may represent businesses, multiple businesses, and not-for-profit organizations. The requirements of this NPRM, however, fall on the sponsor, and therefore we used sponsor

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<sup>82</sup>According to RAPIDS, the percent of programs (of all sizes) in the selected sectors were as follows: Construction, 40.2 percent; Manufacturing, 26.7 percent; Service, 8.6 percent; Transportation and Communication, 7.3 percent; and Trade, 2.7 percent.

<sup>83</sup>RAPIDS includes a portion of all registered apprenticeship programs and apprentices nationwide because SAAs that are recognized by the Department of Labor to serve as the Registration Agency may choose, but are not required, to participate in RAPIDS. Therefore, RAPIDS includes individual level apprentice and apprenticeship program data for the 25 states in which OA is the Registration agency and 7 SAAs that participate in RAPIDS. Therefore, RAPIDS includes data from 32 of the 50 states and the Department estimates that they represent 55 to 60 percent of all sponsors and 50 to 55 percent of all apprentices. We assume that our data set is a good predictor of the population of apprenticeship programs nationwide.

data to create the industry breakdowns. The Department requests information from the public regarding possible sources of data or information on the number and revenues of not-for-profit organizations sponsoring apprenticeship programs.

The Department has adopted the SBA small business size standard for each of the five industry categories. Since the industry categories include multiple NAICS sectors, some industry categories will reflect multiple SBA definitions. We accounted for industries included in each industry category.

The “Construction” industry category follows NAICS exactly (NAICS 23) and, thus, we used the SBA definition of revenue less than or equal to \$35.5 million.

The “Manufacturing” industry category includes the standard sector for Manufacturing (NAICS 31-33), but also covers Logging (NAICS 113310); Sand, Gravel, Clay, and Ceramic and Refractory Minerals Mining and Quarrying (NAICS 21232); and Newspaper, Periodical, Book, and Directory Publishers (NAICS 5111). The corresponding SBA small size standards are as follows: Manufacturing – 500 employees or less; Newspaper, Periodical, Book, and Directory Publishers – 500 employees or less; Logging and Sand, Gravel, Clay, and Ceramic – revenue less than or equal to \$7 million; and Refractory Minerals Mining and Quarrying – revenue less than or equal to \$7 million.<sup>84</sup>

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<sup>84</sup>When an industry breakdown uses multiple sector codes, we used the more specific NAICS code. Typically, the definition of the industry category centers on a particular sector (for example, Manufacturing) but it may also include some satellite industries. For example, Logging is the only industry in Agriculture, Forestry, Fishing, and Hunting (NAICS 11). Thus, including the entire sector would be a poor representation of the “Manufacturing” industry category.

The “Service” industry category covers the largest number of NAICS sectors, subsectors, and industries.<sup>85</sup> The majority of these industries use the SBA small business size standard of revenue of less than or equal to \$7 million, with the exception of Radio, Television, and Other Electronic Stores, which uses \$9 million (the average across the industry codes); Motion Picture and Video Production, which uses \$29.5 million; and Dental Laboratories, which uses 500 employees or less.

The “Transportation and Communication” industry category includes transportation and warehousing (NAICS 48-49), Marinas (NAICS 713930), Other Nonhazardous Waste Treatment and Disposal (NAICS 562219), Telecommunication (NAICS 517), Radio and TV Broadcasting (NAICS 5151), and Utilities (NAICS 221). The SBA size standard for these industries is revenue less than or equal to \$7 million for Transportation and Warehousing, Marinas and Telecommunication; \$12.5 million for Other Nonhazardous Waste Treatment and Disposal; and \$10.5 million for Radio and TV Broadcasting.<sup>86</sup>

The “Trade” industry category includes Merchant Wholesalers, Nondurable Goods (NAICS 424) and Durable Goods (NAICS 423); Retail Trade (NAICS 44-45); Retail Bakeries (NAICS 311811); and Food Services and Drinking Places (NAICS 722). The associated SBA size standards are: Merchant Wholesalers, Nondurable Goods and Durable Goods – less than or equal to 100 employees, Retail Trade – revenue less than or

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<sup>85</sup>The included industry sectors are Arts, Entertainment and Recreation (NAICS 71); Accommodation (NAICS 721); Other Services (NAICS 81); Administrative and Support and Waste Management and Remediation Services (NAICS 56); Professional, Scientific, and Technical Services (NAICS 541); Rental and Leasing Services (NAICS 532); Motion Picture and Video Production (NAICS 512110); Dental Laboratories (NAICS 339116); Radio, Television and Other Electronic Stores (NAICS 44312); Educational Services (NAICS 611); and Health Care and Social Assistance (NAICS 62).

<sup>86</sup>Utilities are categorized as small when their total electric output does not exceed 4 million megawatt hours. Because we did not have readily available data on megawatt output, we set aside the Utilities subsector.

equal to \$7 million, Retail Bakeries – less than or equal to 500 employees and Food Services and Drinking Places – revenue less than or equal to \$7 million.

SBA small business size standards are based on a comprehensive survey of industries, and are specific to each industry. Because each industry category covers multiple sectors, each category includes several criteria that can be used to identify small entities.<sup>87</sup> To determine the average number of employees by small entity, the revenue per employee for a small entity, and the percent of entities that qualify as a small entity, we broke down the 2007 Economic Census by these various sectors, subsectors, and industries. We made a calculation separately for each industry and then aggregated these values to obtain estimates for the top five industry categories.

## 2. Impact on Small Entities

The Department has estimated the incremental costs for small entities from the baseline of the 1978 Final Rule.<sup>88</sup> This analysis reflects the incremental cost of this NPRM, as it adds to the requirements of the 1978 Final Rule. Using available data, we have estimated the costs of the following provisions: posting of the equal opportunity pledge, disseminating information about apprenticeship opportunities through universal outreach and recruitment, selected sponsors disseminating information about apprenticeship opportunities through targeted outreach, and the time required to read and review the new regulatory requirements.

To examine the impact of this proposed rule on small entities, we evaluated the impact of the incremental costs on a hypothetical small entity of average size. The total

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<sup>87</sup>The SBA classifies small entities at the industry level but, because our analysis considers affected sectors, we incorporate the most common industry standard for each sector or subsector.

<sup>88</sup>43 FR 20760 (May 12, 1978) (requiring the inclusion of female apprentices in AAPs).

number of workers for the average small entity in the different sectors is as follows: Construction, 6.2; Manufacturing, 20.3, Service, 6.6; Transportation and Communication, 6.7; and Trade, 7.5.<sup>89</sup>

Using 2007 Economic Census data, we derived the annual revenues for small entities in each of the top five industry categories by multiplying the average number of workers by the average revenue per worker for each of the sectors. We estimated that small entities in the five sectors considered in this analysis have the following average annual revenues: Construction, \$1.28 million; Manufacturing, \$4.31 million; Service, \$0.72 million; Transportation and Communication, \$1.05 million; and Trade, \$1.72 million.

A significant economic burden results when the total incremental annual cost as a percentage of total average annual revenue is equal to or exceeds 1 percent.<sup>90</sup> Because the estimated annual burden of the rule is less than 1 percent of the average annual revenue of each industry category, the rule is not expected to cause a significant economic impact to small entities.<sup>91</sup> These entities include individual employers, groups of employers, labor management organizations, or industry associations that sponsor apprenticeships.

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<sup>89</sup>Source: 2007 County Business Patterns and 2007 Economic Census. These figures originate from the average number of employees and average revenue by employee size for a business that qualifies as a small business based on the sector-specific size standard.

<sup>90</sup>See Small Business Association, [A Guide for Government Agencies: How to Comply with the Regulatory Flexibility Act](http://www.sba.gov/content/guide-government-agencies-how-comply-with-regulatory-flexibility-act-0), 17-19 (June 2010), available at <http://www.sba.gov/content/guide-government-agencies-how-comply-with-regulatory-flexibility-act-0> (last accessed Apr. 7, 2011). The Department has used the 1 percent threshold in previous regulations.

<sup>91</sup>The ratio of annual costs to average annual revenue for small entities for the year 2010 is as follows: Construction, 0.12 percent; Manufacturing, 0.03 percent; Service, 0.21 percent; Transportation/Communication, 0.14 percent; and Trade, 0.09 percent.

A provision-by-provision analysis of the estimated small entity impacts of this NPRM is provided below.

### 3. Impacts of NPRM Provisions

The following sections present the impacts that this NPRM is estimated to have on small entities that sponsor apprentices. These include: posting of the equal opportunity pledge, disseminating information about apprenticeship opportunities through universal outreach and recruitment to individuals with disabilities, disseminating information about apprenticeship opportunities through targeted outreach and recruitment, , and reading and reviewing the new regulatory requirements.

The Department estimated the per-entity cost for each one of these changes from the baseline, that is, the 1978 Final Rule. Because all the rule provisions will have a similar impact on entities across economic sectors, we calculated impacts to a representative single entity.<sup>92</sup> As explained in detail below, the total impact amounts to approximately \$436 per affected entity in the first year (and a somewhat smaller impact in subsequent years).<sup>93</sup> The analysis covers a 10-year period (2015 through 2024) to ensure it captures costs that accrue over time.

#### a. Posting of the equal opportunity pledge

This NPRM proposes to require sponsors to post their equal opportunity pledge at each individual sponsor location, including on bulletin boards and through electronic

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<sup>92</sup>A large entity could have a single apprentice or a small entity could have multiple apprentices.

<sup>93</sup>Because the number of apprentices does not directly correlate with the size of the sponsor, we are unable to account for this difference. To be conservative in its estimate of impacts, the Department assumed that the time to complete the review process is independent of the size of the entity and applied the same cost of this provision to entities regardless of their size.

media (proposed § 30.3(b)(2)). The 1978 Final Rule did not contain a requirement for posting the pledge. This proposed provision represents a cost to sponsors, and reflects the time needed to post the document as well as the cost of the materials.

To estimate the labor cost of this provision, we assumed that it would take a sponsor 5 minutes (0.0833 hours), to post the pledge, and that this task would be performed by an administrative assistant at an average hourly compensation rate of \$22.28.<sup>94</sup> We multiplied the time estimate for this provision by the average hourly compensation rate to obtain a total labor cost per sponsor of \$1.85 ( $\$22.28 \times 0.083$ ).

To estimate the materials cost, we assumed that the pledge is one page, and that the cost per page for photocopying is \$0.15, resulting in a materials cost of \$0.15 ( $\$0.15 \times 1$ ) per sponsor. Summing the labor and materials costs results in an annual per-entity cost of \$2.00 ( $\$1.85 + \$0.15$ ) due to this provision.

b. Disseminate information about apprenticeship opportunities through universal outreach and recruitment, including to individuals with disabilities

Under the 1978 Final Rule, sponsors are required to develop and maintain an affirmative action program, which requires, among other things, outreach and recruitment of women and minorities. This NPRM proposes that sponsors, in addition to contacting organizations that reach women and minorities, also contact organizations that serve individuals with disabilities. Sponsors would be required to develop a list of recruitment sources that would generate referrals from all demographic groups, including women,

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<sup>94</sup>The hourly compensation rate for an administrative assistant was calculated by multiplying the average hourly wage of \$15.58 (as published by the Department's OES survey, O\*NET Online) by 1.43 to account for private-sector employee benefits (source: BLS). Thus, the hourly compensation rate for an administrative assistant is \$22.28 ( $\$15.58 \times 1.43$ ).

minorities, and individuals with disabilities, with contact information for each source. Further, sponsors would be required to notify these sources at least 30 days in advance of any apprenticeship opportunities

We assumed that the cost to sponsors to distribute the information about apprenticeship opportunities to organizations serving individuals with disabilities will be the labor cost. We also assumed that the labor for this provision will be performed by a human resource manager and an administrative assistant with average hourly compensation rates of \$68.55 and \$22.28, respectively.<sup>95</sup>

The Department estimated that this dissemination task will take 0.5 hours of a human resource manager's time and 0.5 hours of an administrative assistant's time per targeted location. The cost of this provision per affected sponsor is, therefore, the time each staff member devotes to this task (0.5 hours for a human resource manager and 0.5 hours for an administrative assistant) multiplied by their associated average hourly compensation rates. This calculation resulted in a total labor cost of \$45.41  $((\$68.55 \times 0.5) + (\$22.28 \times 0.5))$  per location. This total labor cost is then multiplied by the number of locations (5). The total per-entity cost for this provision for the first year is \$227.05  $(\$45.41 \times 5)$  for each entity.<sup>96</sup>

Because the universal outreach may involve several different types of activities, the Department included a sensitivity analysis on the total time allocated to universal outreach. Mirroring the sensitivity analysis calculation above in the Executive Order

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<sup>95</sup>The hourly compensation rate for a human resource manager is calculated by multiplying the hourly wage of \$47.94 (as published by the Department's OES survey) by 1.43 to account for private-sector employee benefits (source: BLS). Thus, the average hourly compensation rate for a human resource manager is \$68.55  $(\$47.94 \times 1.43)$ . The average hourly compensation rate for an administrative assistant is \$22.28, as calculated above.

<sup>96</sup>Total does not add up precisely due to rounding.

12866 analysis, the Department estimated a low allocation of time (15 minutes, or 0.25 hours) and a high allocation of time (1 hour and 15 minutes, or 1.25 hours) for both the administrative assistant and the human resource manager. The resulting range of costs for the first year is \$113.55 to \$567.70.<sup>97</sup> The Department requests data from the public on how the addition of universal outreach to organizations that serve individuals with disabilities is expected to impact small entities that sponsor apprentices.

c. Disseminate information about apprenticeship opportunities through targeted outreach and recruitment, including to individuals with disabilities

In addition to the normal outreach, recruitment, and retention activities required of all sponsors under proposed § 30.3(b), the proposed rule would require a sponsor of an apprenticeship program, whose utilization analyses revealed underutilization of Hispanics or Latinos, women, or a particular racial minority group(s) and/or who has determined pursuant to proposed § 30.7(f) that there are problem areas with respect to its outreach, recruitment, and retention activities of individuals with disabilities, to improve and revamp their targeted outreach, as discussed in proposed § 30.8. We assume that this additional outreach will happen in the same manner as the universal outreach discussed above.

This additional outreach, recruitment, and retention would be required of sponsors who employ five or more apprentices and who are not effectively recruiting and retaining a particular underutilized group. We assume that 25 percent of all sponsors currently

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<sup>97</sup> To estimate the range of costs for this provision, we calculated the labor cost per affected sponsor by multiplying the time required for the task by the hourly compensation rate for both a human resource manager ( $\$68.55 \times .25 = \$17.14$  for the low cost and  $\$68.55 \times 1.25 = \$85.69$  for the high cost) and an administrative assistant ( $\$22.28 \times .25 = \$5.57$  for the low cost and  $\$22.28 \times 1.25 = \$27.85$  for the high cost). We then multiplied the total per-sponsor labor cost by the five sites for which each sponsor is to provide outreach. This results in a total cost of \$113.55 for the low time assumption ( $(\$17.14 + \$5.57) \times 5$ ) and \$567.70 for the high time assumption ( $(\$85.69 + \$27.85) \times 5$ ) in 2015.

employ five or more apprentices, and would thus be required to develop and maintain an affirmative action program.<sup>98</sup> However, the Department recognizes that some sponsors may already be employing persons with disabilities as registered apprentices and, therefore, this analysis would be overestimating those who need to set goals.

Unfortunately, there are no available data on the number of sponsors who are employing persons with disabilities as registered apprentices. As stated above in the discussions of proposed §§ 30.5 and 30.6, the Department requests data or information from the public on the number of sponsors who currently employ persons with disabilities.

For this analysis, we assumed that the 25 percent of all sponsors employing five or more apprentices remains constant throughout the 10-year analysis period. In reality, this percentage will fluctuate as sponsors take on new apprentices and as apprentices complete their programs. We also expect that, over time, successful outreach will lead to more hiring of persons with disabilities and that sponsors will meet their recruitment goals and not be required to complete this additional outreach.

We assumed that the cost to sponsors to distribute information about apprenticeship opportunities to organizations serving individuals with disabilities will be the labor cost. We also assumed that the labor for this provision will be performed by a human resource manager and an administrative assistant with average hourly compensation rates of \$68.55 and \$22.28, respectively.

The Department estimated that this dissemination task will take 0.5 hours of a human resource manager's time and 0.5 hours of an administrative assistant's time per targeted location. A sensitivity analysis for a range of time spent conducting targeted

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<sup>98</sup>The 25 percent of sponsors who employ five or more apprenticeships was estimated from the RAPIDS data set maintained by the Department.

outreach to organizations that serve individuals with disabilities was conducted and is presented below. The cost of this provision per affected sponsor is, therefore, the time each staff member devotes to this task (0.5 hours for a human resource manager and 0.5 hours for an administrative assistant) multiplied by their associated average hourly compensation rates. This calculation results in a total labor cost of \$45.41 ( $(\$68.55 \times 0.5) + (\$22.28 \times 0.5)$ ) per location. This total labor cost is then multiplied by the number of locations (5) and by the number of sponsors who sponsor 5 or more apprentices (25 percent of the total number of sponsors, or 5,754 ( $23,014 \times 25$  percent)).

Finally, we assume that this additional outreach will occur when those sponsors who underutilize persons with disabilities are identified by the Department through audits (10 percent of the total number of sponsors). This calculation results in a total cost for this provision of approximately \$238,506 annually. To estimate the cost of this provision per affected small entity, we divided this total by the estimated number of small entities (19,345), resulting in an average cost per small entity of \$12.33 ( $\$238,506 / 19,345$ ). We assume that this additional outreach will occur 3 years after the rule goes into effect.

Because the targeted outreach may involve several different types of activities, the Department included a sensitivity analysis on the total time allocated to universal outreach. Mirroring the sensitivity analysis calculation above, the Department estimated a low allocation of time (15 minutes, or 0.25 hours) and a high allocation of time (1 hour and 15 minutes, or 1.25 hours) for the administrative assistant. The resulting range of costs annually is \$6.17 to \$30.83. The Department requests data from the public on how the targeted outreach to organizations that serve not only individuals with disabilities, but

women and minorities is expected to impact small entities that sponsor apprenticeship programs.

d. Reading and Reviewing the New Regulatory Requirements

During the first year that this NPRM would be in effect, assuming that it becomes a final rule, sponsors would need to learn about the new regulatory requirements. We estimate this cost for a hypothetical small entity by multiplying the time required to read the new rule (4 hours) by the average hourly compensation rate of a human resources manager (\$68.55, as calculated above). Thus, the resulting cost per small entity for this provision is \$274.20 ( $\$68.55 \times 4$ ). This cost occurs only in the year when the rule is published.

e. Orientation and periodic information sessions

Proposed § 30.3(b)(2) requires each sponsor to conduct orientation and periodic information sessions for apprentices and journeyworkers who directly supervise apprentices, and other individuals connected with the administration or operation of the sponsor's apprenticeship program to inform and remind such individuals of the sponsor's equal employment opportunity policy with regard to apprenticeship.

The Department estimated a sponsor in the first year (2015) will hold one 30 minute regular orientation and periodic information sessions with on average 5 apprentices (\$18.59) and 5 journeyworkers (\$36.47). The Department estimated that a human resource manager (\$68.55) would need to spend 4 hours to develop and prepare written

materials for the session in the first year. The average annual cost over the 10-year analysis period per a small entity for this provision is \$197.77.

f. Invitation to self-identify as an individual with a disability

Proposed § 30.11 requires sponsors, as part of their general duty to engage in affirmative action, to invite applicants for apprenticeship to voluntarily self-identify as an individual with a disability protected by this part at three stages: (1) at the time they apply or are considered for apprenticeship; (2) after they are accepted into the apprenticeship program but before they begin their apprenticeship; and (3) once they are enrolled in the program.

The Department estimated that a sponsor in the first year (2015) will need to develop a self-identification invitation, which must be separate from the application, for pre-offer, post-offer, and post-enrollment stages. The Department estimated that a human resource manager (\$68.55) will spend 1 hour to develop a self-identification invitation and estimated that an applicant (\$18.59) would take on average 5 minutes (0.083 hour) to complete the invitation. The Department also estimated that there will be an average of 10 applicants per job listings for an average for on average 5 listings per year. In addition, the Department estimated that an administrative assistant (\$22.28) would spend 0.5 hour to record and keep invitations in a data analysis file. The average annual cost over the 10-year analysis period per a small entity for this provision is \$117.67.

4. Total Cost Burden for Small Entities

The Department's calculations indicate that for a hypothetical small entity in the top five industry categories the average annual cost of this proposed rule is \$831.02 (\$2 +

$\$227.05 + \$12.33 + \$274.2 + \$197.77 + \$117.67) + 303 + 118)$  The cost in the initial year is higher than the cost in subsequent years because the initial year includes the time to read and review the provisions of the new rule; costs change in the third year to reflect the additional recruitment but remain constant for the remaining years of the 10-year analysis period. Neither the entity size nor the entity sector impact the per-entity costs.

The Department also calculated a range of costs to account for some of the uncertainty in the time needed to disseminate information to underutilized groups and the time needed for universal outreach. The Department's calculations indicate that for a hypothetical small entity in the top five industry categories the annual average cost of this proposed rule is \$831.02 over 2015-2024.

The total cost impacts, as a percent of revenue, are all well below the 1 percent threshold for determining a significant economic impact. The estimated cost impacts to apprenticeship sponsors for the first year, as a percent of revenue, are as follows: Construction, 0.06 percent; Manufacturing, 0.02 percent; Service, 0.1 percent; Transportation and Communication, 0.08 percent; and Trade, 0.05 percent. None of these impacts for the first year are close to 1 percent of revenues, even if considering only the high cost estimates.

Even if we measure the cost impacts, as a percent of revenue for the smallest of the small entities in each industry, they are still below the 1 percent threshold. Estimated number of sponsors classified as small entities is 9,154, 6,059, 1,936, 1,613, and 507 for construction, manufacturing, service, transportation and communication, and trade industry, respectively.

<b>EXHIBIT 9: SUMMARY OF THE IMPACTS ON SMALL ENTITIES</b>		
<b>Industry</b>	<b>Average Cost as a Percent of Average Revenue</b>	<b>Affected Small Entities</b>
1 Construction	0.06%	9,154
2 Manufacturing	0.02%	6,059
3 Service	0.1%	1,936
4 Transportation and Communication	0.08%	1,613
5 Trade	0.05%	507

Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

The Department has reviewed this proposed rule in accordance with Executive Order 13175 and has determined that it does not have “tribal implications.” This NPRM does not “have substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.”

Executive Order 12988: Civil Justice

This NPRM has been drafted and reviewed in accordance with Executive Order 12988, Civil Justice Reform, and will not unduly burden the Federal court system. This NPRM has been written so as to minimize litigation and provide a clear legal standard for affected conduct, and has been reviewed carefully to eliminate drafting errors and ambiguities.

**List of Subjects in 29 CFR part 30**

Administrative practice and procedure, Apprenticeship, Employment, Equal employment opportunity, Reporting and recordkeeping requirements, Training.

Signed in Washington, DC.

Portia Wu

Assistant Secretary, Employment and Training

For the reasons stated in the preamble, the Department of Labor proposes to amend 29 CFR parts 29 and 30 as follows:

PART 29 – LABOR STANDARDS FOR THE REGISTRATION OF  
APPRENTICESHIP PROGRAMS

1. The authority citation for part 29 continues to read as follows:

Authority: Section 1, 50 Stat. 664, as amended (29 U.S.C. 50; 40 U.S.C. 276c; 5 U.S.C. 301) Reorganization Plan No. 14 of 1950, 64 Stat. 1267 (5 U.S.C. App. P. 534)

2. Amend § 29.5 by revising paragraph (b)(21) to read as follows:

§ 29.5 Standards of apprenticeship.

\* \* \* \* \*

(b) \* \* \*

(21) Compliance with 29 CFR part 30, including the equal opportunity pledge prescribed in 29 CFR 30.3(c); an affirmative action program complying with 29 CFR 30.4; and a method for the selection of apprentices complying with 29 CFR 30.10, or compliance with parallel requirements contained in a State plan for equal opportunity in apprenticeship adopted under 29 CFR part 30 and approved by the Department. The apprenticeship standards must also include a statement that the program will be conducted, operated and administered in conformity with applicable provisions of 29 CFR part 30, as amended, or if applicable, an approved State plan for equal opportunity in apprenticeship.

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3. Amend § 29.7 by revising paragraph (j) and adding paragraph (l) to read as follows:

§ 29.7 Apprenticeship agreement.

\* \* \* \* \*

(j) A statement that the apprentice will be accorded equal opportunity in all phases of apprenticeship employment and training, without discrimination because of race, color, religion, national origin, sex, sexual orientation, age (40 or older), genetic information, or disability.

\* \* \* \* \*

(l) A request for demographic data, including the apprentice's race, sex, and ethnicity, and disability status.

4. Amend § 29.8 by revising paragraph (b)(1)(i) to read as follows:

§ 29.8 Deregistration of a registered program.

\* \* \* \* \*

(b) \* \* \*

(1)(i) Deregistration proceedings may be undertaken when the apprenticeship program is not conducted, operated, or administered in accordance with the program's registered provisions or with the requirements of this part, including but not limited to: failure to provide on-the-job learning; failure to provide related instruction; failure to pay the apprentice a progressively increasing schedule of wages consistent with the apprentices skills acquired; or persistent and significant failure to perform successfully.

\* \* \* \* \*

5. Amend § 29.14 by revising paragraph (a) to read as to read as follows:

§ 29.14 Derecognition of State apprenticeship agencies.

\* \* \* \* \*

(a) Derecognition proceedings for failure to adopt or properly enforce a State Plan for Equal Employment Opportunity in Apprenticeship must be processed in accordance with the procedures prescribed in this part.

\* \* \* \* \*

## PART 30 – EQUAL EMPLOYMENT OPPORTUNITY IN APPRENTICESHIP AND TRAINING

6. Revise part 30 to read as follows:

### PART 30 – EQUAL EMPLOYMENT OPPORTUNITY IN APPRENTICESHIP

Sec.

- 30.1 Purpose, applicability, and relationship to other laws.
- 30.2 Definitions.
- 30.3 Equal opportunity standards applicable to all sponsors.
- 30.4 Affirmative action programs.
- 30.5 Utilization analysis for race, sex, and ethnicity.
- 30.6 Establishment of utilization goals for race, sex, and ethnicity.
- 30.7 Utilization goals for individuals with disabilities.
- 30.8 Targeted outreach, recruitment, and retention.
- 30.9 Review of personnel processes.
- 30.10 Selection of apprentices.
- 30.11 Invitation to self-identify as an individual with a disability.
- 30.12 Recordkeeping.
- 30.13 Equal employment opportunity compliance reviews.
- 30.14 Complaints.
- 30.15 Enforcement actions.
- 30.16 Reinstatement of program registration.
- 30.17 Intimidation and retaliation prohibited.
- 30.18 State apprenticeship agencies.
- 30.19 Exemptions.
- 30.20 Effective date.

Authority: Sec. 1, 50 Stat. 664, as amended (29 U.S.C. 50; 40 U.S.C. 276c; 5 U.S.C.

301); Reorganization Plan No. 14 of 1950, 64 Stat. 1267, 3 CFR 1949-53 Comp. p. 1007.

§ 30.1 Purpose, applicability, and relationship to other laws.

(a) Purpose. The purpose of this part is to promote equal opportunity for apprentices and applicants for apprenticeship in registered apprenticeship programs by prohibiting discrimination based on race, color, religion, national origin, sex, sexual orientation, age (40 or older), genetic information, and disability. This part also prescribes affirmative action efforts sponsors must take to ensure equal opportunity for apprentices and applicants for apprenticeship. The regulations set forth the equal opportunity obligations of sponsors, the contents of affirmative action programs, procedures for the filing and processing of complaints, and enforcement procedures. These regulations also establish procedures for deregistration of an apprenticeship program in the event of noncompliance with this part and prescribe the equal opportunity requirements for recognition of State Apprenticeship Agencies (SAA) under part 29.

(b) Applicability. This part applies to all sponsors of apprenticeship programs registered with either the U.S. Department of Labor or a recognized SAA.

(c) Relationship to other laws. This part does not invalidate or limit the remedies, rights, and procedures under any Federal law or the law of any State or political subdivision of any State or jurisdiction that provides greater or equal protection for individuals based on race, color, religion, national origin, sex, sexual orientation, age (40 or older), genetic information, or disability than are afforded by this part. It may be a defense to a charge of a violation of this part that a challenged action is required or necessitated by another Federal law or regulation, or that another Federal law or regulation prohibits an action that would otherwise be required by this part.

§ 30.2 Definitions.

For the purpose of this part:

Administrator means the Administrator of the Office of Apprenticeship, or any person specifically designated by the Administrator.

Apprentice means a worker at least 16 years of age, except where a higher minimum age standard is otherwise fixed by law, who is employed to learn an apprenticeable occupation as provided in § 29.4 of this title under standards of apprenticeship fulfilling the requirements of § 29.5 of this title.

Apprenticeship Committee (Committee) means those persons designated by the sponsor to administer the program. A committee may be either joint or non-joint, as follows:

(1) A joint committee is composed of an equal number of representatives of the employer(s) and of the employees represented by a bona fide collective bargaining agent(s).

(2) A non-joint committee, which may also be known as a unilateral or group non-joint (which may include employees) committee, has employer representatives but does not have a bona fide collective bargaining agent as a participant.

Apprenticeship program means a plan containing all terms and conditions for the qualification, recruitment, selection, employment and training of apprentices, as required under 29 CFR parts 29 and 30, including such matters as the requirement for a written apprenticeship agreement.

Department means the U.S. Department of Labor.

Direct threat means a significant risk of substantial harm to the health or safety of the individual or others that cannot be eliminated or reduced by reasonable accommodation.

The determination that an individual poses a “direct threat” must be based on an individualized assessment of the individual’s present ability to safely perform the essential functions of the job. This assessment must be based on a reasonable medical judgment that relies on the most current medical knowledge and/or on the best available objective evidence. In determining whether an individual would pose a direct threat, the factors to be considered include:

- (1) The duration of the risk;
- (2) The nature and severity of the potential harm;
- (3) The likelihood that the potential harm will occur; and
- (4) The imminence of the potential harm.

Disability<sup>1</sup> means, with respect to an individual:

(1) A physical or mental impairment that substantially limits one or more major life activities of such individual;

- (2) A record of such an impairment; or
- (3) Being regarded as having such an impairment.

EEO means equal employment opportunity.

Electronic media means media that utilize electronics or electromechanical energy for the end user (audience) to access the content; and includes, but is not limited to,

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<sup>1</sup> The definitions for the term “disability” and other terms relevant to defining disability and disability discrimination standards, including “direct threat”, “major life activities”, “physical or mental impairment”, “qualified applicant or apprentice”, “reasonable accommodation”, and “undue hardship, are taken directly from title I of the Americans with Disabilities Act (ADA), as amended by the Americans with Disabilities Act Amendments Act (ADAAA) and from the Equal Employment Opportunity Commission’s regulations implementing the ADA at 29 CFR part 1630, to the extent that the ADAAA did not provide a definition.

electronic storage media, transmission media, the Internet, extranet, lease lines, dial-up lines, private networks, and the physical movement of removable/transportable electronic media and/or interactive distance learning.

Employer means any person or organization employing an apprentice whether or not such person or organization is a party to an Apprenticeship Agreement with the apprentice.

Ethnicity, for purposes of recordkeeping and affirmative action, has the same meaning as under the Office of Management and Budget's Standards for the Classification of Federal Data on Race and Ethnicity, 62 FR 58782 (Oct. 30, 1997), or any successor standards. Ethnicity thus refers to the following designations:

(1) Hispanic or Latino – A person of Cuban, Mexican, Puerto Rican, Cuban, South or Central American, or other Spanish culture or origin, regardless of race.

(2) Not Hispanic or Latino

Genetic information means:

(1) Information about:

(i) An individual's genetic tests;

(ii) The genetic tests of that individual's family members;

(iii) The manifestation of disease or disorder in family members of the individual (family medical history);

(iv) An individual's request for, or receipt of, genetic services, or the participation in clinical research that includes genetic services by the individual or a family member of the individual; or

(v) The genetic information of a fetus carried by an individual or by a pregnant woman who is a family member of the individual and the genetic information of any embryo legally held by the individual or family member using an assisted reproductive technology.

(2) Genetic information does not include information about the sex or age of the individual, the sex or age of family members, or information about the race or ethnicity of the individual or family members that is not derived from a genetic test.<sup>2</sup>

Journeyworker means a worker who has attained a level of skill, abilities and competencies recognized within an industry as having mastered the skills and competencies required for the occupation. (Use of the term may also refer to a mentor, technician, specialist or other skilled worker who has documented sufficient skills and knowledge of an occupation, either through formal apprenticeship or through practical on-the-job experience and formal training.)

Major life activities include, but are not limited to: caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, sitting, reaching, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, interacting with others, and working. A major life activity also includes the operation of a major bodily function, including but not limited to, functions of the immune system, special sense organs and skin; normal cell growth; and digestive, genitourinary, bowel, bladder, neurological, brain, respiratory, circulatory, cardiovascular, endocrine, hemic, lymphatic, musculoskeletal, and reproductive

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<sup>2</sup> The definition of the term “genetic information” is taken directly from the Genetic Information Nondiscrimination Act of 2008 (GINA) at 42 U.S.C. 2000ff(4) and the EEOC’s implementing regulations at 29 CFR 1635.3(c).

functions. The operation of a major bodily function includes the operation of an individual organ within a body system.

Office of Apprenticeship (OA) means the office designated by the Employment and Training Administration of the U.S. Department of Labor to administer the National Registered Apprenticeship System or its successor organization.

Physical or mental impairment means:

(1) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more body systems, such as neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, immune, circulatory, hemic, lymphatic, skin, and endocrine; or

(2) Any mental or psychological disorder, such as intellectual disability (formerly termed “mental retardation”), organic brain syndrome, emotional or mental illness, and specific learning disabilities.

Pre-apprenticeship program means a training model designed to assist individuals who do not currently possess the minimum requirements for selection into an apprenticeship program to meet the minimum selection criteria established in a program sponsor’s apprenticeship standards required under part 29. It involves a form of structured workplace education and training in which an employer, employer group, industry association, labor union, community-based organization, or educational institution collaborates to provide formal instruction that will introduce participants to the competencies, skills, and materials used in one or more apprenticeable occupations. It may also involve provision of supportive services such as transportation, child care, and

income support to assist participants in the successful completion of the pre-apprenticeship program.

Qualified applicant or apprentice is an individual who, with or without reasonable accommodation, can perform the essential functions of the apprenticeship program for which the individual applied or is enrolled.

Race, for purposes of recordkeeping and affirmative action, has the same meaning as under the Office of Management and Budget's Standards for the Classification of Federal Data on Race and Ethnicity, 62 FR 58782 (Oct. 30, 1997), or any successor standards.

Race thus refers to the following designations:

(1) White - A person having origins in any of the original peoples of Europe, the Middle East, or North Africa.

(2) Black or African American - A person having origins in any of the black racial groups of Africa.

(3) Native Hawaiian or Other Pacific Islander - A person having origins in any of the peoples of Hawaii, Guam, Samoa, or other Pacific Islands.

(4) Asian - A person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian Subcontinent including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam.

(5) American Indian or Alaska Native - A person having origins in any of the original peoples of North and South America (including Central America), and who maintains tribal affiliation or community attachment.

Reasonable accommodation (1) The term reasonable accommodation means:

(i) Modifications or adjustments to a job application process that enable a qualified applicant with a disability to be considered for the position such qualified applicant desires; or

(ii) Modifications or adjustments to the work environment, or to the manner or circumstances under which the position held or desired is customarily performed, that enable a qualified individual with a disability to perform the essential functions of that position; or

(iii) Modifications or adjustments that enable a sponsor's apprentice with a disability to enjoy equal benefits and privileges of apprenticeship as are enjoyed by its other similarly situated apprentices without disabilities.

(2) Reasonable accommodation may include but is not limited to:

(i) Making existing facilities used by apprentices readily accessible to and usable by individuals with disabilities; and

(ii) Job restructuring; part-time or modified work schedules; reassignment to a vacant position; acquisition or modifications of equipment or devices; appropriate adjustment or modifications of examinations, training materials, or policies; the provision of qualified readers or interpreters; and other similar accommodations for individuals with disabilities.

(3) To determine the appropriate reasonable accommodation it may be necessary for the sponsor to initiate an informal, interactive process with the qualified individual in need of the accommodation. This process should identify the precise limitations resulting from the disability and potential reasonable accommodations that could overcome those limitations.

Registration Agency means the Office of Apprenticeship or a recognized SAA that has responsibility for registering apprenticeship programs and apprentices; providing technical assistance; conducting quality assurance assessments and reviews of registered apprenticeship programs for compliance with the requirements of part 29 and this part.

Selection procedure means any measure, combination of measures, or procedure used as a basis for any decision in apprenticeship. Selection procedures include the full range of assessment techniques from traditional paper and pencil tests, performance tests, training programs, or probationary periods and physical, educational, and work experience requirements through informal or casual interviews and unscored application forms.

Sponsor means any person, association, committee or organization operating an apprenticeship program, and in whose name the program is (or is to be) registered or approved.

State Apprenticeship Agency (SAA) means an agency of a State government that has responsibility and accountability for apprenticeship within the State. Only an SAA may seek recognition from OA as an agency which has been properly constituted under an acceptable law or Executive Order (E.O.), and authorized by OA to register and oversee apprenticeship programs and agreements for Federal purposes.

Undue hardship—(1) In general. Undue hardship means, with respect to the provision of an accommodation, significant difficulty or expense incurred by a sponsor, when considered in light of the factors set forth in paragraph (2) of this definition.

(2) Factors to be considered. In determining whether an accommodation would impose an undue hardship on a sponsor, factors to be considered include:

(i) The nature and net cost of the accommodation needed under this part, taking into consideration the availability of tax credits and deductions, and/or outside funding;

(ii) The overall financial resources of the facility or facilities involved in the provision of the reasonable accommodation, the number of persons employed at such facility, and the effect on expenses and resources;

(iii) The overall financial resources of the sponsor, the overall size of the registered apprenticeship program with respect to the number of apprentices, and the number, type and location of its facilities;

(iv) The type of operation or operations of the sponsor, including the composition, structure and functions of the workforce of such entity, and the geographic separateness and administrative or fiscal relationship of the facility or facilities in question to the sponsor; and

(v) The impact of the accommodation upon the operation of the facility, including the impact on the ability of other apprentices to perform their duties and the impact on the facility's ability to conduct business.

§ 30.3 Equal opportunity standards applicable to all sponsors.

(a) Discrimination prohibited. (1) It is unlawful for a sponsor of a registered apprenticeship program to discriminate against an apprentice or applicant for apprenticeship on the basis of race, color, religion, national origin, sex, sexual orientation, age (40 or older), genetic information, or disability with regard to:

(i) Recruitment, outreach, and selection procedures;

- (ii) Hiring, upgrading, periodic advancement, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff, and rehiring;
- (iii) Rotation among work processes;
- (iv) Imposition of penalties or other disciplinary action;
- (v) Rates of pay or any other form of compensation and changes in compensation;
- (vi) Conditions of work;
- (vii) Hours of work and hours of training provided;
- (viii) Job assignments;
- (ix) Leaves of absence, sick leave, or any other leave; and
- (x) Any other benefit, term, condition, or privilege associated with apprenticeship.

(2) Discrimination standards and defenses—(i) Race, color, religion, national origin, sex, or sexual orientation. In implementing this section, the Registration Agency will apply the same legal standards and defenses as those applied under title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e et seq., in determining whether a sponsor has engaged in an unlawful employment practice.

(ii) Disability. With respect to discrimination based on a disability, the Registration Agency will apply the same standards, defenses, and exceptions to the definition of disability as those set forth in title I of the Americans with Disabilities Act (ADA), 42 U.S.C. 12112 and 12113, and the implementing regulations promulgated by the Equal Employment Opportunity Commission (EEOC) at 29 CFR part 1630, which include, among other things, the standards governing reasonable accommodation, medical examinations and disability-related inquiries, qualification standards, and direct threat defense. The Interpretive Guidance on title I of the ADA set out as an appendix to part

1630 issued pursuant to title I may be relied upon for guidance in complying with the nondiscrimination requirements of this part with respect to the treatment of individuals with disabilities.

(iii) Age. The Registration Agency will apply the same standards and defenses for age discrimination as those set forth in the Age Discrimination in Employment Act (ADEA), 29 U.S.C. 623, and the implementing regulations promulgated by the EEOC at 29 CFR part 1625.

(iii) Genetic information. The Registration will apply the same standards and defenses for discrimination based on genetic information as those set forth in the Genetic Information Nondiscrimination Act (GINA), 29 U.S.C. 2000ff et seq., and the implementing regulations promulgated by the EEOC at 29 CFR part 1635.

(b) General duty to engage in affirmative action. For each registered apprenticeship program, a sponsor is required to take affirmative steps to provide equal opportunity in apprenticeship. These steps must include:

(1) Assignment of responsibility. The sponsor will designate an individual with appropriate authority under the program, such as an apprenticeship coordinator, to be responsible and accountable for overseeing its commitment to equal opportunity in registered apprenticeship, including the development and implementation of an affirmative action program as required by § 30.4. This individual must have the resources, support of, and access to the sponsor leadership to ensure effective implementation. This individual will be responsible for:

(i) Monitoring all registered apprenticeship activity to ensure compliance with the nondiscrimination and affirmative action obligations required by this part;

(ii) Maintaining records required under this part; and

(iii) Generating and submitting reports as may be required by the Registration Agency.

(2) Internal dissemination of equal opportunity policy. The sponsor must inform all applicants for apprenticeship, apprentices, and individuals who operate or administer any aspect of the registered apprenticeship program of its commitment to equal opportunity and its affirmative action obligations. In addition, the sponsor must require that individuals connected with the administration or operation of the apprenticeship program take the necessary action to aid the sponsor in meeting its nondiscrimination and affirmative action obligations under this part. A sponsor, at a minimum, is required to:

(i) Publish its equal opportunity pledge required in paragraph (c) of this section in the apprenticeship standards required under § 29.5 of this title, and in appropriate publications, such as apprentice and employee handbooks, policy manuals, newsletters, and other appropriate publications;

(ii) Post its equal opportunity pledge from paragraph (c) of this section on bulletin boards, including through electronic media, such that it is accessible to all apprentices and applicants for apprenticeship;

(iii) Conduct orientation and periodic information sessions for apprentices, journeyworkers who directly supervise apprentices, and other individuals connected with the administration or operation of the sponsor's apprenticeship program to inform and remind such individuals of the sponsor's equal employment opportunity policy with regard to apprenticeship; and

(iv) Maintain records necessary to demonstrate compliance with these requirements and make them available to the Registration Agency upon request.

(3) Universal outreach and recruitment. The sponsor will implement measures to ensure that its outreach and recruitment efforts for apprentices extend to all persons available for apprenticeship within the sponsor's relevant recruitment area without regard to race, sex, ethnicity, or disability. In furtherance of this requirement, the sponsor must:

(i) Develop and update annually a list of current recruitment sources that will generate referrals from all demographic groups within the relevant recruitment area.

Examples of relevant recruitment sources include: the public workforce system's One-Stop Career Centers and local workforce investment boards; community-based organizations; community colleges; vocational, career and technical schools; pre-apprenticeship programs; and Federally-funded, youth job-training programs such as YouthBuild and Job Corps or their successors;

(ii) Identify a contact person, mailing address, telephone number, and e-mail address for each recruitment source; and

(iii) Provide recruitment sources advance notice, preferably 30 days, of apprenticeship openings so that the recruitment sources can notify and refer candidates. Such notification must also include documentation of the sponsor's equal opportunity pledge specified in paragraph (c) of this section.

(4) Maintain workplace free from harassment, intimidation, and retaliation. The sponsor must develop and implement procedures to ensure that its apprentices are not harassed because of their race, color, religion, national origin, sex, sexual orientation, age (40 or older), genetic information, or disability and to ensure that its workplace is free

from intimidation and retaliation as prohibited by § 30.16. To ensure an environment in which all apprentices feel safe, welcomed, and treated fairly, the sponsor must:

(i) Communicate to all personnel that harassing conduct will not be tolerated;

(ii) Provide anti-harassment training to all personnel;

(iii) Make all facilities and apprenticeship activities available without regard to race, color, religion, national origin, sex, sexual orientation, age (40 or older), genetic information, or disability except that if the sponsor provides restrooms or changing facilities, the sponsor must provide separate or single-user restrooms and changing facilities to assure privacy between the sexes;

(iv) Establish and implement procedures for handling and resolving complaints about harassment and intimidation based on race, color, religion, national origin, sex, sexual orientation, age (40 or older), genetic information, and disability.

(5) Compliance with Federal and State equal employment opportunity laws. The sponsor (or where the sponsor is a joint apprenticeship committee, parties represented on such committee) must comply with all applicable Federal and State laws and regulations requiring equal employment opportunity without regard to race, color, religion, national origin, sex, sexual orientation, age (40 or older), genetic information, or disability. Failure to comply with such laws is grounds for deregistration or the imposition of other enforcement actions in accordance with § 30.14.

(c) Equal opportunity pledge. Each sponsor of an apprenticeship program must include in its Standards of Apprenticeship and apprenticeship opportunity announcements the following equal opportunity pledge:

[Name of sponsor] will not discriminate against apprenticeship applicants or apprentices based on race, color, religion, national origin, sex

(including pregnancy and gender identity), sexual orientation, genetic information, or because they are an individual with a disability or a person 40 years old or older. [Name of sponsor] will take affirmative action to provide equal opportunity in apprenticeship and will operate the apprenticeship program as required under Title 29 of the Code of Federal Regulations, part 30.

The nondiscrimination bases listed in this pledge may be broadened to conform to consistent State and local requirements. Sponsors may include additional protected bases but may not exclude any of the bases protected by this part.

#### § 30.4 Affirmative action programs.

(a) Definition and purpose. As used in this part: (1) An affirmative action program is designed to ensure equal opportunity and prevent discrimination in apprenticeship programs. An affirmative action program is more than mere passive nondiscrimination. Such a program requires the sponsor to take affirmative steps to encourage and promote equal opportunity, to create an environment free from discrimination, and to address any barriers to equal opportunity in apprenticeship. An affirmative action program is more than a paperwork exercise. It includes those policies, practices, and procedures, including self analyses, that the sponsor implements to ensure that all qualified applicants and apprentices are receiving an equal opportunity for recruitment, selection, advancement, retention and every other term and privilege associated with apprenticeship. An affirmative action program should be a part of the way the sponsor regularly conducts its apprenticeship program.

(2) A central premise underlying affirmative action is that, absent discrimination, over time a sponsor's apprenticeship program, generally, will reflect the sex, race,

ethnicity, and disability profile of the labor pools from which the sponsor recruits and selects. Consistent with this premise, affirmative action programs contain a diagnostic component which includes quantitative analyses designed to evaluate the composition of the sponsor's apprenticeship program and compare it to the composition of the relevant labor pools. If women, individuals with disabilities, or individuals from a particular minority group, for example, are not being admitted into apprenticeship at a rate to be expected given their availability in the relevant labor pool, the sponsor's affirmative action program must include specific, practical steps designed to address any barriers to equal opportunity that may be contributing to this underutilization.

(3) Effective affirmative action programs include internal auditing and reporting systems as a means of measuring the sponsor's progress toward achieving an apprenticeship program that would be expected absent discrimination.

(4) An affirmative action program also ensures equal opportunity in apprenticeship by incorporating the sponsor's commitment to equality in every aspect of the apprenticeship program. Therefore, as part of its affirmative action program, a sponsor must monitor and examine its employment practices, policies and decisions and evaluate the impact such practices, policies and decisions have on the recruitment, selection and advancement of apprentices. It must evaluate the impact of its employment and personnel policies on minorities, women, and persons with disabilities, and revise such policies accordingly where such policies or practices are found to create a barrier to equal opportunity.

(5) The commitments contained in an affirmative action program are not intended and must not be used to discriminate against any qualified applicant or apprentice on the basis

of race, color, religion, national origin, sex, sexual orientation, age (40 or older), genetic information, or disability.

(b) Adoption of affirmative action programs. Sponsors other than those identified in paragraph (d) of this section must develop and maintain an affirmative action program, setting forth that program in a written plan in the timeframe provided by § 30.20 of this part. The written plan must be made available to the Registration Agency any time thereafter upon request.

(c) Contents of affirmative action programs. An affirmative action program must include the following components in addition to those required of all sponsors by § 30.3(a):

(1) Utilization analysis for race, sex, and ethnicity, as described in § 30.5;

(2) Establishment of utilization goals for race, sex, and ethnicity, as described in § 30.6;

(3) Utilization goals for individuals with disabilities, as described in § 30.7;

(4) Targeted outreach, recruitment, and retention, as described in § 30.8; and

(5) Review of personnel processes, as described in § 30.9

(d) Exemptions—(1) Programs with fewer than five apprentices. A sponsor is exempt from the requirements of paragraph (b) of this section if the sponsor's apprenticeship program has fewer than five apprentices registered, unless such program was adopted to circumvent the requirements of this section.

(2) Programs subject to approved equal employment opportunity programs. A sponsor is exempt from the requirements of paragraph (b) of this section if the sponsor both submits to the Registration Agency satisfactory evidence that it is in compliance

with an equal employment opportunity program providing for affirmative action in apprenticeship, including the use of goals for any underrepresented group or groups of individuals, which has been approved as meeting the requirements of either title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000e et seq.) and agrees to extend such program to include individuals with disabilities, or if the sponsor submits to the Registration Agency satisfactory evidence that it is in compliance with an equal employment opportunity program providing for affirmative action in apprenticeship, including the use of goals for any underrepresented group or groups of individuals, which has been approved as meeting the requirements of both Executive Order 11246, as amended, and section 503 of the Rehabilitation Act, as amended (29 U.S.C. 793), and their implementing regulations at title 41 of the Code of Federal Regulations, chapter 60: Provided, That programs approved, modified or renewed subsequent to the effective date of this amendment will qualify for this exception only if the goals for any underrepresented group for the selection of apprentices provided for in such programs are equal to or greater than the goals required under this part.

(e) Review of affirmative action programs. Sponsors are required to internally review all elements of their affirmative action programs on an annual basis. If, however, a sponsor's annual review demonstrates that there is no underutilization in any industry within the sponsor's program and that the sponsor's review of its personnel practices, pursuant to § 30.9, did not indicate any necessary modifications, then the sponsor may wait two years to complete its next affirmative action program review. Qualifying for this extended review period does not change any other obligations set forth in these regulations.

§ 30.5 Utilization analysis for race, sex, and ethnicity.

(a) Purpose. The purpose of the utilization analysis is to provide sponsors with a method for assessing whether possible barriers to apprenticeship exist for particular groups of individuals by determining whether the race, sex, and ethnicity for apprentices in a sponsor's apprenticeship program is reflective of persons available for apprenticeship by race, sex, and ethnicity in the relevant recruitment area. Where significant disparity exists between availability and representation in the sponsor's apprenticeship program, the sponsor will be required to establish a utilization goal pursuant to § 30.6.

(b) Analysis of apprenticeship program workforce. Sponsors must analyze the racial, sex, and ethnic composition of their apprentice workforce. This is a two-step process. First, each sponsor must group all occupational titles represented in its registered apprenticeship program by industry. Next, for each industry represented, the sponsor must identify the race, sex, and ethnicity of its apprentices within that industry.

(c) Availability analysis—(1) Purpose. The purpose of the availability analysis is to establish a benchmark against which the demographic composition of the sponsor's apprenticeship program can be compared in order to determine whether barriers to equal opportunity may exist with regard to the sponsor's apprenticeship program.

(2) Availability is an estimate of the number of qualified individuals available for apprenticeship by race, sex, and ethnicity expressed as a percentage of all qualified persons available for apprenticeship in the sponsor's relevant recruitment area.

(3) In determining availability, the sponsor must consider at least the following factors for each occupational title represented in the sponsor's registered apprenticeship program standards:

(i) The percentage of individuals available with the present or potential capacity for apprenticeship in the sponsor's relevant recruitment area broken down by race, sex, and ethnicity; and

(ii) The percentage of the sponsor's employees with the present or potential capacity for apprenticeship broken down by race, sex, and ethnicity.

(4) In determining availability, the relevant recruitment area is defined as the geographical area from which the sponsor usually seeks or reasonably could seek apprentices. The sponsor must identify the relevant recruitment area in its written affirmative action plan (AAP). The sponsor may not draw its relevant recruitment area in such a way as to have the effect of excluding individuals based on race, sex, or ethnicity from consideration, and must develop a brief rationale for selection of that recruitment area.

(5) The sponsor must use the most current and discrete statistical information available to derive availability figures. The sponsor should consult the Bureau of Labor Statistics' Occupational Handbook to confirm the educational background required for the particular occupation. The sponsor should then consult sources such as the American Community Survey for data on the size of the eligible population in the relevant recruitment area with the appropriate educational attainment for entrance into the apprenticeship program. Examples of such data include but are not limited to data from the Census Bureau's American Community Survey; the Census Bureau's EEO Data Tool

currently available at

<http://www.census.gov/people/eetabulation/data/eetables20062010.html>; the Census Bureau's Quick Facts tables currently available at <http://quickfacts.census.gov>; labor market information data from State workforce agencies; data from vocational education schools, secondary and post-secondary school or other career and employment training institutions; educational attainment data from the Census Bureau; and for sponsors of registered apprenticeship programs in the construction industry, any data provided by the Department's Office of Federal Contract Compliance Program (OFCCP) through their regulations at 41 CFR part 60-4, Construction Contractors – Affirmative Action Requirements or otherwise.

(d) Rate of utilization. Based on the apprentice workforce analysis performed in paragraph (b) of this section and the availability analysis performed in paragraph (c) of this section, when the sponsor's utilization of women, Hispanics or Latinos, or a particular racial minority group in its apprenticeship program is less than would be reasonably expected given the availability of such individuals for apprenticeship, the sponsor must establish a utilization goal for the affected group in accordance with the procedures set forth in § 30.6. Sponsors are not required or expected to establish goals where no disparity in utilization rates has been found.

#### § 30.6 Establishment of utilization goals for race, sex, and ethnicity.

(a) Where, pursuant to § 30.5, a sponsor is required to establish a utilization goal for a particular group in its apprenticeship program, the sponsor must establish a percentage goal at least equal to the availability figure derived under § 30.5(c).

(b) A sponsor's determination under § 30.5 that a utilization goal is required constitutes neither a finding nor an admission of discrimination.

(c) Utilization goals serve as objectives or targets reasonably attainable by means of applying every good faith effort to make all aspects of the entire affirmative action program work. Utilization goals are used to measure the effectiveness of the sponsor's outreach, recruitment, and retention efforts.

(d) In establishing utilization goals, the following principles apply:

(1) Utilization goals may not be rigid and inflexible quotas, which must be met, nor are they to be considered either a ceiling or a floor for the selection of particular groups as apprentices. Quotas are expressly forbidden.

(2) Utilization goals may not provide a sponsor with a justification to extend a preference to any individual, select an individual, or adversely affect an individual's status as an apprentice, on the basis of that person's race, sex, or ethnicity.

(3) Utilization goals do not create set-asides for specific groups, nor are they intended to achieve proportional representation or equal results; rather they are intended to assist with identifying the existence of barriers to equal opportunity.

(4) Utilization goals may not be used to supersede eligibility requirements for apprenticeship. Affirmative action programs prescribed by the regulations of this part do not require sponsors to select a person who lacks qualifications to participate in the apprenticeship program successfully, or select a less-qualified person in preference to a more qualified one.

#### § 30.7 Utilization goals for individuals with disabilities.

(a) Utilization goal. The Administrator of OA has established a utilization goal of 7 percent for employment of qualified individuals with disabilities as apprentices for each industry within which the sponsor has an apprenticeship program.

(b) Purpose. The purpose of the utilization goal established in paragraph (a) of this section is to establish a benchmark against which the sponsor must measure the representation of individuals with disabilities in the sponsor's apprentice workforce by industry in order to assess whether any barriers to equal opportunity in apprenticeship remain. The goal serves as an equal opportunity objective that should be attainable by complying with all of the affirmative action requirements of this part.

(c) Periodic review of goal. The Administrator of OA will periodically review and update, as appropriate, the utilization goal established in paragraph (a) of this section.

(d) Utilization analysis—(1) Purpose. The utilization analysis is designed to evaluate the representation of individuals with disabilities in the sponsor's apprentice workforce grouped by industry. If individuals with disabilities are represented in the sponsor's apprentice workforce in any given industry at a rate less than the utilization goal, the sponsor must take specific measures to address this disparity.

(2) Apprentice workforce analysis. Sponsors are required to analyze the representation of individuals with disabilities within their apprentice workforce by industry. This is a two-step process. First, as required in § 30.5, each sponsor must group all occupational titles represented in its registered apprenticeship program by industry. Next, for each industry represented, the sponsor must identify the number of apprentices with disabilities.

(3) Schedule of evaluation. The sponsor must evaluate its utilization of apprentices with disabilities in each group identified in paragraph (d)(2) of this section annually, or biannually if it meets the conditions for biannual review set forth in § 30.4(e) of this part.

(e) Identification of problem areas. When the percentage of individuals with disabilities in one or more industries within which a sponsor has apprentices is less than the utilization goal established in paragraph (a) of this section, the sponsor must take steps to determine whether and where impediments to equal opportunity exist. When making this determination, the sponsor must look at the results of its assessment of personnel processes and the effectiveness of its outreach and recruitment efforts required by § 30.9.

(f) Action-oriented programs. The sponsor must undertake action oriented programs, including targeted outreach, recruitment, and retention activities identified in § 30.8, designed to correct any problem areas that the sponsor identified pursuant to its review of personnel processes and outreach and recruitment efforts.

(g) A sponsor's determination that it has not attained the utilization goal established in paragraph (a) of this section in one or more industry groups does not constitute either a finding or admission of discrimination in violation of this part.

(h) The utilization goal established in paragraph (a) of this section must not be used as a quota or ceiling that limits or restricts the employment of individuals with disabilities as apprentices.

#### § 30.8 Targeted outreach, recruitment, and retention.

(a) Minimum activities required. Where a sponsor has found underutilization and established a utilization goal for a specific group or groups pursuant to § 30.6, and/or where a sponsor has determined pursuant to § 30.7(f) that there are problem areas with respect to its outreach, recruitment, and retention activities for individuals with disabilities, the sponsor must undertake targeted outreach, recruitment, and retention activities that are likely to generate an increase in applications for apprenticeship from and improve retention of apprentices from the targeted group or groups and/or from individuals with disabilities, as appropriate. In furtherance of this requirement, the sponsor must:

(1) Set forth in its written AAP the specific targeted outreach, recruitment, and retention activities it plans to take for the upcoming program year. Such activities must include at a minimum:

(i) Dissemination of information to community-based organizations, local high schools, local community colleges, local vocational, career and technical schools, and other groups serving the underutilized group regarding the nature of apprenticeship, requirements for selection for apprenticeship, availability of apprenticeship opportunities, and the equal opportunity pledge of the sponsor;

(ii) Advertising openings for apprenticeship opportunities by publishing advertisements in newspapers and other media, electronic or otherwise, which have wide circulation in the relevant recruitment areas;

(iii) Cooperation with local school boards and vocational education systems to develop and/or establish relationships with pre-apprenticeship programs targeting

students from the underutilized group to prepare them to meet the standards and criteria required to qualify for entry into apprenticeship programs; and

(iv) Establishment of linkage agreements enlisting the assistance and support of pre-apprenticeship programs, community-based organizations and advocacy organizations in recruiting qualified individuals for apprenticeship and in developing pre-apprenticeship programs.;

(2) Evaluate and document after every selection cycle for registering apprentices the overall effectiveness of such activities;

(3) Refine its targeted outreach, recruitment, and retention activities as needed; and

(4) Maintain records of its targeted outreach, recruitment, and retention activities and records related to its evaluation of these activities.

(b) Other activities. In addition to the activities set forth in paragraph (a) of this section, as a matter of best practice, sponsors are encouraged but not required to consider other outreach, recruitment, and retention activities that may assist sponsors in addressing any barriers to equal opportunity in apprenticeship. Such activities include but are not limited to:

(1) Enlisting the use of journeyworkers from the underutilized group or groups to assist in the implementation of the sponsor's affirmative action program;

(2) Enlisting the use of journeyworkers from the underutilized group or groups to mentor apprentices and to assist with the sponsor's targeted outreach and recruitment activities; and

(3) Conducting exit interviews of each apprentice who leaves the sponsor's apprenticeship program prior to receiving a certificate of completion to understand better

why the apprentice is leaving the program and to help shape the sponsor's retention activities.

§ 30.9 Review of personnel processes.

(a) As part of its affirmative action program, the sponsor must, for each registered apprenticeship program, engage in an annual review of its personnel processes related to the administration of the apprenticeship program to ensure that the sponsor is operating an apprenticeship program free from discrimination based on race, color, religion, national origin, sex, sexual orientation, age (40 or older), genetic information, and disability. The review must be a careful, thorough, and systematic one and include review of all aspects of the apprenticeship program, including but not limited to the qualifications for apprenticeship, application and selection procedures, wages, outreach and recruitment activities, advancement opportunities, promotions, work assignments, job performance, rotations among all work processes of the occupation, disciplinary actions, handling of requests for reasonable accommodations, and the program's accessibility to individuals with disabilities (including to the use of information and communication technology). The sponsor must make any necessary modifications to its program to ensure that its obligations under this part are met.

(b) The sponsor must include a description of its review in its written AAP and identify in the written plan any modifications made or to be made to the program as a result of its review.

§ 30.10 Selection of apprentices.

(a) A sponsor's procedures for selection of apprentices must be included in the written plan for Standards of Apprenticeship submitted to and approved by the Registration Agency, as required under § 29.5 of this title.

(b) Sponsors may utilize any method for selection of apprentices, provided that the selection method used meets the following requirements:

(1) The use of the selection procedure must comply with the Uniform Guidelines on Employee Selection Procedures (UGESP) (41 CFR part 60-3), including the requirements to evaluate the impact of the selection procedure on race, sex, and ethnic groups (Hispanic or Latino/non-Hispanic or Latino) and to demonstrate job-relatedness and business necessity for those procedures that result in adverse impact in accordance with the requirements of UGESP.

(2) The selection procedure must be uniformly and consistently applied to all applicants and apprentices.

(3) The selection procedure must comply with title I of the ADA and EEOC's implementing regulations at part 1630. This procedure must not screen out or tend to screen out an individual with a disability or a class of individuals with disabilities, on the basis of disability, unless the standard, test or other selection criteria, as used by the program sponsor, is shown to be job-related for the position in question and is consistent with business necessity.

(4) The selection procedure must be facially neutral in terms of race, color, religion, national origin, sex, sexual orientation, age (40 or older), genetic information, and disability.

§ 30.11 Invitation to self-identify as an individual with a disability—(a) Pre-offer. (1)

As part of the sponsor's general duty to engage in affirmative action, the sponsor must invite applicants for apprenticeship to inform the sponsor whether the applicant believes that that he or she is an individual with a disability as defined in § 30.2. This invitation must be provided to each applicant when the applicant applies or is considered for apprenticeship. The invitation may be included with the application materials for apprenticeship, but must be separate from the application.

(2) The sponsor must invite an applicant to self-identify as required in paragraph (a) of this section using the language and manner prescribed by the Administrator and published on the OA Web site.

(b) Post offer. (1) At any time after acceptance into the apprenticeship program, but before the applicant begins his or her apprenticeship, the sponsor must invite the applicant to inform the sponsor whether the applicant believes that he or she is an individual with a disability as defined in § 30.2.

(1) The sponsor must invite an applicant to self-identify as required in paragraph (b) of this section using the language and manner prescribed by the Administrator and published on the OA Web site.

(c) Apprentices. The sponsor must invite each of its apprentices to voluntarily inform the sponsor whether the apprentice believes that he or she is an individual with a disability as defined in § 30.2. This invitation shall be extended the first year the sponsor becomes subject to the requirements of this section and then each time an apprentice is enrolled into an apprenticeship program. The sponsor must remind apprentices yearly that they may voluntarily update their disability status.

(d) The sponsor may not compel or coerce an individual to self-identify as an individual with a disability.

(e) The sponsor must keep all information on self-identification confidential, and must maintain it in a data analysis file (rather than the medical files of individual apprentices). See § 30.12(e). The sponsor must provide self-identification information to the Registration Agency upon request. Self-identification information may be used only in accordance with this part.

(f) Nothing in this section may relieve the sponsor of its obligation to take affirmative action with respect to those applicants and apprentices of whose disability the sponsor has knowledge.

(g) Nothing in this section may relieve the sponsor from liability for discrimination in violation of this part.

#### § 30.12 Recordkeeping.

(a) General obligation. Each sponsor must collect such data and maintain such records as the Registration Agency finds necessary to determine whether the sponsor has complied or is complying with the requirements of this part. Such records must include, but are not limited to records relating to:

(1) Selection for apprenticeship, including applications, tests and test results, interview notes, bases for selection or rejection, and any other records required to be maintained under UGESP;

(2) The invitation to self-identify as an individual with a disability;

(3) Information relative to the operation of the apprenticeship program, including but not limited to job assignments in all components of the occupation as required under § 29.5(b)(3) of this title, promotion, demotion, transfer, layoff, termination, rates of pay, other forms of compensation, conditions of work, hours of work, hours of training provided, and any other personnel records relevant to EEO complaints filed with the Registration Agency under § 30.14 or with other enforcement agencies;

(4) Compliance with the requirements of § 30.3;

(5) Requests for reasonable accommodation; and

(6) Any other records pertinent to a determination of compliance with these regulations, as may be required by the Registration Agency.

(b) Sponsor identification of record. For any record the sponsor maintains pursuant to this part, the sponsor must be able to identify the race, sex, ethnicity (Hispanic or Latino/non-Hispanic or Latino), and when known, disability status of each apprentice, and where possible, the race, sex, ethnicity, and disability status of each applicant to apprenticeship and supply this information upon request to the Registration Agency.

(c) Affirmative action programs. Each sponsor required under § 30.4 to develop and maintain an affirmative action program must retain both the written AAP and documentation of its outreach, recruitment, and retention efforts required by § 30.8, including all data and analyses made pursuant to the requirements of this part.

(d) Maintenance of records. The records required by this part and any other information relevant to compliance with these regulations must be maintained for 3 years from the date of the making of the record or the personnel action involved, whichever occurs later, and must be made available upon request to the Registration Agency or

other authorized representative in such form as the Registration Agency may determine is necessary to enable it to ascertain whether the sponsor has complied or is complying with this part. Failure to preserve complete and accurate records as required by paragraphs (a), (b), and (c) of this section constitutes noncompliance with this part.

(e) Confidentiality and use of medical information. (1) Any information obtained pursuant to this part regarding the medical condition or history of an applicant or apprentice must be collected and maintained on separate forms and in separate medical files and treated as a confidential medical record, except that:

(i) Supervisors and managers may be informed regarding necessary restrictions on the work or duties of the applicant or apprentice and necessary accommodations;

(ii) First aid and safety personnel may be informed, when appropriate, if the disability might require emergency treatment; and

(iii) Government officials engaged in enforcing this part, the laws administered by OFCCP, or the ADA, must be provided relevant information on request.

(2) Information obtained under this part regarding the medical condition or history of any applicant or apprentice may not be used for any purpose inconsistent with this part.

(f) Access to records. Each sponsor must permit access during normal business hours to its places of business for the purpose of conducting on-site EEO compliance reviews and complaint investigations and inspecting and copying such books, accounts, and records, including electronic records, and any other material the Registration Agency deems relevant to the matter under investigation and pertinent to compliance with this part. The sponsor must also provide the Registration Agency access to these materials, including electronic records, off-site for purposes of conducting EEO compliance reviews

and complaint investigations. Upon request, the sponsor must provide the Registration Agency information about all format(s), including specific electronic formats, in which its records and other information are available. Information obtained in this manner will be used only in connection with the administration of this part or other applicable EEO laws.

§ 30.13 Equal employment opportunity compliance reviews.

(a) Conduct of compliance reviews. The Registration Agency will regularly conduct EEO compliance reviews to determine if the sponsor maintains compliance with this part, and will also conduct EEO compliance reviews when circumstances so warrant. An EEO compliance review may consist of, but is not limited to, comprehensive analyses and evaluations of each aspect of the apprenticeship program through off-site reviews, such as desk audits of records submitted to the Registration Agency, and on-site reviews conducted at the sponsor's establishment that may involve examination of records required under this part; inspection and copying of documents related to recordkeeping requirements of this part; and interviews with employees, apprentices, journeymen, supervisors, managers, and hiring officials.

(b) Notification of compliance review findings. Within 45 business days of completing an EEO compliance review, the Registration Agency must present a written Notice of Compliance Review Findings to the sponsor's contact person through registered or certified mail, with return receipt requested. If the compliance review indicates a failure to comply with this part, the registration agency will so inform the sponsor in the Notice and will set forth in the Notice the following:

- (1) The deficiency(ies) identified;
- (2) How to remedy the deficiency(ies);
- (3) The timeframe within which the deficiency(ies) must be corrected; and
- (4) Enforcement actions may be undertaken if compliance is not achieved within the required timeframe.

(c) Compliance. When a sponsor receives a Notice of Compliance Review Findings that indicates a failure to comply with this part, the sponsor must, within 30 business days of notification, implement a compliance action plan and notify the Registration Agency of that plan. The compliance action plan must include, but is not limited to, the following provisions:

- (1) A specific commitment, in writing, to correct or remediate identified deficiency(ies) and area(s) of noncompliance;
- (2) The precise actions to be taken for each deficiency identified;
- (3) The time period within which the cited deficiency(ies) will be remedied and any corrective program changes implemented; and
- (4) The name of the individual(s) responsible for correcting each deficiency identified.

Upon the Registration Agency's approval of the compliance action plan, the sponsor may be considered in compliance with this part provided that the compliance action plan is implemented.

(d) Enforcement actions. Any sponsor that fails to implement its compliance action plan within the specified timeframes may be subject to an enforcement action under § 30.15.

§ 30.14 Complaints.

(a) Requirements for individuals filing complaints—(1) Who may file. Any individual who believes that he or she has been or is being discriminated against on the basis of race, color, religion, national origin, sex, sexual orientation, age (40 or older), genetic information, or disability with regard to apprenticeship may, personally or through an authorized representative, file a written complaint with the Registration Agency with whom the apprenticeship program is registered.

(2) Time period for filing a complaint. Generally, a complaint must be filed within 180 days of the alleged discrimination or specified failure to follow the equal opportunity standards. However, for good cause shown, the Registration Agency may extend the filing time. The time period for filing is for the administrative convenience of the Registration Agency and does not create a defense for the respondent.

(3) Contents of the complaint. Each complaint must be made in writing and must contain the following information:

(i) The complainant's name, address and telephone number, or other means for contacting the complainant;

(ii) The identity of the respondent (the individual or entity that the complainant alleges is responsible for the discrimination);

(iii) A short description of the events that the complainant believes were discriminatory, including but not limited to when the events took place, what occurred, and why complainant believes the actions were discriminatory (for example, because of

his or her race, color, religion, sex, sexual orientation, national origin, age (40 or older), genetic information, or disability).

(iv) The complainant's signature or the signature of the complainant's authorized representative.

(b) Requirements of sponsors. Sponsors must provide written notice to all applicants for apprenticeship and all apprentices of their right to file a discrimination complaint and the procedures for doing so. The notice must include the address, phone number, and other contact information for the Registration Agency that will receive and investigate complaints filed under this part. The notice must be provided in the application for apprenticeship and must also be displayed in a prominent, publicly available location where all apprentices will see the notice. The notice must contain the following specific wording:

#### YOUR RIGHT TO EQUAL OPPORTUNITY

It is against the law for a sponsor of an apprenticeship program registered for Federal purposes to discriminate against an apprenticeship applicant or apprentice based on race, color, religion, national origin, sex, sexual orientation, age (40 years or older), genetic information, or disability. The sponsor must ensure equal opportunity with regard to all terms, conditions, and privileges associated with apprenticeship. If you think that you have been subjected to discrimination, you may file a complaint within 180 days from the date of the alleged discrimination or failure to follow the equal opportunity standards with [INSERT NAME OF REGISTRATION AGENCY, ADDRESS, PHONE NUMBER, AND CONTACT NAME OF INDIVIDUAL AT THE REGISTRATION AGENCY WHO IS RESPONSIBLE FOR RECEIVING COMPLAINTS].

Each complaint filed must be made in writing and include the following information:

1. Complainant's name, address and telephone number, or other means for contacting the complainant;
2. The identity of the respondent (i.e. the name, address, and telephone number of the individual or entity that the complainant alleges is responsible for the discrimination);
3. A short description of the events that the complainant believes were discriminatory, including but not limited to when the events took place, what occurred, and why the complainant believes the actions were discriminatory (for example, because of his/her

race, color, religion, sex, sexual orientation, national origin, age (40 or older), genetic information, or disability);

4. The complainant's signature or the signature of the complainant's authorized representative.

(c) Requirements of the Registration Agency.—(1) Conduct investigations. The investigation of a complaint filed under this part will be made by the Registration Agency. In conducting complaint investigations, the Registration Agency must:

(i) Within 10 business days of receiving the complaint, provide written notice to the complainant acknowledging receipt of the complaint;

(ii) Contact the complainant within 10 business days, if the complaint form is incomplete, to obtain full information necessary to initiate an investigation.

(iii) Initiate an investigation within 15 business days of receiving a complete complaint;

(iv) Complete a thorough investigation of the allegations of the complaint within 30 business days of initiating the investigation and develop a complete case record that must contain, but is not limited to, the name, address, and telephone number of each person interviewed, the interview statements, copies, transcripts, or summaries (where appropriate) of pertinent documents, and a narrative report of the investigation with references to exhibits and other evidence which relate to the alleged violations; and

(v) Within 15 business days of completing the investigation, provide written notification of the Registration Agency's findings to both the respondent and the complainant.

(2) Seek compliance. Where a report of findings from a complaint investigation indicates a violation of the nondiscrimination requirements of this part, the Registration Agency must resolve the matter quickly and informally whenever possible. Where a

complaint of discrimination cannot be resolved informally to the satisfaction of the complainant within 75 business days of its filing, the Registration Agency must refer the complaint to other Federal, State or local EEO agencies, as appropriate.

(3) Referrals to other EEO agencies. The Registration Agency, at its discretion, may choose to refer a complaint immediately upon its receipt or any time thereafter to:

- (i) The EEOC;
- (ii) The United States Attorney General;
- (iii) The Department's OFCCP; or
- (iv) For an SAA, to its Fair Employment Practices Agency.

(4) An SAA may adopt a complaint review procedure differing in detail from that given in this section provided it is submitted for review to and receives approval by the Administrator.

#### § 30.15 Enforcement actions.

Where the Registration Agency, as a result of a compliance review, complaint investigation, or other reason, determines that the sponsor is not operating its apprenticeship program in accordance with this part, the Registration Agency must notify the sponsor in writing of the specific violation(s) identified and may:

- (a) Offer the sponsor technical assistance to promote compliance with this part.
- (b) Suspend the sponsor's right to register new apprentices if the sponsor fails to implement a compliance action plan to correct the specific violation(s) identified within 30 business days from the date the sponsor is so notified of the violation(s).

(c) If the sponsor has not implemented a compliance action plan within 30 business days of notification of suspension, institute proceedings to deregister the program in accordance with the deregistration proceedings set forth in part 29 of this title.

(d) Take any other action authorized by law. These other actions may include, but are not limited to,

- (1) Referral to the EEOC;
- (2) Referral to an appropriate State fair employment practice agency; or
- (3) Referral to the Department's OFCCP.

§ 30.16 Reinstatement of program registration.

An apprenticeship program that has been deregistered pursuant to this part may be reinstated by the Registration Agency upon presentation of adequate evidence that the apprenticeship program is operating in accordance with this part.

§ 30.17 Intimidation and retaliation prohibited.

(a) A sponsor and its employees must not intimidate, threaten, coerce, retaliate, or discriminate against any individual because the individual has:

- (1) Filed a complaint alleging a violation of this part;
- (2) Opposed a practice prohibited by the provisions of this part or any other Federal or State equal opportunity law;
- (3) Furnished information to, or assisted or participated in any manner, in any investigation, compliance review, proceeding, or hearing under this part or any Federal or State equal opportunity law; or

(4) Otherwise exercised any rights and privileges under the provisions of this part.

(b) Any sponsor that engages in such intimidation or retaliation or fails to take appropriate steps to prevent such activity will be subject to enforcement action under § 30.15.

§ 30.18 State apprenticeship agencies.

(a) State Plan. (1) Within 1 year of the effective date of this part, with no exceptions of this deadline permitted, an SAA that seeks to obtain or maintain recognition under § 29.13 of this title must submit to OA a State EEO plan that:

(i) Includes the State apprenticeship law that corresponds to the requirements of this part; and

(ii) Requires all apprenticeship programs registered with the State for Federal purposes to comply with the requirements of the State's EEO plan within 180 days from the date that OA provides written approval of the State EEO plan submitted under paragraph (1) of this section.

(2) Upon receipt of the State's EEO plan, OA will review the plan to determine if the plan conforms to this part. OA will:

(i) Grant the SAA continued recognition during this review period;

(ii) Provide technical assistance to facilitate conformity, and provide written notification of the areas of nonconformity, if any; and

(iii) Upon successful completion of the review process, notify the SAA of OA's determination that the State's EEO plan conforms to this part.

(3) If the State does not submit a revised State EEO plan that addresses identified non-conformities within 90 days from date that OA provides the SAA with written notification of the areas of nonconformity, OA will begin the process set forth in § 29.14 of this title to rescind recognition of the SAA.

(4) An SAA that seeks to obtain or maintain recognition must obtain the Administrator's written concurrence in any proposed State EEO plan, as well as any subsequent modification to that plan, as provided in § 29.13(b)(9) of this title.

(b) Recordkeeping requirements. A recognized SAA must keep all records pertaining to program compliance reviews, complaint investigations, and any other records pertinent to a determination of compliance with this part. These records must be maintained for three years from the date of their creation.

(c) Retention of authority. As provided in § 29.13 of this title, OA retains the full authority to:

(1) Conduct compliance reviews of all registered apprenticeship programs;

(2) Conduct complaint investigations of any program sponsor to determine whether an apprenticeship program registered for Federal purposes is operating in accordance with this part;

(3) Deregister for Federal purposes an apprenticeship program registered with a recognized SAA as provided in §§ 29.8(b) and 29.10 of this title; and

(4) Refer any matter pertaining to § 30.18(c)(1) or (2) to the following:

(i) The EEOC or the U.S. Attorney General with a recommendation for the institution of an enforcement action under title VII of the Civil Rights Act of 1964, as amended; the ADEA; GINA, or title I of the ADA;

(ii) The Department's OFCCP with a recommendation for the institution of agency action under Executive Order 11246; or section 503 of the Rehabilitation Act of 1973, as amended; or

(iii) The U.S. Attorney General for other action as authorized by law.

(d) Derecognition. A recognized SAA that fails to comply with the requirements of this section will be subject to derecognition proceedings, as provided in § 29.14 of this title.

#### § 30.19 Exemptions.

Requests for exemption from these regulations, or any part thereof, must be made in writing to the Registration Agency and must contain a statement of reasons supporting the request. Exemptions may be granted for good cause by the Registration Agency. State Apprenticeship Agencies must receive approval to grant an exemption from the Administrator, prior to granting an exemption from these regulations.

#### § 30.20 Effective date.

(a) Effective date for specified requirements in all currently registered programs.

Within 180 days of [effective date of the final rule], each sponsor of an apprenticeship program currently registered with a Registration Agency as of [effective date of the final rule] must:

(1) Amend its Standards of Apprenticeship to include the equal opportunity pledge prescribed by § 30.3(c);

(2) Comply with the non-discrimination requirements prescribed by § 30.3(a).

(b) Effective date for specified requirements in programs registered with an SAA.

Sponsors of programs registered with an SAA must adopt an affirmative action program as set forth in § 30.4 that complies with the requirements of this part and have the written plan approved by its SAA. For programs registered with an SAA as of [effective date of the final rule], these actions must be completed within 180 days from the date that OA provides written approval of a State's EEO plan, as provided under § 30.18(a). For programs registered with an SAA after [effective date of the final rule], these actions must be completed within 180 days from the date OA provides written approval of a State's EEO plan or, if OA has already approved the State's EEO plan, within one year after registration.

(c) Effective date for specified requirements in programs registered with OA.

Sponsors of programs registered with the Office of Apprenticeship must adopt an affirmative action program as set forth in § 30.4 that complies with the requirements of this part and have the written plan approved by OA. For programs registered as of the [effective date of the final rule], these actions must be completed within one year after [effective date of the final rule]. For programs registered after [effective date of the final rule], these actions must be completed within one year after registration.

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