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Administrator  
Office of Policy Development and Research, Employment and Training Administration  
U.S. Department of Labor  
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Room N-5641  
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On behalf of the Independent Electrical Contractors (IEC), Inc. thank you for the opportunity to comment on the Department of Labor’s (the “Department”) notice of proposal rule making (NPRM) published in the Federal Register on November 5, 2015, at 80 FR 68908, to update the equal opportunity regulations of 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 Department’s proposal will have significant repercussions for IEC and its 51 chapter training facilities, most of which operate registered apprenticeship programs.

Established in 1957, IEC is a trade association representing 3,000 members with 51 chapter training facilities nationwide. IEC is the nation’s only trade association representing America’s independent electrical and systems contractors. IEC National aggressively works with the industry to establish a competitive environment for the merit shop – a philosophy that promotes the concept of free enterprise, open competition and economic opportunity for all.

The IEC network takes pride in its registered apprenticeship program, which has been in existence for nearly 60 years. In 2015 alone, IEC trained over 8,000 registered apprentices. Additionally, IEC is an active supporter of President Obama’s efforts to double the number of registered apprentices by 2020, through its participation in the Department’s ApprenticeshipUSA program and as active member of the Advisory Committee on Apprenticeship (ACA).

§ 30.2 Definitions.

Definition: Pre-apprenticeships

Proposed Rule
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.

IEC Comment
The proposed rule states that the definition for “pre-apprenticeship” “would provide greater clarity and uniformity by establishing required components and suggested elements for pre-apprenticeship programs consistent with the TEN 13–12.” IEC recommends that the Department insert the definition as established in Training and Employment Notice No. 13-12 (TEN 13-12) from November 30, 2012, which states:

“Defining a Quality Pre-Apprenticeship Program. Pre-apprenticeship definition - a program or set of strategies designed to prepare individuals to enter and succeed in a Registered Apprenticeship program and has a documented partnership with at least one, if not more, Registered Apprenticeship program.”

Definition: Selection procedure

Proposed Rule
Selection procedure means any measure, combination of measures, or procedure used as basis or 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.

IEC Comment
IEC recommends the Department amend the first sentence in defining “selection procedure” to read: “Selection procedure means any measure, combination of measures, or procedure used as a basis for determining acceptance of the applicant into the apprenticeship programs.” IEC recommends the Department also include language that states, “This definition is intended to parallel the definition in the Uniform Guidelines on Employee Selection Procedures (UGESP) at 41 CFR part 60-3.” In addition, in defining “selection procedure,” IEC requests additional clarification from the Department regarding “any decision.” Specifically, does “any decision” include day-to-day matters affecting an already registered apprentice? Finally, IEC recommends clarification on how a sponsor may incorporate “casual interview” and “unscored application forms” into an applicant selection procedure within the confines of EEO requirements.

§ 30.3 Equal opportunity standards applicable to all sponsors.

§ 30.3(b)(3)(iii)

Proposed Rule
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.
IEC Comment
IEC chapters work regularly with recruitment sources to find new apprentices. However, IEC recommends to the Department that it amend the language in the proposed rule to read “provide recruitment sources notice of such openings within 30 days of the opening being published.”

§ 30.3(b)(4) - § 30.3(b)(4)(ii)

Proposed Rule
(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;

IEC Comment
IEC recommends the Department clarify what it means with respect to the “workplace.” In many cases, IEC chapters are not the employers of the apprentices and only have control over what takes place within their own facilities. IEC recommends the Department take this into consideration so as not to expand the sponsor’s responsibilities to the job site. IEC also recommends the Department provide sponsors guidelines, best practices and additional resources to help in providing anti-harassment training to all personnel.

§ 30.5 Utilization analysis for race, sex, and ethnicity.

§ 30.5(c)(2)

Proposed Rule
(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.

IEC Comment
IEC believes the rule needs to provide more clarity with regards to how an “estimate” of a measurable statistic is determined. It is also unclear as to what is considered “qualified persons available for apprenticeship.” IEC recommends the Department provide clearer guidance on both.

§ 30.5(c)(3) - § 30.5(c)(3)(ii)

Proposed Rule
(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
(iii) The percentage of the sponsor’s employees with the present or potential capacity for apprenticeship broken down by race, sex, and ethnicity.

IEC Comment
The proposed rule does not define “present capacity” or “potential capacity” for apprenticeship. IEC requests the Department address these in greater detail with clearer descriptions or definitions. Furthermore, the proposed rule does not give much guidance into how a sponsor would go about acquiring data of individuals with the “present or potential capacity for apprenticeship.” IEC requests the Department address how these figures can be captured by a sponsor for this undefined population and how exactly to factor in “present or potential capacity” into this calculation.

§ 30.5(c)(5)

Proposed Rule
(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/eeotabulation/data/eeotables20062010.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.

IEC Comment
The proposed rule directs sponsors to “confirm the educational background required for the particular occupation” as well as address the “appropriate educational attainment for entrance into the apprenticeship program.” This language should be changed to state that “educational requirements align with each sponsor’s educational requirement as outlined in its sponsor agreement with the OA or SAA.”

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

§ 30.6(c)

Proposed Rule
(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.
IEC Comment
IEC recommends the Department to either strike “every” from “every good faith effort” or define those good faith efforts that would fall under “every.” It also recommends language be included in this section that states: “A sponsor’s failure to attain a stated utilization goal after sponsor has demonstrated good faith efforts shall not be held as a penalty against the sponsor, only sponsors found to have not exercised good faith efforts in outreach and recruitment may be subject to a penalty.”

§ 30.6(c)(3)

Proposed Rule
(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.

IEC Comment
IEC recommends the Department provide further clarification to this section by defining what constitutes a barrier to equal opportunity and how the existence of barriers to equal opportunity are to be determined.

§ 30.7 Utilization goals for individuals with disabilities.

§ 30.7(a)

Proposed Rule
(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.

IEC Comment
IEC applauds the Department’s efforts to advance opportunities for persons with disabilities and increase outreach to these individuals for registered apprenticeship programs. IEC has always welcomed qualified disabled electrical apprentices into its program. However, IEC recommends the Department revisit the proposed requirement of an across the board 7 percent utilization goal for all industries. Given the physical demanding nature of the job of an electrician, the industry’s pool of applicants is limited. And unlike identifying individuals based on classifications such as race, age, sex and gender, it is often times difficult to determine whether an individual possesses a certain disability, making reaching any specific goal challenging. Furthermore, the Americans with Disabilities Act explicitly makes it illegal for employers to request an applicant inform them of a disability (or about the nature of an obvious disability) under the ADA. The same law should be applied to sponsors of registered apprenticeship programs. However, should the Department wish to move forward with a utilization goal, rather than adopting the same goals as established under Office of Federal Contract Compliance Programs’ (OFCCP) Section 503 of the Rehabilitation Act, which applies to federal contractors and subcontractors, it should work with stakeholders that operate registered apprenticeship programs to determine an appropriate goal specific to each industry, in order to take into account the unique characteristics of each occupation. Additionally, the Department should invite stakeholders to advise the Department of an appropriate phase-in period for any utilization goal it may ultimately establish to give sponsors the appropriate amount of time to account for the new rule in its process and procedures.
§ 30.7(e)

Proposed Rule
(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.

IEC Comment
The proposed rule implies that should a sponsor not reach this utilization goal for people with disabilities within its program, that there must automatically be a barrier to equal employment, and requires the sponsor to investigate to discover what these impediments may be. IEC recommends the Department revisit the proposal to require sponsors to investigate impediments to equal opportunity for people with disabilities. IEC also requests the Department clarify, define and provide examples of “impediments to equal opportunity” as well as provide additional guidance and resources to help with this process.

§ 30.8 Targeted outreach, recruitment, and retention.

§ 30.8(a) - § 30.8(a)(1)(iii)

Proposed Rule
(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 and/or 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
IEC Comment
IEC recommends that the Department replace “must include at a minimum” with “may include” in § 30.8(a)(1). IEC feels the Department need not prescribe specific requirements for outreach as it could be a deterrent for new registered apprenticeship programs, further harming the Administration’s goal of increasing the number of registered apprentices. IEC also recommends that the Department give smaller programs the option to pool their outreach efforts and to have their efforts be executed by a single entity or third party on their behalf.

§ 30.10 Selection of apprentices.

§ 30.10(b)

Proposed Rule
(b) Sponsors may utilize any method for selection of apprentices, provided that the selection method used meets the following requirements:

IEC Comment
IEC recommends the Department revise this statement to read: “Sponsors may utilize any method for selection of apprentices, including all of the selection methods allowed by the previous edition of CFR 29 part 30, provided that selection method used meets the following requirements.”

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

§ 30.11(a)(1)

Proposed Rule
(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.

IEC Comment
IEC recommends that the Department revisit the proposed requirement to require sponsors to invite applicants for apprenticeship to inform them of a disability since employers may not ask job applicants if they have a disability (or about the nature of an obvious disability) under the ADA. IEC recommends the Department apply this same requirement to sponsors of registered apprenticeship programs at the time of application or when being “considered for apprenticeship.” At the very least, IEC requests the term “voluntarily” be inserted prior to “inform the sponsor,” as is currently the case under Section 30.11(1)(c). IEC also recommends that the Department require a sponsor to offer an apprentice the
opportunity to voluntarily self-identify one time each year, prior to the beginning of each school year.

§ 30.11(f)

*Proposed Rule*

(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.

IEC Comment

IEC requests the Department provide further clarification of what it means for the sponsor’s “obligation to take affirmative action with respect to those applicants and apprentices of whose disability the sponsor has knowledge.”

§ 30.18 State apprenticeship agencies.

§ 30.18(a)(ii)

*Proposed Rule*

(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.

IEC Comment

IEC believes more time should be given to programs that operate under State Apprenticeship Agencies (SAA) to come into compliance with the new requirements once the state’s EEO plan is approved. The state will need to host a series of town meetings to explain the new regulations to stakeholders, and will need to provide an abundance of technical assistance to a great deal of sponsors. Sponsors will need more than 180 days to prepare changes to policies, procedures, and documents for implementation. The timeline should be extended from 180 days to one year from the date of approval.

§ 30.20 Effective Date.

§ 30.20(a)

*Proposed Rule*

(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:

IEC Comment

IEC recommends that the language “Within 180 days” be amended to “within one year.”

§ 30.20(b)

*Proposed Rule*

(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.

IEC Comment
The proposed rule allows programs registered with the OA to have one year from the effective date of approval to implement changes, but programs registered with an SAA only have 180 days. IEC would request that the Department change this and give all registered apprenticeship programs one year from the effective date to comply.

Sincerely,

Jason E. Todd
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Independent Electrical Contractors, Inc.