

DEPARTMENT OF LABOR**Employment and Training Administration****29 CFR Parts 29 and 30**

RIN 1205-AB59

Apprenticeship Programs; Equal Employment Opportunity**AGENCY:** Employment and Training Administration, Labor.**ACTION:** Final rule.

SUMMARY: The U.S. Department of Labor (DOL or Department) is issuing this rule to modernize the equal employment opportunity regulations that implement the National Apprenticeship Act of 1937. The existing 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. This rule updates equal opportunity standards in part 30 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; improves and clarifies the affirmative action provisions for sponsors by detailing with specificity the actions a sponsor must take to satisfy its affirmative action obligations, including affirmative action for individuals with disabilities; revises regulations to reflect changes made in October 2008 to Labor Standards for Registration of Apprenticeship Programs, the companion regulations governing the conduct of registered apprenticeship programs; and improves the overall readability of part 30 through restructuring and clarification of the text. Wherever possible, this final rule has attempted to streamline and simplify sponsors' obligations, while maintaining broad and effective equal employment opportunity protections for apprentices and those seeking entry into apprenticeship programs. The policies and procedures of this rule promote equality of opportunity in apprenticeship programs registered with the Department and in apprenticeship programs registered with federally recognized state apprenticeship agencies.

DATES: *Effective date:* These regulations are effective January 18, 2017.

Compliance date: Several sections in the final regulation pertaining to equal employment and affirmative action violations specify extended periods

beyond the effective date for sponsors to come into compliance with the rule. They are listed below, and described in more detail in the Section-by-Section Analysis and regulatory text. Unless otherwise indicated, sponsors must comply with the provisions of this regulation on the effective date:

- 180 days after effective date: Obligations under § 30.3
- 2 years after effective date (or 2 years after registration, for sponsors registered after the effective date): Obligations under §§ 30.4(e), 30.5(b), 30.7(d)(2), 30.9, and 30.11
- At first compliance review after effective date: §§ 30.5(c), 30.6

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SUPPLEMENTARY INFORMATION:**Statement of Legal Authority and Background Information**

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.¹ The responsibility for formulating and promoting these labor standards within the Department lies with the 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.

The regulations at 29 CFR part 29 implement the National Apprenticeship Act by setting forth labor standards that safeguard the welfare of apprentices, including: 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.²

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 on certain protected bases. In addition, part 30 also requires that sponsors of registered apprenticeship programs take affirmative action to provide equal employment opportunity in such programs.

The Department first published part 30 on December 18, 1963, by order of the President 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.³ At that time, the regulations prohibited discrimination based on race, color, religion, and national origin. Nondiscrimination 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 (written AAP) for minorities.⁴ In 1978, the Department amended these regulations to require inclusion of female apprentices in written AAPs.⁵ This rule represents the first changes to these regulations since 1978.

Apprenticeship is an earn-and-learn strategy combining on-the-job training with related technical (classroom) instruction, blending the practical and theoretical aspects of training for highly-skilled occupations. Apprenticeship programs are sponsored voluntarily by a wide range of organizations, including individual employers, employer associations, joint labor-management organizations, and other workforce intermediaries. As of the close of Fiscal Year 2015, there were about 21,000 program sponsors representing about 200,000 employers that offer registered apprenticeship training to more than 455,000 apprentices.⁶

Registered apprenticeship is a voluntary national system under which the vast majority of program sponsors enter into agreements with their

² 73 FR 64402. These regulations can be accessed on OA's Web site at: <http://www.doleta.gov/oa/pdf/FinalRule29CFRPart29.pdf>.

³ 28 FR 13775.

⁴ 36 FR 6810, Apr. 8, 1971.

⁵ 43 FR 20760, May 12, 1978.

⁶ Fiscal Year (FY) 2015 national results available at http://doleta.gov/oa/data_statistics.cfm

¹ 29 U.S.C. 50.

Registration Agencies without direct funding. Potential apprenticeship sponsors deciding whether or not to register their programs weigh the net benefits derived from meeting state and national standards for registration.

There are numerous benefits to registering an apprenticeship program with the Department or an SAA. For the business sponsor, registration provides a structure and framework for developing skilled workers critical to a company's success, and connection to industry, education, and government resources for on-going management of the program and adaptation of new technologies and practices. For example, registered apprenticeships are automatically eligible to be listed as Eligible Training Providers within the workforce development system, the only such training model to have such treatment. Also, Federal government grants for apprenticeships are available to registered programs only. There are also economic incentives for apprenticeship employers in terms of the wage rates that apply to apprentices for work on projects covered by the Davis-Bacon Act and related Acts. For apprentices, registered apprenticeship comes with education and training without the high costs of a 4-year college education, and a nationally-recognized credential upon completion. American communities benefit from enhanced systems to develop skilled workers in high paying occupations through collaborative partnerships of education, industry, and government, working together and supporting quality training programs.

OA oversees the National Apprenticeship System. OA serves as the Registration Agency, and its staff members are directly responsible for, registered apprenticeship activities in 25 States. It also provides technical assistance and oversight to 25 SAAs in the other 25 States, in the District of Columbia, the Virgin Islands, and Guam. In these "SAA States," the SAA has requested and received 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 SAA States, the SAA, in accordance with Federal regulations, serves as the Registration Agency and has responsibility for registering apprenticeship activities for Federal purposes.

Apprenticeship programs appear in traditional industries, such as construction (which has historically trained the majority of apprentices) and manufacturing, as well as in new and emerging industries, such as health care, information and communications

technology, transportation and logistics, and energy, which are projected to add substantial numbers of new jobs to the economy.

Apprenticeship has become increasingly attractive to workforce policy-makers in the U.S., and more in focus after witnessing the expansive growth in apprenticeship in some of our closest allies, such as the United Kingdom, Canada, and Australia. U.S. policy-makers have studied these countries as well as several other European countries, such as Germany, Switzerland, and Austria, where apprenticeships have been ingrained in the culture for centuries and train large percentages of their workforce. The United States Departments of Labor, Commerce, and Education have signed Joint Declarations of Intent to cooperate on workforce training with both Germany⁷ and Switzerland;⁸ apprenticeship systems and strategies are featured in both of these Joint Declarations.

In light of favorable policy research and the increased business demand for high-quality workforce skills and competencies, the Department substantially increased its investments in Registered Apprenticeship in recent years.⁹ The Department's new initiative, ApprenticeshipUSA, seeks to advance apprenticeship and build a strong pipeline of skilled workers, critical for companies to grow their business and compete in the global economy. The ApprenticeshipUSA initiative is stepping up efforts to expand apprenticeship into high-growth industries and to support a uniquely American apprenticeship system. The Department is lifting the image and quality of Registered Apprenticeship throughout the nation, and broadening its scope of training and development activities into an array of diverse industries and occupations.

Through ApprenticeshipUSA, the Department has taken steps to focus on

⁷ Joint Declaration of Intent between the U.S. and the Federal Republic of Germany signed June 5, 2015 [https://www.dol.gov/ilab/diplomacy/Signed%20US-Germany%20JDoI%20\(English\).pdf](https://www.dol.gov/ilab/diplomacy/Signed%20US-Germany%20JDoI%20(English).pdf).

⁸ Joint Declaration of Intent between the U.S. and the Swiss Confederation signed July 7-9, 2015 <https://www.dol.gov/ilab/diplomacy/Switzerland-JDoI.pdf>.

⁹ The Department awarded \$175 million in American Apprenticeship Grants in September 2015. See <https://www.dol.gov/opa/media/press/eta/ETA20151762.htm>. Congress also issued a supplemental appropriation of \$90 million to OA in Fiscal Year 2016, which OA is using for new investments through ApprenticeshipUSA to expand apprenticeship in the United States. See <https://www.whitehouse.gov/the-press-office/2016/04/21/fact-sheet-investing-90-million-through-apprenticeshipusa-expanded-proven> (last accessed June 22, 2016).

sector-based and industry engagement in expansion efforts, such as promoting business engagement in the Leaders of Excellence in Apprenticeship Development, Education, and Research (LEADERS) and the Sectors of Excellence in Apprenticeship (SEAs) initiatives, designed to expand the number of employers training apprentices, to increase program quality, and to build pipelines of diverse populations into apprenticeship.

As apprenticeship expands in the U.S., the Department remains committed to long-standing principles of equal employment opportunity to ensure that this expansion draws from and benefits the entire American workforce, providing more Americans a path to good jobs and careers with living wages that apprenticeships offer, in line with the Administration's commitment to double and diversify apprenticeship. The Department is also committed to using these new initiatives and available resources, in conjunction with business, industry, and community partners, to collaborate and build new pipelines into apprenticeship programs, with diversity as a cornerstone of growth in our expansion efforts.

Increasing diversity in apprenticeship will further the goals and demonstrate support of the President's Administration's My Brother's Keeper¹⁰ (MBK) Task Force, a coordinated Federal effort to address persistent opportunity gaps faced by boys and young men of color and ensure that all young people can reach their full potential. This rule also builds upon programs such as the Women in Apprenticeship and Nontraditional Occupations (WANTO)¹¹ initiative, which provides technical assistance to improve outreach, recruitment, hiring, training, employment, and retention of women, including women of color and women with disabilities. The Department has additionally provided support for diversity in apprenticeship through the 2015 American Apprenticeship Initiative grant that supported programs with a focus upon including underrepresented populations, including women, people of color, and individuals with disabilities.

Building a sustained effort to ensure that the benefits apprenticeship programs provide are broadly available to all is a key goal of these revised regulations. The history, demographic

¹⁰ My Brother's Keeper initiative was announced by President Barack Obama on February 27, 2014, <https://www.whitehouse.gov/my-brothers-keeper> (last accessed May 11, 2016).

¹¹ The WANTO Act of 1992, Public Law 102-530, 29 U.S.C. 2501 *et seq.*

patterns, and documented experiences in apprenticeships of members of certain underrepresented groups demonstrate the continuing obstacles to the full participation of these groups in registered apprenticeship programs.

In evaluating the need for this rule, OA analyzed participant demographics in apprenticeship programs in construction and non-construction industries and the demographics of the national labor force. OA reviewed apprenticeship data from OA’s Registered Apprenticeship Partners Information Data System (RAPIDS)¹² and analyzed national labor force data from the Current Population Survey (CPS). Using the data from these sources to compare the demographic characteristics of the national workforce to the demographics of individuals enrolled in apprenticeships makes clear that notable disparities exist in apprenticeship participation and completion.

¹² 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. 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). It should be noted that the United Services Military Apprenticeship Program (USMAP) serves approximately 21 percent of all U.S. apprentices.

The comparisons made here between the demographics of the apprenticeship workforce and the demographics of the national labor force are made because using national-level data allows for the use of certain data breakdowns—such as looking at racial shares of the workforce of a particular level of educational attainment—that would not be possible to do using readily available public state-level data. The 25 states from which the RAPIDS data are drawn are, however, broadly demographically representative of the United States as a whole, and using aggregated data from only these 25 states would not have substantially impacted these comparisons. Looking at all participants in the labor force in calendar year 2015 over age 16, the shares that are women (46.8 percent) and Black or African American (12.3 percent) in the national labor force are not significantly different than the shares that are women and Black or African American in these 25 states (46.2 percent and 11.8 percent respectively), while the share of these states’ labor forces that is Hispanic (19.7 percent) is actually somewhat higher than the share of the national labor force that is Hispanic (16.6 percent). Consequently, had aggregated state-level data from these 25 states been used instead of the national-level data, the disparities illustrated below would have likely looked largely identical or even slightly more substantial in the case of Hispanic workers.

As described in more detail below, these data and other available analyses indicate that certain groups continue to face substantial barriers to entry into and, for some groups, completion of registered apprenticeships. These barriers result in the following:

- Lower than expected enrollment rates in registered apprenticeships among women and specific minority groups;
- To the extent that women and minorities participate in registered apprenticeships, concentration of these groups in apprenticeships for lower-paying occupations; and
- Significantly lower apprenticeship completion rates among specific minority groups and lower construction apprenticeship completion rates among minority groups and women.

It should also be noted that OA lacks data on the apprenticeship experiences of individuals with disabilities, which complicates efforts both to measure the challenges faced by this group and to address the disparities in access and participation that are likely to exist given the disparities faced by these individuals in the labor force more broadly.

Women in Registered Apprenticeships

In general, women’s enrollment in registered apprenticeship programs is significantly lower than would be expected based on labor market data. This disparity exists in comparison to the number of men in registered apprenticeships and also in comparison to the number of women in the wider civilian labor force. As shown in Table 1, in FY2015 the national labor force was 53.2 percent male and 46.8 percent female, and even when looking only at the labor force lacking a college degree—those workers most likely to participate in apprenticeship programs—the labor force was still 43.0 percent female.¹³

¹³ All figures derived from CPS data. Those participants in the labor force lacking a college degree consist of those with no high school diploma, those that completed high school but did not attend college, and those that attended some college but did not receive an associate’s degree or bachelor’s degree. Note that the Bureau of Labor Statistics only publishes educational attainment labor force statistics for individuals age 25 and over. Consequently, while the overall labor force shares presented in the Table 1 are for all individuals age 16 and above, the shares of labor force participants lacking a college degree are for individuals age 25 and above. While this means that the comparison between the latter set of figures and the apprenticeship workforce is not perfect given that many apprentices are below age 25, it nevertheless provides valuable insight into how the composition of the apprenticeship workforce compares to a group of workers of which they already are, or are likely to, become a part.

TABLE 1—MALE AND FEMALE SHARES OF NATIONAL LABOR FORCE IN FY2015

	Share of labor force (%)	Share of labor force with no college degree (%)
Men	53.2	57.0
Women	46.8	43.0

Source: Current Population Survey.

Yet, as Table 2 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. Additionally, while the share of newly enrolled apprentices that are women has fluctuated up and down by small margins over this period, overall no noticeable progress has been made, and the share of newly enrolled apprentices in FY2015 that were women is identical to the share in FY2006 that were women.

TABLE 2—NEW ENROLLMENTS IN REGISTERED APPRENTICESHIP BY SEX AND FISCAL YEAR, ALL INDUSTRIES

Fiscal year	Female (%)	Male (%)
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
2014	6.7	93.3
2015	7.1	92.9
10 Year Average	7.1	92.9
CPS Share of Labor Force (FY2015)	46.8	53.2

Source: Query of RAPIDS database—May 2016.

Additionally, when looking at the 50 occupations with the largest number of apprenticeships, it becomes clear that women who are participating in the largest apprenticeship programs are disproportionately ending up in lower-paying occupations.¹⁴ As shown in Table 3 below, while women account for 9.6 percent of the enrollments in apprenticeship programs in the lowest paying apprenticeable occupations, they make up only 2.2 percent of enrollments in apprenticeship programs in the highest paying apprenticeable occupations. Also illustrative of this fact

¹⁴ Note that these 50 occupations accounted for 82.6 percent of all apprentices in the RAPIDS database as of September 2015.

is that while the 16 occupations comprising the lowest-paid tier of these 50 occupations account for only just over one-fifth of total apprenticeship enrollments, they account for nearly half of female enrollments.¹⁵

TABLE 3—REPRESENTATION OF WOMEN IN REGISTERED APPRENTICESHIP IN TOP 50 (MOST POPULOUS) APPRENTICEABLE OCCUPATIONS IN FY2015

Category	Example job titles in the tier	Mean hourly wage	Women's share of enrollments (%)
Highest Paid Occupations Tier (17 occupations)	Electrician, Pipe Fitter, Plumber, Telecommunications Technician.	\$28.04	2.2
Intermediate Paid Occupations Tier (17 occupations)	Firefighter, Carpenter, Sheet Metal Worker, Glazier, Floor Layer.	22.70	4.3
Lowest Paid Occupations Tier (16 occupations)	Truck Driver, Roofer, Painter, Housekeeper, Cook, Child Care Development Specialist.	17.16	9.6

Source: Query of RAPIDS database—May 2016; Bureau of Labor Statistics May 2015 National Occupational Employment and Wage Estimates.

When analyzing the distribution of female apprentices on an industry basis, more pronounced disparities become apparent. As seen in Table 4 below, of the 20 major industries in which apprenticeship programs exist, women's share of apprenticeship enrollments is only greater than or equal to their share of the national labor force in three industries and greater than their share of

the national labor force without a college degree in four industries (Healthcare and Social Assistance, Retail Trade, Finance and Insurance, and Warehousing). Among the top five industries by total apprenticeship enrollments (the first five industries shown in the Table 4), women's share of enrollments is no more than 11.6 percent. While there are many reasons

that these apprenticeship enrollment rates do not equal the share of the labor force that is women or the share of the labor force without a college degree that is women, the magnitudes of the disparities present clearly indicate the presence of significant inequities in access and participation.

TABLE 4—NEW ENROLLMENTS IN REGISTERED APPRENTICESHIP BY SEX AND INDUSTRY IN FY2015

Industry	Total enrollments	Female share (%)
Construction ¹⁶	165,291	2.8
Public Administration	19,579	11.6
Manufacturing	17,154	8.0
Utilities	8,389	1.7
Transportation	4,951	5.9
Health Care and Social Assistance	2,274	71.2
Retail Trade	1,782	72.0
Education	1,755	17.1
Other Services, except Public Administration	1,658	15.6
Wholesale Trade	1,529	9.2
Administrative and Support and Waste Management and Remediation Services	959	18.6
Accommodation and Food Services	701	36.2
Agriculture, Forestry, Fishing and Hunting	701	8.0
Information	673	12.5
Professional, Scientific, and Technical Services	270	20.0
Mining, Quarrying, and Oil and Gas Extraction	225	3.1
Finance and Insurance	146	46.6
Arts, Entertainment, and Recreation	43	37.2
Real Estate and Rental and Leasing	43	7.0
Warehousing	41	58.5

Source: Query of RAPIDS database—May 2016.

Disparities between male and female enrollment rates are particularly dramatic in the construction industry, where over 70 percent of apprentices were enrolled in FY2015.¹⁷ That year, only 2.8 percent of enrollments were women, the second lowest female

enrollment rate among all industries, trailing only the Utilities industry (1.7 percent). While historical and ongoing discrimination are not the sole explanations for this, the magnitude of the disparities seen in the data, along with several studies of the construction

industry and the anecdotal experience of the women working in the industry who submitted comments to the proposed rule, suggest that

¹⁵ Analysis of RAPIDS data from May 2016 query of RAPIDS database and BLS 2015 National Occupational Employment and Wage Estimates.

¹⁶ Joint apprenticeship training committees (JATCs) have been removed from the Education industry category and included in the Construction industry category.

¹⁷ Joint apprenticeship training committees (JATCs) have been removed from the Education industry category and included in the Construction industry category.

discrimination remains a significant factor.¹⁸

In the proposed rule, the Department stated that the construction trades have traditionally used informal networks and referrals and word of mouth to recruit for open apprenticeships. While we recognize, in response to comments submitted, that significant progress has been made in wider recruitment for apprenticeships and in opening these networks, historical barriers linger. Personal introductions and recommendations (as well as nepotism in the past) continue to be significant factors in selection for construction apprenticeships and work, and many potential female apprentices are not even be aware of the apprenticeship and job opportunities available.¹⁹ The

problem of underrepresentation then perpetuates itself; because women have historically been underrepresented in construction apprenticeships and jobs, many of them may not have access to the interpersonal relationships and informal networks necessary to receive information concerning these opportunities and be selected for them.²⁰ Barriers remain even after women gain entry into these programs. Several women submitted comments recounting discrimination they faced during registered apprenticeship programs, such as being assigned more arduous tasks than male counterparts or otherwise being required to work harder than male counterparts to receive equivalent recognition, being given less skilled and meaningful tasks than male

counterparts, being given fewer hours than male counterparts, and seeing men with less skill promoted ahead of them. Several female commenters described incidents of sexual harassment and retaliation that they experienced during their apprenticeships or while working in the trades.

In addition to low enrollment rates, women complete apprenticeships in the construction industry at lower rates than men. As shown in Table 5 below, while across all industries women complete apprenticeships at a higher rate (50.9 percent) than do men (42.0 percent), within the construction industry women completed apprenticeships at a rate of only 36.5 percent compared to 40.6 percent for men.

TABLE 5—APPRENTICESHIP COMPLETION RATES IN FY2015 BY SEX

FY2015 completion rates ²¹				
	Completions (all industries)	Completion rate (all industries)	Completions (construction)	Completion rate (construction) (%)
Male	23,763	42.0	11,685	40.6
Female	2,248	50.9	271	36.5

Source: Query of RAPIDS database—June 2016.

These disparities can be addressed, however, and evidence illustrates that women do participate and succeed in apprenticeship programs at higher levels when provided equal opportunity and support. The state of Oregon, for example, has been proactively working to increase diversity in its highway construction workforce since 2009 by providing potential highway construction workers with a variety of supports to help them complete relevant apprenticeships. The state’s Highway Construction Workforce Development Program (WDP) provides pre-apprenticeship programs, support services including childcare and transportation subsidies, and mentoring

and retention services to help apprentices gain the training and credentials they need, with a particular emphasis on serving female and minority candidates.²² A 2014 poll of apprentices by WDP found that 80 percent of female active apprentices reported that WDP supports allowed them to take a job they would not otherwise have been able to take, and completion rates for female apprentices who received financial services from the WDP were significantly higher than those who did not receive any services (60.9 percent versus 31.5 percent).²³ Between 2005 and 2013, the share of all heavy highway construction apprentices in Oregon that were female apprentices

or apprentices of color increased from 16.5 percent to 26.9 percent, with the program likely playing a significant role in more recent years.²⁴

Examples such as that seen in Oregon demonstrate that progress can be made in improving women’s participation and success in apprenticeship programs when doing so is made a priority. Making sure that women are aware of the apprenticeship opportunities available to them, that they receive equal opportunities to participate in those apprenticeship programs, and that they receive the same quality of training and mentorship in those programs are all critical to closing the significant utilization gaps we see today.

¹⁸ 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 (ACSSH), submitted to Occupational Safety and Health Administration (OSHA), Department of Labor (June 1999).

¹⁹ 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); National Women’s Law Center, “Women in Construction Still Breaking Ground,” (2014), available at http://www.nwlc.org/sites/default/files/pdfs/final_nwlc_womeninconstruction_report.pdf.

²⁰ 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).

Additionally, 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).

²¹ 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).

²² S. Burd-Sharps, K. Lewis, and M. Kelly, “Building a More Diverse Skilled Workforce in the Highway Trades: Are Oregon’s Current Efforts Working?” available at <http://www.pdx.edu/sociology/sites/www.pdx.edu.sociology/files/Building%20a%20More%20Diverse%20Skilled%20Workforce%20in%20the%20Highway%20Trades%20FINAL%20REPORT.pdf>.

²³ *Id.*

²⁴ *Id.*

Minorities in Apprenticeship

The participation of racial and/or ethnic minorities in apprenticeships has been uneven and varies by group. In FY2015, the “Black or African American” demographic group²⁵ comprised 12.3 percent of the national labor force and 14.1 percent of the labor force without a college degree (see Table 6), but made up 10.0 percent of all apprenticeship enrollments. While those gaps are clearly substantially smaller than those seen among women, focusing only on this broad measure can mask significant underrepresentation of Black or African Americans in particular industries.

TABLE 6—RACIAL AND ETHNIC COMPOSITION OF LABOR FORCE IN FY2015

	Share of labor force (%)	Share of labor force with no college degree (9%)
White	78.8	78.5
Black or African American	12.3	14.1
Other Race	9.0	7.4
Hispanic or Latino ²⁶	16.6	22.7

Source: Current Population Survey.

For example, as can be seen in Table 7, while Black or African Americans were well-represented in apprenticeships in industries such as

Public Administration, Health Care and Social Assistance, and Other Services in FY2015, they comprised only 8.8 percent of apprentice enrollments in Construction, the industry with by far the largest number of apprentices. Black or African Americans also comprised under 10 percent of enrollments in seven other industries, including Utilities; Agriculture, Forestry, Fishing, and Hunting; and Professional, Scientific, and Technical Services among others. These disparities illustrate the uneven manner in which Black and African Americans participate in apprenticeships across industries and also speak to the importance of disaggregating such enrollment data so as to gain a more accurate picture of where and to what extent different groups are being underrepresented.

TABLE 7—NEW ENROLLMENTS IN REGISTERED APPRENTICESHIP BY RACE AND INDUSTRY IN FY2015

Industry	Total enrollments	White share (%)	Black or African American share (%)	Other race share (%)	Unreported race share (%)
Construction ²⁷	165,291	62.4	8.8	7.2	21.5
Public Administration	19,579	62.0	24.4	3.5	10.1
Manufacturing	17,154	68.6	10.4	6.0	15.0
Utilities	8,389	74.5	6.8	4.0	14.6
Transportation	4,951	49.5	11.1	5.2	34.2
Health Care and Social Assistance	2,274	53.2	31.9	3.2	11.7
Retail Trade	1,782	26.3	14.3	3.3	56.2
Education	1,755	49.3	13.2	9.8	27.7
Other Services, except Public Administration	1,658	55.6	29.5	2.8	12.1
Wholesale Trade	1,529	66.8	13.3	2.0	17.8
Administrative and Support and Waste Management and Remediation Services	959	31.0	22.3	8.2	38.5
Accommodation and Food Services	701	68.2	13.0	8.3	10.6
Agriculture, Forestry, Fishing and Hunting	701	67.8	3.0	5.8	23.4
Information	673	56.8	16.2	18.1	8.9
Professional, Scientific, and Technical Services	270	55.6	5.9	21.1	17.4
Mining, Quarrying, and Oil and Gas Extraction	225	37.8	8.4	32.0	21.8
Finance and Insurance	146	67.1	24.7	4.1	4.1
Arts, Entertainment, and Recreation	43	48.8	9.3	14.0	27.9
Real Estate and Rental and Leasing	43	86.0	2.3	2.3	9.3
Warehousing	41	4.9	4.9	0.0	90.2

Source: Query of RAPIDS database—May 2016.

Studies examining apprenticeship data at the occupation level have also presented compelling evidence that Blacks or African Americans are underrepresented in certain

apprenticeable occupations. In an analysis of 2005–2007 ACS data broken down to the occupational level in the construction, extraction, and maintenance sector, researchers found

that Black or African-American men experienced underrepresentation in 81 percent of the 67 precisely-defined occupations that comprise this sector.²⁸

²⁵ We refer herein to “Black or African American” because that is the racial categorization used by the Bureau of Labor Statistics in CPS data, and is in turn used within the definition of “race” in the part 30 regulations. See Bureau of Labor Statistics Glossary, available at <http://www.bls.gov/bls/glossary.htm#R> (last accessed June 24, 2016); 29 CFR 30.2.

²⁶ Note that percentages in this table will not add up to 100 percent due to rounding and because there is overlap between the Hispanic or Latino

ethnic group and the racial groups presented in the table.

²⁷ Joint apprenticeship training committees (JATCs) have been removed from the Education industry category and included in the Construction industry category.

²⁸ The authors also found that across occupations in all sectors examined, Black or African-American men were underrepresented in 49 percent of occupations. To determine whether underrepresentation existed in a particular occupation, the authors compared the share

workers in the occupation that were Black or African American to the share of workers in the occupation that one would have expected to be Black or African American given the proportion of Black or African-American workers that have the education level associated with that occupation. See 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).

Examining the distribution of Hispanic apprentices illustrates a similar pattern of uneven participation of workers across industries and points to the existence of significant underrepresentation of Hispanics in a number of industries. In FY2015, Hispanics comprised 20.2 percent of apprenticeship enrollments, which was higher than their share of the national

labor force (16.6 percent) but below their share of the labor force without a college degree (22.7 percent). Looking specifically at industry employment, it can be seen in Table 8 that while Hispanics were relatively well represented in industries such as Education and Wholesale Trade, of the top seven industries by apprenticeship enrollment, Hispanics accounted for

less than 10 percent of enrollees in all but one (Construction). In total, Hispanics accounted for a share of enrollments that was below their share of the national labor force in 13 industries, and accounted for a share of enrollments that was below their share of the labor force without a college degree in 15 industries.

TABLE 8—NEW ENROLLMENTS IN REGISTERED APPRENTICESHIP BY ETHNICITY AND INDUSTRY IN FY2015

Industry	Total enrollments	Hispanic share (%)	Non-Hispanic share (%)	Unreported ethnicity share (%)
Construction ²⁹	165,291	21.2	55.7	23.1
Public Administration	19,579	7.2	46.8	46.0
Manufacturing	17,154	5.6	62.1	32.3
Utilities	8,389	7.2	61.7	31.1
Transportation	4,951	6.4	37.2	56.3
Health Care and Social Assistance	2,274	9.9	58.9	31.1
Retail Trade	1,782	4.7	14.9	80.4
Education	1,755	30.9	47.0	22.1
Other Services, except Public Administration	1,658	10.5	38.9	50.6
Wholesale Trade	1,529	24.0	61.7	14.3
Administrative and Support and Waste Management and Remediation Services	959	8.4	36.6	55.0
Accommodation and Food Services	701	8.1	47.9	43.9
Agriculture, Forestry, Fishing and Hunting	701	23.7	33.7	42.7
Information	673	22.1	44.7	33.1
Professional, Scientific, and Technical Services	270	7.4	55.6	37.0
Mining, Quarrying, and Oil and Gas Extraction	225	24.0	50.2	25.8
Finance and Insurance	146	2.1	87.7	10.3
Arts, Entertainment, and Recreation	43	23.3	58.1	18.6
Real Estate and Rental and Leasing	43	0.0	55.8	44.2
Warehousing	41	7.3	2.4	90.2

Source: Query of RAPIDS database—May 2016.

Further, minority groups tend to be more concentrated in apprenticeships for lower-paying occupations than are apprentices as a whole. RAPIDS data for the 50 occupations with the largest numbers of apprentices show that both Black or African-American enrollees and Hispanic enrollees in apprenticeship programs make up higher shares of apprentices in low-

wage occupations than of apprentices in high-wage occupations. As seen below in Table 9, while Black or African Americans comprise 17.3 percent of enrollees in the lowest-paid occupation tier, they account for only 7.8 percent of enrollees in the highest-paid tier, and while Hispanics comprise 22.4 percent of enrollees in the lowest-paid occupation tier, they account for only

15.6 percent of enrollees in the highest-paid tier. Further illustrating this point is that while enrollments in the bottom wage tier account for 21.2 percent of total apprenticeship enrollments among these 50 occupations, they account for 35.8 percent of Black or African American enrollments and 25.3 percent of Hispanic enrollments.

TABLE 9—REPRESENTATION BY RACE IN 50 MOST POPULOUS APPRENTICEABLE OCCUPATIONS FY2015 [RAPIDS data]

Category	Example job titles in the tier	Mean hourly wage	Black or African American share of enrollments (%)	Hispanic share of enrollments (%)
Highest Paid Occupations Tier (17 Occupations).	Electrician, Pipe Fitter, Plumber, Telecommunications Technician.	\$28.04	7.8	15.6
Intermediate Paid Occupations Tier (17 Occupations).	Firefighter, Carpenter, Sheet Metal Worker, Glazier, Floor Layer.	22.70	9.5	22.1

²⁹ Joint apprenticeship training committees (JATCs) have been removed from the Education

industry category and included in the Construction industry category.

TABLE 9—REPRESENTATION BY RACE IN 50 MOST POPULOUS APPRENTICEABLE OCCUPATIONS FY2015—Continued
[RAPIDS data]

Category	Example job titles in the tier	Mean hourly wage	Black or African American share of enrollments (%)	Hispanic share of enrollments (%)
Lowest Paid Occupations Tier (16 Occupations).	Truck Driver, Roofer, Painter, Housekeeper, Cook, Child Care Development Specialist.	17.16	17.3	22.4

Source: Query of RAPIDS database—May 2016; Bureau of Labor Statistics May 2015 National Occupational Employment and Wage Estimates.

Finally, RAPIDS data also reveal that there are challenges for minority groups in completion rates as well. For example, the FY2015 completion rate for Black or African American apprentices in all industries was only 39.3 percent, and in the construction industry it was only 30.6 percent (see Table 10). White apprentices, by comparison, had an all-industry completion rate of 47.3 percent, and a construction-industry completion rate of 44.6 percent. Similar patterns are seen among Hispanic apprentices, who had an all-industry completion rate of 31.7 percent and a construction-industry completion rate of 34.0 percent in FY2015, compared to a 46.5 percent all-industry completion rate and a 43.2 construction-industry percent completion rate among Non-Hispanics.

TABLE 10—APPRENTICESHIP COMPLETION RATES IN FY2015 BY RACE AND ETHNICITY

	FY2015 completion rates ³⁰			
	Completions (all industries)	Completion rate (all industries) (%)	Completions (construction)	Completion rate (construction) (%)
White	17,853	47.3	9,168	44.6
Black or African American	3,000	39.3	816	30.6
Non-Hispanic	15,690	46.5	7,951	43.2
Hispanic	3,709	31.7	1,568	34.0

Source: Query of RAPIDS database—June 2016.

That such disparities and patterns of uneven participation exist is not surprising given the challenges often faced by many minorities and ethnic groups as they look to find work in the industries and occupations where apprenticeships are most common. These workers can be confronted by workplace cultures that are overtly or subtly hostile to workers of their race or ethnic background, and they often lack access to the types of interpersonal relationships and professional networks that would help them find jobs and receive the mentorship and training they need to complete their apprenticeships. One study of apprentices in the highway trades in Oregon published in 2015 documents all of these challenges.³¹ In surveying apprentices in the highway trades, it found that 21 percent of men of color and 30 percent of women of color reported feeling disadvantaged on the

job due to their race or ethnicity. Speaking to the issues surrounding minorities' access to critically important informal networks, the survey also found that while only 13 percent of white men stated that problems with journeyworkers were a challenge during their apprenticeship, 21 percent of men of color and 35 percent of women of color reported such problems. Indeed, while 79 percent of white men reported receiving mentoring on the job, only 60 percent of men of color and 38 percent of women of color reported the same.

All of these challenges and disparities can make it very difficult for minority workers to break in to trades in which they have not been traditionally well represented, but they can be successfully addressed by robust affirmative action efforts if these efforts are tailored to address the specific circumstances of the disparity.

Individuals With Disabilities in Apprenticeship

While the Department does not currently have data on the representation of persons with disabilities in apprenticeship programs, the underemployment of individuals with disabilities in the labor force more broadly is well documented. According to data from BLS, 30.5 percent of working-age individuals with disabilities were in the labor force in 2015, compared with 76.1 percent of working-age individuals with no disability.³² The unemployment rate for working-age individuals with disabilities was 11.7 percent in 2015, compared with a 5.2 percent unemployment rate for working-age individuals without a disability. Furthermore, wages for individuals with disabilities on average lag behind the rest of the workforce. The mean weekly earnings of employed full-time wage

³⁰ 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, available at http://doleta.gov/OA/bul10/Bulletin_2011-07_Completion_Rates.pdf.

³¹ M. Kelly et al., “When Working Hard is Not Enough for Female and Racial/Ethnic Minority Apprentices in the Highway Trades,” 30 *Sociology Forum* no. 2 (June 2015).

³² Source: Current Population Survey data. ‘Working age’ refers to individuals between the ages of 16 and 64. As the Department’s Section 503 Final

Rule noted, this acute disparity in the workforce participation and unemployment rates of working age individuals with disabilities persists, despite the many technological advances that now make it possible for a broad array of jobs to be successfully performed by individuals with severe disabilities.

and salary workers with a disability in 2015 were \$962 (with a median of \$737) compared to \$1,157 (median \$811) for those without a disability.³³ While 28.5 percent of individuals, ages 18 to 64, with a disability were in poverty in 2014, the data show that 12.3 percent of individuals without a disability were in poverty.³⁴

Affirmative efforts to seek out individuals with disabilities and ensure they have fair access to apprenticeship programs and the “ticket to the middle class” that apprenticeship programs provide has the potential to powerfully impact these profound inequalities.

Overview of the Apprenticeship Equal Employment Opportunity Notice of Proposed Rulemaking and Public Comments

Leading up to the publication of the Notice of Proposed Rulemaking (NPRM), 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 employers, employer associations, and labor-management organizations; journeyworkers; former apprentices; and registered apprentices. This input addressed features of the existing rules 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; focus on equal training and retention of apprentices; stricter enforcement of the Equal Employment Opportunity (EEO) obligations; recognition of the voluntary nature of apprenticeship programs; clarification of complaint procedures; and progressive actions by Registration Agencies to achieve sponsor compliance with the regulations.

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 on a wide

range of matters related to apprenticeship. The ACA is comprised of approximately 30 members drawn equally from employers, labor organizations, and the public.

OA's NPRM was published in the **Federal Register** on November 6, 2015.³⁵ The NPRM sought public comment on a number of proposals designed to improve the regulations implementing EEO in apprenticeship. The NPRM was published for a 60-day public comment period. After receiving several requests to extend the public comment period, OA extended the public comment period an additional 15 days to January 20, 2016.³⁶

The NPRM contained four general categories of proposed revisions to the part 30 regulations: (1) Changes required to make part 30 consistent with the Labor Standards for Registration of Apprenticeship Programs set forth in part 29; (2) adding additional protected bases to those already delineated in part 30, and further clarifying the scope of some of the existing bases; (3) changes to enhance and clarify the affirmative steps sponsors must take to ensure equal employment opportunity, including the contents of affirmative action programs (AAPs), and how these obligations would be reviewed and enforced by Registration Agencies; and (4) changes to improve the overall readability of part 30. Wherever possible, this Final Rule has attempted to streamline and simplify sponsors' obligations, while maintaining broad and effective EEO protections for apprentices and those seeking entry into apprenticeship programs.

The first set of changes proposed to 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 proposed to revise or add several definitions and incorporate the procedures set forth in part 29 for deregistration of apprenticeship programs, derecognition of SAAs, and hearings. The use of a more uniform set of procedures streamlines management of the National Apprenticeship System. Also proposed were a few minor, conforming changes in 29 CFR part 29, the companion rule to part 30.

The second category of changes proposed to expand the protected bases upon which discrimination is unlawful and align the existing protected bases with current jurisprudence given the developments in EEO law since the

regulations were last revised in 1978. Categories added to update the rule included age, disability, sexual orientation, genetic information; the proposal also took the position that sex discrimination included discrimination on the basis of pregnancy and gender identity.

The third category of changes in the proposal was designed to improve the effectiveness of program sponsors' required affirmative action efforts and of Registration Agencies' efforts to enforce and support compliance with this rule. Among these proposed changes were the following:

- Listing specific steps all sponsors must undertake to ensure equal employment opportunity, including: Dissemination of EEO policy; outreach and recruitment obligations in an effort to increase diversity in applications for apprenticeship; taking steps to keep the workplace free from harassment, intimidation, and retaliation; and assigning an individual at the sponsor to oversee EEO efforts (proposed § 30.3);

- Specifying in clearer detail the components of a written AAP for those sponsors required to maintain one, allowing new sponsors more time to establish initial AAPs, and requiring an internal, annual review of all written AAP contents (with the possibility to extend the review to every two years if their review demonstrated compliance with all AAP elements) (proposed § 30.4);

- As part of an AAP, simplifying the process by which sponsors analyze whether the apprenticeship program is underutilizing women or minorities, and accordingly whether they need to set utilization goals (proposed §§ 30.5–30.6);

- Expanding the AAP to include affirmative action obligations on the basis of disability, including a 7% utilization goal for individuals with disabilities in apprenticeship programs and a self-identification mechanism allowing sponsors to quantitatively measure their progress against that goal (proposed §§ 30.7, 30.11);

- Clarifying the existing outreach and recruitment AAP obligation, which required engaging in a “significant number” of ten possible activities, by specifying four required, common-sense activities (proposed § 30.8);

- Requiring an annual review of personnel practices to ensure the program is operating free from discrimination (proposed § 30.9);

- Providing sponsors greater flexibility in how they may select apprentices for their programs, provided that such selection mechanisms are free from discrimination and comport with the Uniform Guidelines for Employee Selection Procedures that already governed selection in the existing regulations (proposed § 30.10); and

- Clarifying procedures for apprentices to file complaints of discrimination and the types of enforcement actions Registration Agencies may take in the event of violations (proposed §§ 30.12–30.15).

While progress has been made in some segments of the workforce since the

³³ BLS unpublished table A–45.

³⁴ *Income and Poverty in the United States: 2014*, Current Population Reports, issued September 2015, <https://www.census.gov/content/dam/Census/library/publications/2015/demo/p60-252.pdf> (last accessed June 3, 2016).

³⁵ 80 FR 68908.

³⁶ 80 FR 80307, Dec. 24, 2015.

promulgation of the existing part 30, these enhancements and improvements were proposed to address the ongoing widespread underutilization of historically disadvantaged worker groups in apprenticeship. The Department has a compelling interest in ensuring that its approval of a sponsor's apprenticeship program does not serve to support, endorse, or further promote discrimination.

The fourth category of changes was proposed to improve the overall readability of part 30 through a reorganization of the part 30 requirements, basic editing, providing clarifying language where needed, and adhering to plain language guidelines. This includes replacing the word "shall" with "must" or "will" as appropriate to the context. The proposed rule added a new section setting forth the effective date for this rule and for programs currently registered to come into compliance with the revised regulations.

OA received 245 comments on the NPRM. Commenters represented diverse perspectives including: 107 individuals; 45 advocacy and public interest groups; 27 Joint Apprenticeship Training Committees (state/local); 13 state government agencies; 11 industry association/business interests; 10 national unions; 9 state and local unions; and 5 private employers.

The commenters raised a broad range of issues. Most commenters supported the broader intent of increasing diversity and equal opportunity to bolster inclusion efforts, and many commenters strongly supported the expanded protections proposed in the NPRM. Other commenters raised various concerns with the cost and burden associated with the proposed rule, and questioned whether various proposals were feasible for sponsors to undertake and/or comply with. Among the primary issues raised by these commenters were:

- Whether the obligations under the new rule conflicted with the obligations of certain sponsors under Employee Retirement Income Security Act (ERISA) to act as a fiduciary for the training plans;
- The application of certain non-discrimination, affirmative action, and recordkeeping obligations to certain group sponsors, whom commenters believed would not have the ability to control personnel actions made and records kept by participating employers (proposed §§ 30.3–30.12);
- The definition of sex discrimination, which many commenters believed should specifically include discrimination on the basis of pregnancy, gender identity, and sexual orientation;

- The exemption from AAP obligations for those sponsors with fewer than 5 apprentices (proposed § 30.4), which was carried over from the existing rule. These comments were split between those who wanted the exemption eliminated altogether versus those who wanted the exemption expanded to include sponsors with larger apprenticeship programs;

- Questions of burden related to the frequency and extent of various elements of the AAP (proposed §§ 30.4–30.9);

- The burden of requiring sponsors to complete utilization analyses for race and sex (proposed §§ 30.5–30.6), given that, while required under the existing rule, many sponsors do not have experience undertaking this analysis and have in practice relied upon Registration Agencies to do so on their behalf. Related, a number of commenters cited a lack of clarity on various facets associated with utilization goals (§§ 30.5–30.6), such as defining a relevant recruitment area;

- The feasibility of the new 7% disability goal and attendant self-identification requirements (proposed § 30.7 and 30.11), with some commenters arguing for a lower goal and some a higher goal, as well as whether pre-offer self-identification inquiries comport with State and Federal laws; and

- The new enforcement measure that would allow Registration Agencies to suspend sponsors (proposed § 30.15), which some commenters believed lacked due process considerations and could be used punitively for political reasons by certain SAAs.

The active engagement from stakeholders to provide their ideas about and comments on the proposed rule resulted in a Final Rule that streamlines and simplifies the obligations of sponsors to the extent possible while maintaining broad equal employment opportunity protections for apprentices.

Overview of the Final Rule

This Final Rule responds to and incorporates the public input received during the open comment period and ACA consultation, as well as OA's analysis regarding barriers to entry, underutilization, and discrimination in apprenticeship and nontraditional occupations for underrepresented groups and best practices to address these challenges. The Final Rule includes the same basic structure and many of the same proposals that were announced in the NPRM. However, to focus the Final Rule more closely on key issues, incorporate public comment, and to reduce the burden to the extent possible while maintaining the efficacy of nondiscrimination and affirmative action efforts, the Final Rule also revises or eliminates some of the NPRM's proposals. A summary of the significant changes from the NPRM are as follows:

- Generally providing more time for sponsors—both those currently registered and those who may register programs in the future—to comply with the new non-discrimination and affirmative action obligations;

- Adjusting the workforce analysis so that it is conducted at the occupation level, and the utilization analysis at the major occupation category level, using a common source of data easily accessible to sponsors;

- Clarifying that Registration Agencies will significantly assist sponsors in conducting utilization analyses;

- Clarifying that failure to meet utilization goals will not, in and of itself, result in the assessment of any enforcement actions or sanctions. In so doing, the Final Rule clarifies the goals are not quotas, which in fact are legally impermissible, and that goals do not displace in any way merit selection principles; indeed, the rule specifically prohibits selections made on the basis of a protected category;

- Revising the proposed program suspension alternative in the enforcement action to address due process concerns raised by commenters; and

- Allowing SAAs more time to submit their State EEO plan to come into compliance with these regulations.

These and other changes to the Final Rule, as well as a full response to the significant comments received and clarifying guidance on how the rule should be interpreted, are set forth in the Section-by-Section Analysis below.

Section-by-Section Analysis

Description of Part 30

The description of part 30 in the existing regulations reads "Equal Employment Opportunity in Apprenticeship and Training." The NPRM proposed to delete the words "and Training" to clarify that the rule applies only to apprenticeship programs registered under the National Apprenticeship Act, and not to other training programs. The proposed change was also consistent with the recent change of the name of the Department's apprenticeship agency to the Office of Apprenticeship, from the Bureau of Apprenticeship and Training. We received no comments on this proposed change. Accordingly, the Department adopts the proposed language describing part 30 in the Final Rule.

Purpose, Applicability, and Relationship to Other Laws (§ 30.1)

The existing § 30.1 set forth the scope and purpose in one paragraph and laid out the range of activities to which the policies apply. The NPRM proposed to revise the title by replacing "Scope and purpose" with "Purpose, applicability, and relationship to other laws," organized the text to fall under these three categories, and provided clarifying

details to enhance readability of the section.

The Department received only one comment, from a national JATC, suggesting that the current text be retained because it contains the same information in a more concise manner. We respectfully disagree, and believe that the expanded nature of proposed § 30.1 makes it helpful to the reader to divide the section's provisions among three separate paragraphs: Proposed § 30.1(a) set forth the purpose of the rule; proposed § 30.1(b) addressed to whom the rule applies; and proposed § 30.1(c) discussed how this regulation relates to other laws that may apply to the entities covered by this regulation. We therefore adopt the structure of § 30.1 as proposed.

Paragraph 30.1(a): Purpose

Proposed § 30.1(a) added age (40 or older), genetic information, sexual orientation, and disability to the list of bases set forth in the rule upon which a sponsor of a registered apprenticeship program must not discriminate. The Department received numerous comments addressing these proposed changes, which were generally supportive, although one commenter cautioned the Department not to discount the fact that prohibiting discrimination on the basis of sexual orientation may raise implementation questions for sponsors and require technical assistance. The Department is prepared to undertake such assistance. Among the several commenters that were supportive of the expanded protections, many suggested additional clarifications.

Starting with those protected bases in the existing rule, the NPRM explained that the Department interprets discrimination on the basis of "sex" to include both pregnancy and gender identity discrimination, and clarified this interpretation in the proposed regulatory text at § 30.3(c), which provided the contents of sponsors' equal opportunity pledge, by explicitly including pregnancy and gender identity in a parenthetical following "sex" to make this clear. The Department received numerous comments advocating that pregnancy and gender identity be explicitly listed as separate grounds of discrimination, rather than considered under the umbrella of sex discrimination. Per the language of relevant authorities and case law, both pregnancy and gender identity have been analyzed as forms of sex discrimination.³⁷ The final rule retains,

in the E.O. pledge set forth in § 30.3(c), the proposed rule's parenthetical explaining that sex discrimination includes discrimination on the basis of gender identity and pregnancy. We include the parenthetical explanation in this one portion of the regulation because it is the language that will be incorporated into registered apprenticeship standards and apprenticeship opportunity announcements and thus more visible to those the rule protects, but this interpretation applies wherever sex is discussed in the regulation. As set forth in the discussion of § 30.3(a)(2) herein, the Department will look to the legal standards and defenses that apply under Title VII and Executive Order 11246, as applicable, in determining whether a sponsor has engaged in discrimination made unlawful by § 30.3(a)(1), including sex discrimination.

The NPRM also proposed to include four new grounds to the list of protected bases upon which a sponsor must not discriminate: Age (40 or older); genetic information; sexual orientation; and disability. The Department responds to the comments received on each in turn.

Age (40 or Older)

Of the few commenters who weighed in on the addition of age discrimination, including a national JATC, an advocacy organization, and one individual, all supported its inclusion as a prohibited ground of discrimination. Among these, a national JATC said its industry's

sex" include, but are not limited to, because of or on the basis of pregnancy, childbirth, or related medical conditions"; 41 CFR 60–20(a) (stating that under Executive Order 11246, sex discrimination includes discrimination on the basis of pregnancy, childbirth, or related medical conditions); *see also* EEOC Facts About Pregnancy Discrimination, available at <https://www.eeoc.gov/eeoc/publications/fs-preg.cfm> (last accessed Sept 14, 2016). Regarding gender identity, *see, e.g.*, 41 CFR 60–20.2(a) (stating that, under Executive Order 11246, discrimination on the basis of sex includes discrimination on the basis of gender identity); *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); *Fabian v. Hosp. of Cent. Conn.*, 2016 WL 1089178, * 14 (D. Conn. Mar. 18, 2016); *Schroer v. Billington*, 577 F. Supp. 2d 293 (D.D.C. 2008). The Department is aware of the recent decision in *Texas v. U.S.*, No. 7:16–cv–00054–O, 2016 WL 4426495 (N.D. Tex. Aug 21, 2016), in which the court issued a preliminary injunction enjoining several Federal agencies, including the Department, from enforcing certain guidance pertaining generally to the issue of transgender access to sex segregated facilities. As of when this rule was sent for publication, the effect of that injunction on the Department's programs is unclear and under consideration by the District Court. *See Order, Texas v. U.S.*, No. 7:16–cv–00054–O (N.D. Tex. Oct. 18, 2016), ECF No. 86 (ordering additional briefing as to whether the injunction applies to Title VII and whether and how the injunction applies to DOL). The Department will monitor this and other cases.

programs have been following the Equal Employment Opportunity Commission (EEOC) interpretations and/or State law and including age as a protected category, and that there are many examples of older workers entering the electrical industry through apprenticeship as second careers. An individual commenter relayed personal experience of being excluded from apprenticeship programs due to age, and thus could benefit from this added protection. Accordingly, the Final Rule adopts the addition of age as a protected basis, as proposed.

Genetic Information

With regard to genetic information, those few commenters weighing in all supported its addition to the list of prohibited grounds of discrimination. The national JATC said joint labor-management committees already are prohibited from discriminating against employees or applicants because of genetic information, so this will not be a change for these apprenticeship programs. Accordingly, the Final Rule adopts the addition of genetic information as a protected basis, as proposed.

Sexual Orientation

Numerous commenters, including advocacy organizations, individual commenters, a professional association, and a State Workforce Agency (SWA), supported the rule's explicit inclusion of sexual orientation on the list of protected bases. Several advocacy organizations said individuals who identify as lesbian, gay, or bisexual face high levels of discrimination and harassment at work based on their sexual orientation and this revision is in line with current law and within the Department's rulemaking authority.

Several of the above commenters plus additional advocacy organizations urged the Department to make clear that sexual orientation discrimination and sex stereotyping discrimination are also prohibited forms of sex discrimination. One of these commenters, an advocacy organization, stated that, while the legal landscape continues to evolve, it is now clear that a division between sexual orientation and sex discrimination is unsustainable and providing this additional clarification in the final regulation would provide the fullest protection for program participants. A national JATC urged some caution, noting that the interpretation announced by the EEOC in its 2015 *Baldwin* decision³⁸ that sexual

³⁷ Regarding pregnancy, *see* 42 U.S.C. 2000e(k) ("The terms "because of sex" or "on the basis of

³⁸ *Baldwin v. Foxx*, Appeal No. 0120133080, 2015 WL 4397641 (EEOC July 16, 2015).

orientation discrimination is *per se* sex discrimination under Title VII was not yet settled law.

The Final Rule adopts the NPRM's proposed inclusion of sexual orientation as a stand-alone protected category. As discussed in the NPRM, 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,"³⁹ 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 apprentices and applicants for registered apprenticeship are selected according to objective and specific qualifications relating to job performance. We note further that the addition of sexual orientation as a protected basis aligns with developments in legal protections over the last two decades. At the time of publication, 22 States and the District of Columbia, in addition to numerous additional counties and municipalities across the country, have laws explicitly prohibiting employment discrimination on the basis of sexual orientation in the public and private sectors.⁴⁰ Accordingly, the Final Rule retains sexual orientation as its own protected basis. We do note, as discussed more fully in later sections, that the Final Rule does not require sponsors to collect employee or applicant data on sexual orientation, conduct specific outreach, or otherwise include sexual orientation in the utilization analyses required under AAPs pursuant to § 30.4. This is consistent with the Department's Office of Federal Contract Compliance Programs' (OFCCP) approach to sexual orientation in its programs.

With regard to commenters' requests that the rule state that sexual orientation discrimination is also a *per se* form of sex discrimination, the Department supports this view as a matter of policy. Federal agencies have taken an increasing number of actions to ensure that lesbian, gay, and bisexual individuals are protected from discrimination,⁴¹ and court decisions

have increasingly made clear that individuals and couples deserve equal rights regardless of their sexual orientation.⁴² The Department further notes that this area of title VII law is still developing. In *Baldwin*, the EEOC—the lead Federal agency responsible for administering and enforcing title VII—offered a legal analysis and review of the title VII case law and its evolution, concluding that sexual orientation is inherently a "sex-based consideration" and that discrimination on the basis of sexual orientation is therefore prohibited by title VII as one form of sex discrimination.⁴³ As the EEOC noted in that case, in *Oncala v. Sundowner Offshore Services*, a unanimous Supreme Court stated that "statutory prohibitions often go beyond the principal evil [they were passed to combat] to cover reasonably comparable evils, and it is ultimately the provisions of our laws rather than the principal concerns of our legislators by which we are governed."⁴⁴ More than fifty years after the passage of the Civil Rights Act of 1964, the contours of the law governing sex discrimination in the workplace have changed significantly. Over the past two decades, an increasing number of Federal court cases, building on the *Price Waterhouse* rationale, have found protection under title VII for those asserting discrimination claims related to their

³⁹ 29 U.S.C. 50.
⁴⁰ <https://www.aclu.org/maps/non-discrimination-laws-state-state-information-map> (last accessed May 4, 2016).

³⁹ 29 U.S.C. 50.

⁴⁰ <https://www.aclu.org/maps/non-discrimination-laws-state-state-information-map> (last accessed May 4, 2016).

⁴¹ See, e.g., 80 FR 9989 (Feb. 25, 2015) (DOL amendment of the regulatory definition of spouse under the Family and Medical Leave Act (FMLA) so that eligible employees in legal same-sex marriages are treated the same way for FMLA purposes as employees in opposite-sex marriages);

⁴² For example, in 1996, the Supreme Court struck down an amendment to the Colorado constitution that prohibited the State government from providing any legal protections to gay, lesbian, and bisexual individuals. *Romer v. Evans*, 517 U.S. 620 (1996). And, just last year, the Supreme Court ruled in *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015), that states may not prohibit same-sex couples from marrying and must recognize the validity of same-sex couples' marriages. See also *United States v. Windsor*, 133 S. Ct. 2675 (2013) (declaring unconstitutional the federal Defense of Marriage Act's definition of "marriage" as only a legal union between a man and a woman); *Lawrence v. Texas*, 539 U.S. 558 (2003) (declaring unconstitutional a state statute criminalizing consensual same-sex sexual conduct).

⁴³ *Baldwin*, 2015 WL 4397641 (July 16, 2015). EEOC relied on several analyses to reach this conclusion: a plain reading of the term "sex" in the statutory language, an associational analysis of discrimination based on "sex," and the gender stereotype analysis announced in *Price Waterhouse v. Hopkins*, 490 U.S. 228 (1989).

⁴⁴ *Id.* at 13 (quoting *Oncala v. Sundowner Offshore Servs.*, 523 U.S. 75, 79 (1998) (alteration in original) (internal quotation marks omitted)).

sexual orientation.⁴⁵ In light of this legal framework, and for consistency with the position taken by the Department's OFCCP in its recently issued Sex Discrimination regulations and the Department of Health and Human Services in its rule implementing Section 1557 of the ACA, the Department will interpret sex discrimination under this Final Rule to cover treatment of employees or applicants adversely based on their sexual orientation where the evidence establishes that the discrimination is based on gender stereotypes. The Department will continue to monitor the developing law on sexual orientation discrimination as sex discrimination, and will consider issuing further guidance on this subject as appropriate.

Disability

Multiple commenters supported the Department's proposal to add disability to the list of protected categories against which apprenticeship programs may not discriminate. An individual commenter asserted the need for more apprenticeship programs that are open to individuals with disabilities, as

⁴⁵ See, e.g., *Prowel*, 579 F.3d at 291–92 (harassment of a plaintiff because of his "effeminate traits" and behaviors could constitute sufficient evidence that he "was harassed because he did not conform to [the employer's] vision of how a man should look, speak, and act—rather than harassment based solely on his sexual orientation"); *Nichols v. Azteca Rest. Enter., Inc.*, 256 F.3d 864, 874–75 (9th Cir. 2001) (coworkers' and supervisors' harassment of a gay male because he did not conform to gender norms created a hostile work environment in violation of Title VII); *Hall v. BNSF Ry. Co.*, No. C13–2160 RSM, 2014 WL 4719007, at *3 (W.D. Wash. September 22, 2014) (plaintiff's allegation that "he (as a male who married a male) was treated differently in comparison to his female coworkers who also married males" stated a sex discrimination claim under title VII); *Terveer v. Billington*, 34 F. Supp. 3d 100 (D.D.C. 2014) (hostile work environment claim stated when plaintiff's "orientation as homosexual" removed him from the employer's preconceived definition of male); *Heller v. Columbia Edgewater Country Club*, 195 F. Supp. 2d 1212, 1224 (D. Or. 2002) ("[A] jury could find that Cagle repeatedly harassed (and ultimately discharged) Heller because Heller did not conform to Cagle's stereotype of how a woman ought to behave. Heller is attracted to and dates other women, whereas Cagle believes that a woman should be attracted to and date only men."); *Centola v. Potter*, 183 F. Supp. 2d 403 (D. Mass. 2002) ("Sexual orientation harassment is often, if not always, motivated by a desire to enforce heterosexually defined gender norms. In fact, stereotypes about homosexuality are directly related to our stereotype about the proper roles of men and women."). Cf. *Videckis v. Pepperdine Univ.*, No. CV 15–00298 DDP (JCx), 2015 WL 1735191, at *8 (C.D. Cal. April 16, 2015) (harassment and adverse treatment of students because of their sexual orientation may state a claim of sex discrimination under title IX, because it is a form of sex stereotyping; indeed, "discrimination based on a same-sex relationship could fall under the umbrella of sexual discrimination even if such discrimination were not based explicitly on gender stereotypes").

individuals with disabilities continue to struggle to find and keep employment. A number of comments raised specific questions about how the proposed disability non-discrimination and affirmative action obligations would be implemented. Many of these comments are addressed in the discussions of §§ 30.7 and 30.11, but we respond to two of these concerns here because they implicate the purpose of the proposed rule and, to some extent, questions of applicability that are germane to § 30.1. Specifically, one commenter cited other federal regulations to which they must adhere that prohibit the employment of workers who perform work that present dangers to themselves, co-workers, and the general public. Other commenters implied generally that employment of individuals with disabilities was problematic in their particular industry due to physical requirements of the position.

As to the first, nothing in this Final Rule requires sponsors to employ individuals who present dangers to themselves or others. The rule incorporates the “direct threat” defense that is well-established in disability law jurisprudence, which specifically allows an employer to require that an individual be able to perform the essential functions of the position held or desired without posing a direct threat to the health or safety of the individual or others in the workplace. As to the second, to the extent that commenters are seeking exemptions from the disability protection in the Final Rule due to their particular industry, the Department declines to grant such exemptions. Requests to exempt sponsors from disability-related obligations in this Final Rule for safety-sensitive positions or for physically demanding jobs are based on the fundamentally flawed notion that individuals with disabilities as a group are incapable of working in these jobs. The Department does not support this belief and will not construct an avenue to permit sponsors to avoid recruiting and selecting individuals with disabilities for certain apprenticeships. We acknowledge that some individuals with certain disabilities—as well as some individuals without disabilities—may not be able to perform some jobs; this does not countenance broader exclusions from the obligations set forth in this rule.⁴⁶ Not all disabilities have

physical limitations, and not all physical limitations will be relevant to the job at hand.

Proposed Additional Grounds

Several commenters suggested other possible bases for protection against discrimination in apprenticeship programs, including caregiving status (e.g., parental responsibilities), military service, and criminal background. These protected categories are beyond the scope of what was proposed in the NPRM, therefore we did not add them to the Final Rule. However, we note that discrimination based on some of these proposed additional categories may be actionable under already existing categories or under other, already applicable, laws.

Paragraph 30.1(b): Applicability

Proposed § 30.1(b) simplifies the earlier description of the scope of the provision by stating clearly that the rule applies “to all sponsors of apprenticeship programs registered with either the U.S. Department of Labor or a recognized SAA.” A number of comments raised questions regarding how the obligations of this rule would apply differently, if at all, to the different models of sponsors. Some sponsors employ the apprentices and thus their control over the terms and conditions of employment is more clear, while “group” sponsors work with groups of employers where apprentices may be hired or placed and the various types of employment actions prohibited by this rule may be undertaken by these employers, rather than the sponsor.

Throughout the Section-by-Section analysis below, the Department has provided clarification with respect to implementing particular requirements depending on the model of sponsorship. In general, per the text of § 30.1(b), the Department recognizes the sponsor as the entity assuming the equal employment opportunity and affirmative action obligations of this part. To the extent that the sponsor has the ability to control, or otherwise has input into, any of the various employment actions held unlawful by these regulations, its obligations under these regulations are clear. In those situations where discriminatory actions or other actions in violation of this part are taken by participating employers,

typically need no accommodation to work as [a] carpenter. A person with a significant stutter would ordinarily need no accommodation to operate machinery.’ These examples are not an exhaustive list and there are many additional disabilities that, with reasonable accommodation, would not preclude an individual from engaging in even more construction-industry jobs.’) (internal citations omitted).

when the sponsor has knowledge of such actions it has an obligation to undertake steps to address the violation. Historically, this has been accomplished by written agreements entered into between the sponsor and employer setting forth “reasonable procedures . . . to ensure that employment opportunity is being granted,”⁴⁷ as well as through the recordkeeping requirements obligating the sponsor to keep adequate employment records of its apprentices. Were certain categories of sponsors exempted from these general obligations, it could render meaningless many portions of these regulations and the role of the apprenticeship sponsor to help ensure equal employment opportunity that has existed for several decades.

Paragraph 30.1(c): Relationship to Other Laws

Proposed § 30.1(c) clarified that part 30 would 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 under the protected bases. One advocacy organization recommended that the Department work with the EEOC to ensure that part 30 is consistent with other agency directives, including the 2012 EEOC guidance on employer consideration of criminal records. To that end, we note, as we did in the NPRM, that these regulations generally follow Title VII legal principles in their interpretation of the non-discrimination protections in this Final Rule.

An advocacy organization and a State agency commented on the possible linkages between this proposed rule and the Workforce Innovation and Opportunity Act (WIOA). We agree that the two authorities interrelate in important ways to provide broad nondiscrimination protection to apprentices. WIOA encourages the use of registered apprenticeship and the public workforce system provides an opportunity to connect a broad talent pool with the opportunities of apprenticeship, as well as to provide resources and supportive services to assist in connecting individuals to apprenticeship and supporting them through successful completion and career attainment. Section 188 of WIOA also provides comprehensive nondiscrimination protections. The Department will work to ensure that these statutory regimes work in tandem to provide broad and consistent worker protection.

⁴⁷ See existing 29 CFR 30.4(c)(10).

⁴⁶ See *Associated Builders & Contractors, Inc. v. Shiu*, 30 F. Supp. 3d 25, 44 (D.D.C. 2014), *aff’d*, 773 F.3d 257 (D.C. Cir. 2014), *cert. denied*, 135 S. Ct. 2836 (U.S. June 15, 2015) (“Indeed, many disabilities would have little effect on employment by construction contractors. For example, ‘a person with an auditory processing disorder would

Proposed § 30.1(c) also recognized as a defense to a charge of violation of part 30 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 part 30. A national JATC noted that the proposed regulatory text states that “It may be a defense . . .,” and instead recommends that the Department change the word “may” to “shall” in the last sentence of § 30.1(c). The Department respectfully declines to make this change, as whether a defense will succeed is necessarily a fact-specific inquiry which amending the language to “shall” would foreclose. Further, this provision is identical to OFCCP’s regulations implementing section 503 of the Rehabilitation Act of 1973 (section 503) and the Vietnam Era Veterans Readjustment Assistance Act of 1974 (VEVRAA) programs,⁴⁸ and the consistency among these DOL programs is desirable, especially for those entities that may need to comply with both.

One specific potential conflict of laws clarification sought by multiple commenters was the interaction of certain obligations under this rule and obligations under the Employee Retirement Income Security Act of 1974 (ERISA). Many apprenticeship programs are employee benefit plans governed by ERISA. Among other things, ERISA provides that, subject to certain exceptions, the assets of an employee benefit plan shall never inure to the benefit of any employer and shall be held for the exclusive purpose of providing benefits to participants and defraying reasonable administrative expenses. In discharging their duties under ERISA, plan fiduciaries must act prudently and solely in the interests of the plan participants and beneficiaries, and in accordance with the documents and instruments governing the plan insofar as they are consistent with the provisions of ERISA.⁴⁹ Although apprenticeship plans may differ in structure and operations from other ERISA plans, the plan fiduciaries must still abide by the general fiduciary standards in part 4 of title I of ERISA. The Department’s Employee Benefits Security Administration (EBSA) is responsible for interpreting and enforcing the provisions of part 4 of title I of ERISA.

Some commenters asserted that using assets of apprenticeship plans to pay for many of the tasks required in the proposed regulations to gain or maintain registered status under the National

Apprenticeship Act would not be consistent with obligations imposed on plan fiduciaries under ERISA. These commenters cited guidance EBSA issued in 2012 concerning the use of apprenticeship plan assets for graduation ceremonies and to engage in outreach activities and advertise the program to potential apprentices.⁵⁰ The commenters asserted that a plan should have a defense against a violation of the proposed regulations if the apprenticeship plan’s governing board or committee determines that it would violate ERISA to expend plan assets to take compliance actions required to gain or maintain registered status.

EBSA has taken the position that there is a class of activities referred to as “settlor” functions that relate to the formation, design, and termination of plan, rather than the management of the plan, that generally are not activities subject to title I of ERISA. EBSA has concluded that although expenses attendant to settlor activities do not constitute reasonable plan expenses, expenses incurred in connection with the implementation of settlor decisions may constitute reasonable expenses of the plan.⁵¹ A plan sponsor’s decision to register an apprenticeship plan under the National Apprenticeship Act is such a settlor decision of plan design. In the Department’s view, established ERISA guidance on settlor activities supports the conclusion that reasonable expenses incurred in implementing a decision to be a registered apprenticeship plan would generally be payable by the plan to the extent permitted under the terms of the plan’s governing documents.

The commenters also expressed concern about the application of ERISA’s fiduciary standards because registered status may result in benefits for the apprentice plan’s sponsors in addition to the benefits provided to the plan’s participants. In Advisory Opinion 2001–01, dealing with the benefits an employer may secure from sponsoring a tax qualified pension plan, EBSA expressed the view that in the case of such a plan design decision that confers benefits on both the plan sponsor and the plan, a plan fiduciary is not required to take into account the benefits conferred on an employer in determining whether expenses for implementing the plan design decision constitute reasonable expenses of the plan.

A commenter asserted that ERISA may require plan fiduciaries to

withdraw from the Department’s registration program if the increased cost to the plan of compliance with the proposed regulations would be greater than the economic benefits to the plan from registered status. The commenter cited guidance issued by EBSA concerning investments selected because of the collateral economic or social benefits they may further in addition to their investment returns to the plan.⁵² Registered status is clearly connected to the purpose of an apprenticeship plan and provides a range of direct benefits to the plan and the apprentices participating in the plan. Accordingly, EBSA does not believe its guidance in Interpretive Bulletin 2015–02 applies to the decision of whether to maintain a plan as a registered apprenticeship plan.

ERISA requires that plan fiduciaries act prudently and solely in the interest of the plan’s participants in choosing how to comply with the federal regulatory requirements for registered status. Where an apprenticeship program is intended to be registered with the Department, the fiduciaries may treat the reasonable costs of compliance with registration regulations as appropriate means of carrying out the plan’s mission of training workers.

Some commenters requested clarification of ERISA’s impact on the proposal’s requirement that a registered apprenticeship plan establish 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. These commenters noted that participants in pre-apprenticeship programs are not participants in the apprenticeship plan and pointed out that ERISA plan fiduciaries must discharge their duties for the exclusive purpose of providing benefits to the plan participants and defraying reasonable plan administrative expenses. In the Department’s view, where plan fiduciaries prudently determine that supporting quality pre-apprenticeship programs and other workforce pipeline resources are necessary to maintain the plan’s registration, or are otherwise appropriate and helpful to carrying out the purposes for which the plan is established or maintained, assets of the plan may be used to defray the reasonable expenses of such support. Such advantages could include, among other things, more efficient outreach

⁵⁰ EBSA Field Assistance Bulletin (FAB) 2012–01 (Apr. 2, 2012).

⁵¹ See, e.g., Letter to Carl J. Stoney, Jr. (Advisory Opinion 2001–01A, Jan. 18, 2001).

⁵² 29 CFR 2509.2015–02 (Interpretive Bulletin 2015–02).

⁴⁸ See 41 CFR 60–300.1(c)(2) and 60–741.1(c)(3).

⁴⁹ 29 U.S.C. 1103(c)(1), 1104(a)(1)(A), (B) and (D).

and recruitment, and broadening the base of qualified and diverse applicants. For more information on what qualifies as a quality pre-apprenticeship program, see OA's Training and Employment Notice 13–12 (TEN 13–12), dated November 30, 2012.

Finally, one commenter said it is unclear why these defenses are limited to actions required by another Federal law or regulation, and recommended that these defenses be expanded to include actions required or prohibited by any applicable State law or regulation. This commenter did not specifically identify a provision of State law that would be in conflict with these regulations, and we would decline to introduce any such broad defense contrary to general principles of preemption.

Definitions (§ 30.2)

With regard to definitions included in the NPRM, we did not receive comments on the definitions for “administrator,” “apprentice,” “apprenticeship program,” “Department,” “EEO,” “electronic media,” “employer,” “genetic information,” “journeyworker,” “major life activities,” “Office of Apprenticeship,” “physical or mental impairments,” “race,” “reasonable accommodation,” and “Registration Agency.” We made no changes to the proposed definitions for these terms. The others for which comments were received are discussed below.

“Apprenticeship Committee”

This proposed definition comes from part 29, where this term is also used. An SWA suggested that the definition of “apprenticeship committee” should be revised to encompass group sponsor structures as well as individual sponsor structures, and commented that the language throughout the rule is geared towards an individual sponsor structure and not inclusive of group sponsor structures. The Department notes that this definition is identical to the definition contained in part 29. As worded, it is intended to apply to group sponsors as well as individual sponsors. Accordingly, the Final Rule retains the definition as proposed.

“Direct Threat”

This term was added because the proposed rule included disability among the list of protected bases covered by part 30, and the “direct threat” defense is well-established under the Americans with Disabilities Act (ADA), as amended, and other disability laws. A national JATC expressed concern that the proposed

definition would require apprenticeship programs to hire medical professionals to provide “reasonable medical judgment” because this proposed definition states that the process for determining whether an individual poses a direct threat is based on “reasonable medical judgment.” The commenter warned that this would pose a significant financial burden for sponsors, and said that the definition should either be changed or removed. As discussed above, the proposed definition for this term is taken directly from title I of the ADA, as amended, and from the EEOC implementing regulations. The Department intends that this proposed term will have the same meaning as that set forth in the Americans with Disabilities Act Amendments Act of 2008 (ADAAA) and implemented by the EEOC in 29 CFR part 1630. Sponsors and participating employers subject to the ADA, as amended, therefore are already required to comply with this provision under that authority. Any departure would create an unwanted discrepancy between federal disability laws. Further, we note that hiring medical professionals to provide “reasonable medical judgment” is not required by this rule (nor the ADA, as amended). EEOC guidance provides that determining whether a “direct threat” exists is an individual assessment “considering the most current medical knowledge *and/or the best available objective evidence.*”⁵³ (Emphasis added.) The Department interprets this rule consistently with that guidance. Even if medical knowledge were used, it often can be obtained from the individual’s own physician, rather than an in-house physician hired for such purposes. Accordingly, the Final Rule retains the definition as proposed in the NPRM.

“Disability”

This term was added because the proposed rule included disability among the list of protected bases covered by part 30. One commenter explicitly supported this definition as consistent with other Federal laws, most notably the ADA and ADAAA. One commenter requested clarification of the term “disabled individual,” and suggested that the definition and goals should differentiate between individuals with learning disabilities and other types of disabilities. Another commenter, in asking for clarification

⁵³ EEOC Enforcement Guidance on the Americans with Disabilities Act and Psychiatric Disabilities, available at <https://www.eeoc.gov/policy/docs/psych.html> (last accessed May 18, 2016).

about the definition of disability, expressed concern that the construction industry is physically demanding on both body and mind, and that its program asks applicants if they can perform the work required in the industry and if they are physically able regardless of any disabilities. Disability law does not distinguish between “types” of disabilities, but rather whether an individual has, or is regarded as having, an impairment that substantially limits one or more major life activities, or has a record of such impairment. We therefore decline to separate out particular “types” of disabilities for different treatment. With regard to selections in particular industries, again, disability law does not differentiate. It is a well-established tenet of disability law that an individual must be qualified to perform the essential functions of the job, with or without reasonable accommodation, in order to be protected. The proposed definition (as well as the selection provisions in § 30.10 herein) reflects that, and we adopt it as proposed.

Regarding the phrase “a record of such an impairment” in the proposed definition of disability, one commenter asked for clarification as to what type of record would be acceptable verification of an individual having a documented disability. Again, this language was intended to mirror identical language in the ADA, etc., and should be interpreted in the same manner as it is in the ADA. Generally, the phrase “record of” does not require a written record, but rather prohibits discrimination against someone because they are known to have had a disability, for instance, a person who has recovered from cancer or mental illness.

As discussed above, the proposed definition for this term is taken directly from title I of the ADA, as amended, and from the EEOC implementing regulations. The Department intends that this proposed term will have the same meaning as what was set forth in the ADAAA and implemented by the EEOC in 29 CFR part 1630.

“Employer”

The NPRM proposed slight modifications to the definition of “employer” in part 30 to conform to the definition of the term in part 29, where this term is also used. We did not intend this alteration to change how the term is interpreted.

Two national unions expressed concern that, by adopting the definitions of “sponsor” and “employer” in 29 CFR part 29, the proposed rule would allow for a sponsor to conduct its workforce analyses of the

relevant incumbent workforce (required in proposed § 30.5(b)) without accounting for “all occupational titles in its registered apprenticeship program,” should that sponsor include subcontractors or other entities owned or controlled by the sponsor in its apprenticeship program. In this way, they assert that a sponsor could otherwise delegate to an employer its obligations under the rule, thus avoiding enforcement and broad equal employment opportunity for apprentices. It proposed that the Department amend both the definition of “sponsor” and “employer” to include subcontractors and other entities owned and controlled by the sponsor or employer. This latter concern was addressed in the discussion of § 30.1, which clarified that the rule’s obligations apply broadly to all sponsors, and will require partnership and information-sharing with employers to effectuate their non-discrimination and affirmative action obligations. The obligations under § 30.5(b) will be discussed in that part of the Section-by-Section analysis. As the revised definition was offered solely to conform with the existing definition of “employer” in part 29, we retain it in the Final Rule as proposed.

“Ethnicity”

An SWA said that the term “Latino” should be used instead of “Hispanic” because the term “Latino” is broader and includes “Hispanic” groups, but the term “Hispanic” does not include all “Latino” groups. Additionally, the commenter said that “Latino” status should not be limited to “Spanish culture or origin” because some groups do not claim a European cultural or ancestral background, and not all groups speak Spanish as a first language (*e.g.*, Brazilians). In response to this comment, the Department notes that the proposed definition is the same as that used under the Office of Management and Budget’s standards for the classification of Federal data on race and ethnicity,⁵⁴ as well as the definition in the EEOC’s EEO-1 reporting requirements. For consistency with other Federal data collection requirements, we retain the definition as proposed.

“Pre-Apprenticeship Program”

The proposed rule included a definition of “pre-apprenticeship program” because the existing rule refers to such programs, but does not define this term. The proposed

definition, drawn from a Training and Employment Notice regarding pre-apprenticeship,⁵⁵ was intended to provide clarity on what constituted and/or qualified as a pre-apprenticeship program. It is worth noting that this Final Rule does not specifically require sponsors to develop their own pre-apprenticeship programs, but rather includes requirements that sponsors partner with appropriate entities, such as pre-apprenticeship programs, as part of an outreach and recruitment strategy to address underutilization and impediments to equal employment opportunity. The Department received numerous comments addressing this proposed definition, which were generally supportive, but which suggested improvements.

One commenter expressed concern that the proposed definition of “pre-apprenticeship program” does not capture the full scope and reach of high-quality pre-apprenticeship programs, and suggested that the definition of a pre-apprenticeship program should not be limited to programs that assist individuals in meeting the minimum qualifications for selection into an apprenticeship program, but should be expanded to include programs that provide training and education to individuals who meet the minimum requirements for selection into an apprenticeship program but seek additional training in order to remain competitive with other applicants. While this commenter identifies laudable objectives that many programs may accomplish, the Department’s primary focus for pre-apprenticeship programs is to enable participants to obtain minimum requirements for selection into apprenticeship programs to grow opportunities for those individuals. Nothing in the rule prevents sponsors and other entities from designing or linking with additional pre-apprenticeship programs that serve the ends noted by the commenter. The Department is, however, revising the definition to align with TEN 13–12, which addresses pre-apprenticeship programs. Among other things, TEN 13–12 provides that pre-apprenticeship programs maintain a documented partnership with at least one Registered Apprenticeship program, to help ensure that the pre-apprenticeship programs have the relationships in place to support the future success of its participants.

Two national unions commented that the Department should also clarify

whether Job Corps programs satisfy the definition of pre-apprenticeship. As indicated in the NPRM, many Job Corps programs have been used and can serve as pre-apprenticeship programs. While not all Job Corps programs are pre-apprenticeship programs, those Job Corps programs consistent with the requirements of TEN 13–12—specifically, those focusing on preparing individuals for entrance into and success in a registered apprenticeship program, and which maintain a partnership with a Registered Apprenticeship program—would qualify as a pre-apprenticeship program.

A national JATC asked for clarification about the intent of the requirement of collaboration in the definition of “pre-apprenticeship program.” The JATC commented that if the intent is for a minimum of two different types of entities to collaborate on a program, then two employers or a single-employer group or a local union could not operate a pre-apprenticeship program on its own. The JATC suggested that the Department should expressly recognize that a joint-labor management committee is an example of employer and union collaboration, and thus could operate a pre-apprenticeship program. The Department notes that the intent is to link the pre-apprenticeship program with an apprenticeship program. This definition is not intended to require a minimum of two entities given the different ways in which such a link could occur.

Several commenters suggested broadly that the proposed definition of “pre-apprenticeship program” should be in alignment with the definition as written in the Department’s TEN 13–12. Commenters encouraged the Department to adopt a definition of “pre-apprenticeship program” that includes elements that are essential for successful linkage of a pre-apprenticeship program to an apprenticeship program, and/or are otherwise described in TEN 13–12. The definition for “pre-apprenticeship” in the proposed rule was specifically drafted to be consistent with the TEN 13–12, including with its description of the elements described therein, and the Department does not view any change to the definition to be necessary. Sponsors should follow TEN 13–12 and other relevant guidance in their interpretation of the definition provided in the rule.

Numerous commenters recommended that the Department’s definition in proposed § 30.2 should otherwise be more expansive in specifically addressing: Barriers unique to women, people of color, and individuals with

⁵⁴ Available at http://www.whitehouse.gov/omb/fedreg_1997standards/ (last accessed June 3, 2016).

⁵⁵ Office of Apprenticeship Training and Employment Notice 13–12 (TEN 13–12), dated November 30, 2012.

disabilities; standards for EEO/affirmative action in technical instruction and selection procedures; and the length of tenure or manner of payment expected in pre-apprenticeship programs. Again, while one aim of pre-apprenticeship programs is to reach groups that are traditionally underrepresented in apprenticeships, and the Final Rule includes multiple ways in which that may happen (such as in the discussion of § 30.8), we believe that sort of elaboration is best accomplished in those sections and in guidance such as TEN 13–12, rather than in the definitions section of the regulation.

The last sentence of the proposed definition included the optional provision of supportive services, such as transportation, child care, and income support, to assist participants in the successful completion of the pre-apprenticeship program. Several comments underscored the need for resources, including from the Federal government, in order to provide support services. We recognize the resources required to provide such supportive services, which is a primary reason why the provision of such services was not mandated in the definition. The Department has generally expanded the role of apprenticeship and provided opportunities for supportive resources under its WIOA program. Additionally, many other Federal agencies offer some level of support for Registered Apprenticeships.⁵⁶ However, because these services are not a mandated part of pre-apprenticeship programs, and because they are not limited to pre-apprenticeship programs but could apply to apprenticeship programs generally, the Final Rule deletes the sentence on supportive services to avoid confusion.

A national JATC recommended that the Department provide guidance that would reduce certain legal risks in operating pre-apprenticeship programs to increase diversity and mitigate claims of reverse discrimination. The JATC suggested that the Department could significantly advance its efforts by providing final regulations that: (1) Permit apprenticeship programs to include in their standards, subject to Department approval, direct interview or direct entry from pre-apprenticeship programs specifically designed for one or more underrepresented groups and not others; (2) ensure that such options, once adopted, would not violate part 30 rights for any other group; and (3)

provide that it is the Department's interpretation that such approved methods do not violate title VII or other Federal civil rights laws and have the same level of protection against claims as if required under Federal law.

Providing guidance on the legality of direct entry programs necessarily requires fact-specific questions as to how, and in what context, that system is administered. Accordingly, we cannot provide broad guidance on the second and third points above. As to the first, generally speaking, an apprenticeship program may include in its standards, with Departmental approval, a direct entry program targeted toward a specific underrepresented group that is designed to address underutilization. Indeed, such measures are specifically countenanced by § 30.8, referenced below. Beyond that, any such guidance necessarily must proceed on a case-by-case basis. For instance, if a single-employer sponsor draws its apprenticeship pool entirely from a direct entry program that is specifically designed to target one racial minority group, resulting in an apprenticeship pool that consists entirely of members from that group, such a process could result in underutilization of another minority group. Such a program, used in concert with other selection mechanisms resulting in a less homogenous apprenticeship pool, may not. The Department is available to provide guidance, in consultation with its Office of the Solicitor, to sponsors with questions about specific scenarios involving direct entry.

Finally, one comment raised the question of further guidance and suggested updating TEN 13–12. One commenter suggested that the Department issue an update to TEN 13–12 that incorporates references to WIOA instead of the Workforce Investment Act of 1998 (WIA), and others suggested that the guidance be updated to link quality pre-apprenticeship programs with industry or sector partnerships as well as apprenticeship-related provisions in WIOA's implementing regulations. The Department updates its guidance periodically with a particular view towards ensuring that references to other complementary legislative schemes are correct, and will do so in this circumstance as well.

In conclusion, the definition is retained in the Final Rule as proposed.

“Qualified Applicant or Apprentice”

The NPRM proposed to add this definition because of the addition of disability to the list of protected bases covered by part 30. The only comments received related to this proposed

definition posed questions about how “qualified applicants” related to the requirement in proposed § 30.5(c)(2) that utilization analyses take into account the availability of those who have the “present or potential capacity for apprenticeship.” Neither of these commenters raised issues with the wording of this definition, which is taken directly from title I of the ADA, as amended and from the EEOC implementing regulations. The concerns raised by these commenters are addressed in the analysis of the comments received relating to § 30.5(c). The definition is incorporated into the Final Rule as proposed.

“Selection Procedure”

The NPRM proposed a definition of “selection procedure” that was consistent with the definition found in the Uniform Guidelines of Employee Selection Procedures (UGESP) at 41 CFR part 60–3,⁵⁷ because program sponsors are already required to comply with those regulations under the current part 30 and should be familiar with that definition. Commenters sought a few minor changes to the definition, but the Department declines to accept these changes in order to maintain consistency with the term as used in UGESP, which has applied to sponsors under these regulations for decades. Subsequent sections of this analysis, particularly the discussion of § 30.10, address some of the finer questions commenters raised about selection procedures. If further questions persist after publication of the rule, the Department will certainly consider further guidance on acceptable selection procedures.

“Undue Hardship”

This proposed definition was added because of the proposed addition of disability to the list of protected bases covered by part 30. The concept of “undue hardship” is a well-established one under the ADA, which provides that employers need not provide certain accommodations if they will cause an undue hardship to the employer. A national JATC suggested that the

⁵⁷ The intent behind UGESP, originally adopted in 1978 by several Federal agencies, including the Department, was to provide a uniform set of principles on the question of the use of tests and other selection procedures in making employment decisions. This uniform set of principles is designed to assist employers, labor organizations, employment agencies, and others to comply with Federal nondiscrimination requirements. UGESP requires that selection procedures which are found to result in an adverse impact on employment opportunities of members of any race, sex, or ethnic group be validated to show that they are correlated with, representative of, or characteristic of successful performance of the job in question.

⁵⁶ Federal Resources Playbook for Registered Apprenticeship, <https://www.doleta.gov/oa/federalresources/playbook.pdf>.

requirements for documentation of undue hardship should be reduced because they add the possibility of a significant administrative burden on a registered apprenticeship program. As discussed above, the proposed definition for this term is taken directly from title I of the ADA, as amended, and from the EEOC implementing regulations. The Department intends that this proposed term will have the same meaning as what was set forth in the ADAAA and implemented by the EEOC in 29 CFR part 1630. For the sake of consistency, the Department has determined that the requirements should remain the same.

An SWA requested clarification on the specific formula and threshold a sponsor would need to reach to meet the eligibility requirements for undue hardship. The EEOC has published guidance discussing in detail the various factors that should be considered in making an “undue hardship” determination,⁵⁸ but these factors focus broadly on the cost of the accommodation weighed against the financial resources of the employer, and thus are necessarily fact-specific. If sponsors have questions about undue hardship in particular circumstances, the Department can provide technical assistance.

Beyond these definitions proposed in the regulations, several commenters proposed additional definitions that should be included in the regulations. These are discussed in turn below.

“Industry” and “Relevant Labor Pools”

A JATC expressed concern that the proposed rule did not provide a definition of the term “industry,” and urged the Department to define the term (as used in proposed § 30.5(b)) more narrowly to avoid comparisons of occupations that require different levels of skill, education, and technical expertise. The commenter also asked the Department to define the term “relevant labor pools” (in proposed § 30.4(a)(2)) to clarify the relationship between the relevant recruitment area and the relevant labor pools. These terms are further discussed in the relevant sections specified above, and so we decline to define the term here. We note that the use of “industry” as the grouping for analyses under the proposed § 30.5 was not carried over into the Final Rule, and thus there is no need to define it.

“Self-Identification as an Individual With a Disability”

Another national JATC recommended that the Department add language to § 30.2 that defines the phrase “self-identification as an individual with a disability,” which is used in proposed § 30.11. The Department declines to define this compound phrase, the meaning of which can be understood in the context of proposed § 30.11.

“Sex”

Many advocacy groups, a professional association, and a national union, urged the Department to include a definition of “sex” in § 30.2 clarifying that discrimination on the basis of childbirth and medical conditions related to pregnancy or childbirth are prohibited forms of sex discrimination. This Department declines to address this concern by adding a definition, but notes that the issue is addressed in the discussion of §§ 30.1 and 30.3(c) herein.

Equal Opportunity Standards Applicable to All Sponsors (§ 30.3)

The existing § 30.3 was divided into six paragraphs and set forth the equal opportunity standards for registered apprenticeship programs: a sponsor’s obligation not to discriminate on the basis of race, color, religion, national origin, and sex and to engage in affirmative action (existing paragraph (a)); and a sponsor’s obligation to incorporate an equal opportunity pledge into its apprenticeship program standards (existing paragraph (b)). The remaining four paragraphs of existing § 30.3 set the effective date of the part 30 regulations for programs presently registered (existing paragraph (c)), the registration requirements for sponsors seeking registration of new programs (existing paragraph (d)); and the bases for exemption from the requirement to develop an AAP (existing paragraphs (e) and (f)).

Proposed § 30.3 reorganized this section by focusing upon the equal opportunity standards in paragraphs (a) and (b) and removed paragraphs (c) through (f), the substance of which was incorporated into other parts of the rule for the sake of clarity. Proposed § 30.3(a) and (b) built upon the equal employment opportunity standards that are contained in current § 30.3(a).

Paragraph 30.3(a)(1): Discrimination Prohibited

Proposed § 30.3(a)(1) set forth the general prohibition against discrimination on the bases of race, color, religion, national origin, and sex—those listed in the current part 30—and added prohibitions against

discrimination on the bases of age (40 or older), genetic information, sexual orientation, and disability. Proposed § 30.3(a)(1) still specified the same general range of aspects of apprenticeship programs that are covered, but reorganized the text, and reworded it to follow the framework used in other equal opportunity laws. This proposed paragraph received several comments.

Several commenters urged the Department to clarify throughout the text of part 30 that the regulations prohibit discrimination on the basis of pregnancy and gender identity as separate categories. As discussed in the analysis of § 30.1, the proposed rule modified the EEO pledge that a sponsor must include in its Standards of Apprenticeship, codified at § 30.3(c) herein, to contain a parenthetical after the listing of “sex” as a protected basis explicitly including discrimination on the basis of gender identity and pregnancy as forms of sex discrimination. This language is retained in the final rule.

Proposed paragraph (a)(1) also listed all the various employment actions that, if undertaken on the basis of a protected category, would be unlawful. One broader comment raised by an SWA, addressed in part in the discussion of § 30.1 above, was that some of the employment actions listed in paragraph (a)(1) were those undertaken by the employer, not the sponsor, in certain group sponsor structures. For instance, the commenter stated that group sponsors do not “hire” apprentices; rather, they place them with an employer. The commenter recommended that this provision include language for all sponsor types. We decline to change the regulatory text accordingly, as we believe it can apply broadly with the following guidance. In the apprenticeship model where the sponsor and the employer are the same entity or otherwise under the control of a common management structure, the prohibited employment actions listed herein are ones that can apply specifically to the sponsor. In the model where the sponsor and employer are different entities, such as the group sponsor structure identified by the commenter, we appreciate that the sponsor may not have direct control over certain of the employment decisions listed. For instance, a participating employer may discipline an apprentice or make a job assignment independent of the participating sponsor. However, as discussed in the analysis of § 30.1, sponsors and employers in such apprenticeship models have historically entered into

⁵⁸ See EEOC Enforcement Guidance: Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act, available at <https://www.eeoc.gov/policy/docs/accommodation.html#undue> (last accessed May 5, 2016).

written agreements setting forth “reasonable procedures . . . to ensure that employment opportunity is being granted.”⁵⁹ To the extent that a participating employer enters into such an agreement and engages in discrimination unlawful under this part, or even absent such an agreement the sponsor otherwise learns of such discrimination (either through complaints or its recordkeeping obligations under part 30), the Department would expect that the sponsor take action to address the discrimination and, if unremedied, take steps to terminate its relationship with the discriminating employer. While this certainly requires a degree of oversight on the part of the sponsor, it is consistent with past practice in group sponsorships and is necessary so as to prevent expansive loopholes that could allow EEO elements of apprenticeship programs to go entirely unregulated, frustrating the purpose of this part.

Other comments were raised as to the specific employment actions delineated in paragraph (a)(1). One commenter noted that the term “placement” is more germane to a sponsor than the term “hiring” may be. Accordingly, we have revised the Final Rule to include “placement” in addition to “hiring,” to the extent that either is more applicable to a given sponsor. The same commenter also asked the Department to clarify the definition of “award of tenure” as used in this section. Upon review, this term does not appear to correspond to aspects of apprenticeship programs. Accordingly, this term is not included in the Final Rule.

Many commenters expressed the need for sponsors to ensure an equitable schedule of rotation, assignments, training, and mentoring to assure that all apprentices achieve core skill competencies. The Department notes that “rotation among work processes,” “hours of training,” and “job assignments” are already included in § 30.3(a)(1)(iii), (vii) and (viii), while a lack of “mentoring” on the basis of a protected category could fall under the proposed § 30.3(a)(1)(x), which covers “any other benefit, term, condition, or privilege associated with apprenticeship,” depending on the specific facts. Similarly, other advocacy organizations recommended that the Department add “work assignments and training opportunities” to the list of activities for which a sponsor cannot discriminate to ensure that these opportunities are afforded to all apprentices equally. The Department agrees that both of these terms describe

possible adverse employment actions, but believes that the proposed § 30.3(a)(1)(x) covers these terms. Finally, one commenter suggested adding a paragraph (a)(1)(xi) that would include supervision by a trained and skilled journeyworker, where “trained” means familiar with EEO concepts and with a passing knowledge of adult learning theory. This suggestion is out of place in this section, which lists types of adverse employment actions that could be unlawful if made on the basis of a protected category.

Paragraph 30.3(a)(2): Discrimination Standards and Defenses

Proposed § 30.3(a)(2) laid out the discrimination standards and defenses in a framework similar to that used in other equal opportunity laws. Proposed subparagraph (a)(2)(i) discussed standards and defenses for race, color, religion, national origin, sex, or sexual orientation; subparagraph (a)(2)(ii) discussed disability; subparagraph (a)(2)(iii) discussed age; and subparagraph (a)(2)(iv) discussed genetic information (numbered incorrectly in the NPRM as (a)(2)(iii)).

Numerous advocacy organizations urged the Department to clarify in § 30.3(a)(2) that, with respect to pregnancy, the Registration Agency will apply the same legal standards and defenses as those applied under the Pregnancy Discrimination Act (PDA) and the ADAAA, as well as EEOC implementing regulations and enforcement guidance when employers make or are obligated to make accommodations for a substantial percentage of others similar in their ability to work. This was the intent of the proposal and is the intent of the Final Rule, and the regulatory language should be interpreted consistent with this intent. Further, these commenters requested that the Department address the need to provide reasonable accommodations for pregnancy and related conditions, not only to the extent required to avoid discrimination on the basis of pregnancy under the Supreme Court’s recent decision in *Young v. United Parcel Service, Inc.*,⁶⁰ but also as an affirmative measure aimed at breaking down barriers to women’s acceptance and advancement in apprenticeship programs. The NPRM explicitly described its intent to follow all relevant PDA and ADA/ADAAA case law, including *Young*, in interpreting nondiscrimination obligations. With respect to the request to require any additional affirmative action to address and provide reasonable

accommodations on the basis of pregnancy, we decline to specifically include such a requirement as beyond the scope of what was proposed, but encourage sponsors to take steps to break down the barriers raised by this comment.⁶¹

An SWA requested clarification regarding the term “apply the same standards and defense” and asked how it would apply those standards to an individual sponsor. This subparagraph is intended to help stakeholders identify the corresponding source of legal standard for each prohibited ground of discrimination. The information included after each explanation is intended to be helpful as an initial reference but was not intended to be an exhaustive explanation. The Department is available to provide technical assistance, in conjunction with its Office of the Solicitor, to answer questions that arise as to what standards or defenses might apply to specific situations.

A commenter expressed concern that the proposed language “determining whether a sponsor has engaged in an unlawful employment practice” is not inclusive of a group sponsor structure because group sponsors are not employers and do not employ apprentices. As set forth in the analysis of § 30.1 and earlier in this section, we believe the non-discrimination provisions can apply to the range of sponsor models, allowing that in a group sponsorship model, certain specific employment actions may be undertaken by the employer, not the sponsor, and thus actionable against the employer under various other civil rights laws. However, the group sponsor, upon knowledge of such violation, retains an obligation to address the violating activity with the employer and, if continuing or otherwise unremedied, take steps to remove the employer from participating in the apprenticeship program it sponsors. For greater clarity beyond the language “unlawful employment practice,” however, the Final Rule revises the text at the end of this section to read “unlawful practice under § 30.3(a)(1),” the section which enumerates the types of actions that, if taken due to a protected basis, would constitute unlawful discrimination.

The Final Rule contains one additional clarifying edit to § 30.3(a)(2)(i), including Executive Order 11246 as a source for the

⁶¹ We note that states may have pregnancy discrimination laws detailing accommodation obligations beyond those in this Final Rule; if such laws apply to sponsors, they will need to take additional steps to comply with these laws.

⁵⁹ See existing 29 CFR 30.4(c)(10).

⁶⁰ 135 S. Ct. 1338 (2015).

standards and defenses that will apply to the protected bases listed under that paragraph. This addition was made because Executive Order 11246, like this Final Rule but unlike title VII, contains explicit protections from discrimination on the basis of sexual orientation and gender identity, and thus the Department will look to interpretations of the Executive Order when evaluating claims under those bases.

Paragraph 30.3(b): General Duty To Engage in Affirmative Action

Proposed § 30.3(b) strengthened and further detailed the affirmative action obligation contained in the existing § 30.3(a)(3), requiring that all sponsors, regardless of size, take a discrete series of affirmative steps to provide equal opportunity in apprenticeship.

Before turning to each of the specific requirements proposed in § 30.3(b), we address some general comments on this paragraph. An SWA expressed concern that the NPRM confounded the roles of sponsor and employer, asserting that some of the proposed requirements in § 30.3(b) do not make sense when considered from the perspective of a sponsor that does not have a relevant workforce but merely coordinates multiple employers in a group program (e.g., proposed requirements relating to training and dissemination of EEO policy). This commenter suggested that the rule should clarify that the sponsor, where different from the employer, must share the relevant affirmative action responsibilities and requested concrete guidance on how the sponsor should ensure employer compliance. The Department recognizes that there is a difference between the roles of sponsor and employer; it also recognizes that under the existing rules, many of these obligations are among the listed outreach and recruitment efforts of which sponsors must undertake “a significant number.”⁶² To be sure, complying with many of these obligations would be facilitated by involvement of participating employers to develop procedures to ensure equal opportunity is being granted; this is precisely the arrangement that has historically been created by sponsor-employer apprenticeship agreements that we expect to continue.

Paragraph 30.3(b)(1): Assignment of Responsibility

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. A

national JATC recommended that the Department clarify that it is the sponsor, whether employer or JATC, that bears responsibility for all aspects of meeting the requirements of this standard, rather than one individual. Several commenters expressed that identification of an individual to fulfill this role would be burdensome.

In reviewing the comments, the Department wishes to clarify that it is the sponsor that bears the responsibility for meeting the requirements of this standard. The proposed requirement is intended to facilitate the administration and accountability of the program. As stated in the NPRM, the Department anticipates that this requirement would be fulfilled by the individuals who are already providing oversight for the program, such as a named apprenticeship coordinator. This proposal would not create new duties for the sponsor that the sponsor would not already have; rather, it would require the sponsor to identify a point person for overseeing its commitments to equal employment opportunity, whether that person actually performs all the necessary tasks or instead coordinates or monitors the performance of those tasks. While proposed § 30.3(b)(1) requires each sponsor to identify “an individual,” in light of the comments indicating that some sponsors might find placing this responsibility on a single person burdensome, the language has been amended to require each sponsor to identify “an individual or individuals” to provide greater flexibility.

Paragraph 30.3(b)(2): Internal Dissemination of Equal Opportunity Policy

Proposed § 30.3(b)(2) required 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 proposed requirement is similar to that in § 30.4(c)(4) of the existing 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.

An individual commenter suggested that the Department strengthen the language in § 30.3(b)(2) that “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” by specifying that this includes interceding when observing suspected acts of harassment or discrimination on the job or at school. We respectfully decline to include this specific language in the regulation. It is a well-established principle of discrimination law that, if the employer learns of harassing conduct and fails to take reasonable care to prevent and promptly correct the harassment, the employer can be held liable.⁶³ This principle applies to sponsors in the apprenticeship context as well. Beyond this, we believe the anti-harassment measures and right to file complaints otherwise set forth in this part will address the issue raised by the commenter. We do include one change to the regulatory text in (b)(2), specifying that the target of the dissemination of the equal opportunity policy include “individuals connected with the administration or operation of the registered apprenticeship program.” This is made partly to make this paragraph consistent with others in § 30.3 that use this exact phrasing. It is also to clarify the intent that the dissemination of the equal opportunity policy should be broad, reaching, for instance, supervisors, foremen, journeyworkers, and other non-supervisory employees working alongside apprentices in the sponsor’s program.

Proposed §§ 30.3(b)(2)(i) and (ii) required a sponsor to publish its equal opportunity pledge in apprenticeship standards and in appropriate publications and post the pledge on bulletin boards, including through electronic media, accessible to apprentices and applicants for apprenticeship. Multiple commenters believed the proposed requirements requiring the equal opportunity pledge to be posted in apprenticeship standards and in appropriate publications, posted on bulletin boards, and through electronic media would not be burdensome, but a national JATC asserted the proposed requirement was at least partially redundant of part 29, which already requires insertion of the equal opportunity pledge. The Department notes that the proposed publishing requirement purposely goes beyond what is required in the part 29 equal opportunity pledge to include other appropriate publications. In

⁶³ See EEOC Enforcement Guidance: Vicarious Employer Liability for Unlawful Harassment by Supervisors, accessible at <https://www.eeoc.gov/policy/docs/harassment.html> (last accessed May 18, 2016).

⁶² See existing 29 CFR 30.4(c).

response to a question about what constitutes these “appropriate publications,” we note that the proposed regulation specified several types; providing more specificity than this isn’t feasible given that what is appropriate will likely vary from sponsor to sponsor. The Department can provide technical assistance on this issue on a more individualized basis. The Final Rule does make a minor correction to (b)(2)(i), deleting “and other appropriate publications,” which was duplicative language, and replacing it with “or other documents disseminated by the sponsor or that otherwise describe the nature of the sponsorship,” and another non-substantive minor edit for better readability.

While commending the intent of the proposed language requiring wide dissemination of EEO policies, an advocacy organization commented that the use of the term “accessible” in paragraph (b)(2)(ii) carries an additional meaning for individuals with disabilities and urged that dissemination of a sponsor’s EEO policies should be “accessible” in the broadest possible terms. Similarly, another advocacy organization recommended that the Department amend § 30.3(b)(2) to require that any electronic media platform used must be accessible to blind applicants (*i.e.*, compatible with screen-reading technology). The Department notes that here “accessible” was intended to be interpreted broadly, and each sponsor should make its EEO policies available in alternative formats (such as large print, Braille and other means to enable individuals with visual impairments to read for themselves) upon request. This is consistent with existing obligations under disability law that require accommodations of individuals unless to do so would impose an undue hardship on the sponsor’s operations.

An individual commenter recommended that the Department require sponsors to use an inclusion statement to make the workplace environment friendlier to current women in the trades, as well as more welcoming to women considering joining the trade. The requirements to publish and post the equal opportunity pledge are intended to communicate that the apprenticeship programs are welcoming to all apprentices regardless of race, color, religion, national origin, sex, sexual orientation, genetic information, age, or disability. A required inclusion statement was not proposed in the NPRM, and accordingly, the Department declines to so amend this provision. Nonetheless,

the Department encourages such statements to the extent that they serve to further signal to all prospective apprentices that they are welcome, which in turn may help sponsors obtain greater participation from members of certain underrepresented populations.

Proposed § 30.3(b)(2)(iii) required 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 program. Many comments received with respect to this requirement were generally positive. One advocacy organization suggested that the Department go beyond the proposal to require sponsors to, at a minimum, hold orientation and information sessions for apprentices, supervisors, and other individuals associated with an apprenticeship program on an annual, rather than periodic, basis to ensure that individuals are aware of the sponsor’s EEO policy with regard to apprenticeship. We decline to incorporate this specificity in order to maintain sponsors’ flexibility to conduct these sessions at intervals that make sense given the schedule at which sponsors onboard new apprentices. Another commenter recommended that the Department reiterate the importance of broadening the awareness of the EEO policy among those on work sites who control the circumstances of training by, for example, making clear that “other individuals connected with the administration or operation” include the foreman and supervisors who establish the accepted practice on the job site. While not included in the regulatory text, we have provided this guidance in this preamble in the discussion of § 30.3(b). We have also clarified in the regulatory text of paragraph (b)(2)(iii) that sponsors include the anti-harassment training required by paragraph (b)(4) of the final rule in these orientation and information sessions in order to make clear at the outset that harassing conduct will not be tolerated.

Many commenters raised concerns regarding the costs of such orientation and information sessions. In crafting this Final Rule, the Department has attempted to balance the burden on sponsors with establishing a meaningful and effective equal opportunity policy dissemination process. For instance, the Department notes that sponsors, as a matter of effective program management, must communicate some information jointly to apprentices and at least some other individuals connected with the administration and operation

of its apprenticeship program during the course of its sponsorship. Accordingly, the sessions established in these regulations need not necessarily require new training sessions or timetables, but can incorporate the communication of the EEO policy information and anti-harassment training into existing sponsor-participant communications and training sessions. We additionally repeat that the schedule for these sessions remains “periodic” to provide sponsors with some timing flexibility.

Several commenters raised issues regarding the implementation of this requirement in various scenarios in which the sponsor is not the employer. These commenters noted generally that the requirement would place a particular burden on multi-employer sponsors, that the employers would generally be better placed to provide EEO training of this sort, and the constantly changing nature of the participating employers and employees further expanded the burden. Accordingly, one commenter recommended that the Department eliminate the proposed requirement that program sponsors conduct training and orientation for journeyworkers who supervise apprentices. The Department recognizes that sponsors operate apprenticeship programs in numerous industries and occupations, involving a wide range of working conditions and environments, and that sponsors are not always the employer of the apprentice. However, the proposal was largely based on existing actions already undertaken by sponsors, such as that set forth in the existing § 30.4(c)(10), to “develop[] reasonable procedures between the sponsor and employers of apprentices to ensure that employment opportunity is being granted” As discussed above, the Department has not prescribed in the proposed rule the exact nature and frequency of these sessions, to allow sponsors some flexibility depending on their circumstances, but expects sponsors to carry out these activities in good faith, which may in many cases involve coordinating with participating employers. Accordingly, we decline to diverge from the existing regulations and create different obligations for different models of sponsorship.

Cost concerns were also raised with respect to the maintenance of records required by proposed § 30.3(b)(2)(iv). To clarify, the Department notes that this obligation is consistent with recordkeeping already required in the existing regulations, which obligate maintenance of “information relative to the operation of the apprenticeship

program.”⁶⁴ For paragraphs (b)(2)(i) and (ii), the obligation could be met simply by retaining a copy of the documents where the EO pledge is included. For paragraph (iii), retaining a copy of any written materials used to effectuate the sessions, as well as some memorialization of when the session occurred and who attended, would suffice for compliance purposes.

Paragraph 30.3(b)(3): Universal Outreach and Recruitment

Proposed § 30.3(b)(3) required all sponsors to ensure that their outreach and recruitment efforts for apprentices extended to all persons available and qualified for apprenticeship within the sponsor’s recruitment area regardless of race, sex, ethnicity, or disability status. Many commenters, including advocacy organizations and an SWA, expressed support for the proposed universal outreach and recruitment requirements. Some advocacy organizations reasoned that, given historical outreach and hiring practices focused primarily on men, broader outreach efforts are necessary to increase women’s awareness of these opportunities.

Other commenters expressed concerns regarding the scope and cost of this outreach requirement. One commenter recommended that the Department remove the proposed requirement in § 30.3(b)(3)(i) that sponsors maintain lists of recruitment sources that will generate referrals from all demographic groups and the proposed requirement in § 30.3(b)(3)(iii) to notify recruitment sources in advance of apprenticeship opportunities, noting that existing advertising mechanisms were sufficient. The Department notes that the proposed revision mirrors outreach and recruitment efforts set forth in the existing § 30.4(c)(1), so the requirement to do so now should not be new for many sponsors. Further, the data in the introduction to this preamble showing widespread underutilization of certain groups indicate that existing advertising mechanisms may not be sufficient to draw interest from as broad and diverse a base as possible.

An SWA expressed concern regarding the costs of outreach activities for small sponsors, such as those with fewer than five apprentices, that were not previously required to conduct mandatory recruitment and outreach activities, and that it might serve as a deterrent to creating new registered apprenticeship programs. To this, in addition to the response above, we note the Department intends to provide guidance to sponsors who need

assistance finding sources for recruitment. While outreach and recruitment activities take some degree of time, when done purposefully they can provide immense benefits to the apprenticeship program, bringing a wide range of previously untapped talent into the workforce.

Finally, another commenter recommended that to limit costs the Department retain the proposed minimum activities but add to § 30.3(b)(3) that a sponsor must engage in recruitment that would “reasonably be expected” to encourage persons with a potential capacity for apprenticeship to submit an application, suggesting the following revised language:

(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 and are reasonably expected to encourage persons with a potential capacity for apprenticeship to submit an application regardless of sex, race, ethnicity, or disability.

The language proposed by the commenter appears to add another requirement, thus possibly adding to any burden that might be created. Insofar as the commenter is seeking to soften the requirement that a sponsor “implement measures to ensure that its outreach and recruitment efforts extend to all persons available,” to clarify, the implementation of this provision will be reviewed by evaluating the range of recruitment sources, not by checking that every available person was reached. As noted above, during compliance reviews the Department will consider a sponsor’s good faith efforts in this regard. The Department accordingly declines to amend the provision as requested.

Regarding the question of whether the required outreach activities would result in a benefit to justify the costs, a national JATC commented that the studies cited in the NPRM did not include any empirical evidence that additional outreach by construction industry training funds would result in greater participation of women and minorities in the apprenticeship programs. The commenter said that the studies cited in the NPRM showed that the barriers to female participation are societal and there are no consensus best practices to address them.

As an initial response to this comment, the Department does not agree that there is no evidence that additional outreach would result in greater participation by traditionally underrepresented groups. As stated in

the introduction of the rule, the experience of highway construction apprentices in Oregon, where extensive efforts to increase diversity have occurred, demonstrates that the participation rate of women and minorities can increase markedly when it is prioritized. In response to the comment that underutilization is strictly “societal,” which we interpret to mean out of the control of apprenticeship sponsors to address, while we do not suggest that discrimination is the entire reason for utilization disparities, there is ample evidence that it is a contributing factor. As described earlier, comments received from several women working in the construction trades, including those who have participated in apprenticeship programs, detail repeated examples of differential treatment in job assignments, training, and promotions, as well as sexually harassing work environments. Another commenter cited academic research demonstrating that, despite the ability and interest of women to work in these jobs, external barriers in recruitment, hiring, training, and retention of women persists. Indeed, a 2012 study funded by the U.S. Department of Labor identified “harassment and exclusion at male-dominated worksites” as one of three primary barriers underlying women’s low rate of participation in construction trades apprenticeships,⁶⁵ and a 2013 report from the National Women’s Law Center describes the ways in which both overt and subtle forms of discrimination discourage women from entering and remaining in the construction field.⁶⁶

A number of comments made suggestions for additional specificity. Several advocacy organizations recommended that the Department include all of the protected bases in § 30.3(b)(3) to ensure inclusive outreach and recruitment and avoid prohibited discrimination. Asserting that apprenticeship programs have a history of imposing maximum age requirements and other age-discriminatory practices, one advocacy organization urged the Department to add “age” to the bases on which registered apprenticeship programs have a general duty to engage in affirmative action in outreach and recruitment. As discussed above, the affirmative action provisions of this part follow generally other such affirmative

⁶⁵ An Effectiveness Assessment and Cost-Benefit Analysis of Registered Apprenticeship in 10 States, available at https://wdr.doleta.gov/research/FullText_Documents/ETAOP_2012_10.pdf (pp. 50–52) (last accessed May 27, 2016).

⁶⁶ Women in Construction: Still Breaking Ground, available at http://www.nwlc.org/sites/default/files/pdfs/final_nwlc_womeninconstruction_report.pdf (last accessed May 27, 2016).

⁶⁴ See existing 29 CFR 30.8(a).

action programs which do not require specific outreach and recruitment obligations on the basis of age. Nothing in the rule, however, would prevent a sponsor from engaging in such activities.

Some advocacy organizations urged the Department to add to the list of examples of relevant recruitment sources in § 30.3(b)(3)(i) organizations that represent and serve women, people of color, and other underrepresented populations including individuals with disabilities. Further, these commenters suggested that the Department provide links to such resources on its Web site. As discussed above, the Department expects to provide technical assistance to sponsors to help them identify relevant recruitment sources, either through publication on its Web site or through more targeted communication.

To underscore that outreach alone is not sufficient to recruit women in particular, some advocacy organizations suggested that the Department include language in § 30.3(b)(3) to require that outreach is paired with career education that includes formal and informal apprenticeship information and orientation sessions describing what is entailed in the apprenticeship, the requirements and processes for applying, and explanations of the selection process. Related to this, these commenters recommended OA post on its Web site a list of resources for technical assistance and examples of career education materials, including links to WANTO-developed resources. These comments call for new provisions that, while laudable, go beyond the scope of the outreach efforts proposed in the NPRM, and we decline to require them in the Final Rule. As stated above, the Department intends to provide guidance to sponsors relating to relevant recruitment sources.

An advocacy organization urged the Department to strengthen the universal outreach requirements by requiring that apprenticeship programs report on the results of their outreach efforts (*e.g.*, how many candidates were received from each source, whether those candidates were accepted into the program, and why or why not) and modify outreach efforts over time in accordance with the reported results. The Final Rule requires such reporting in written AAPs for sponsors who are underutilized and required to engage in targeted recruitment, as data would be particularly important to sponsors in that standing, but we decline to extend it to the more general outreach requirement. Similarly, another advocacy organization recommended that the Department propose

accountability targets for outreach, recruitment, and retention. This is largely the purpose of the utilization goals set forth in the sections dealing with the written AAP obligations.

A national union and a national JATC said that the Department should clarify the scope of the “relevant recruitment area,” as that term is used throughout § 30.3(b)(3). Explaining that JATCs are often located in remote areas, such that the training centers are not in the same labor market as the work opportunities provided by the signatory contractors, these commenters recommended that the Department add clarifying language to § 30.3(b)(3). The Department addresses the proper interpretation of “relevant recruitment area” in the discussion of § 30.5, and submits that sponsors should use that interpretation to understand the meaning of the term in this section as well.

Commenters also recommended that the Department develop, update, and disseminate annually lists of recruitment resources, including contact information, by occupation and industry that sponsors can use. The commenters suggested that this would ease compliance determinations made by Registration Agencies, in addition to easing the cost burden on sponsors so that they could expend recruitment resources on direct contact and ongoing coordination with the staff of recruitment resources and meeting with groups of potential candidates. The Department and SAAs maintain relationships with some recruitment sources, and we provide such information to sponsors, as available and appropriate. The Department intends to increase technical assistance available to sponsors and provide additional recruitment sources to the extent that our resources allow.

Another commenter expressed concern that requiring sponsors to “develop and update annually a list of current recruitment sources that will generate referrals from all demographic groups within the relevant recruitment area,” could result in Registration Agencies holding sponsors accountable if recruitment and referral sources do not refer qualified applicants, despite good faith efforts on the part of the sponsor. For this reason, the commenter recommended revising the language from “sources that will generate referrals” to “sources likely to generate referrals” We decline to make this change. In the circumstance that the commenter raises, we would expect that the sponsor, upon realizing that the sources it is using are not fulfilling the intent of this provision, would seek alternative or additional sources that are

more effective at referring qualified applicants. The obligation is intended to be a dynamic one in which sponsors actively engage, rather than a rote, “check the box” requirement.

Regarding the proposed § 30.3(b)(3)(iii) requirement that sponsors provide recruitment sources advance notice, preferably 30 days, of apprenticeship openings, we received comments on all sides of the issue. Several commenters urged the Department to require no less than 30 days advance notice, which these commenters said would allow sufficient time for the notice of an opening to be processed, acted upon, and disseminated by the recruitment source and reach prospective applicants. These advocacy organizations stated that, historically, short public notice of opening periods disadvantaged nontraditional pools of applicants who did not have the benefit of familial or collegial connections to become aware of apprenticeship opportunities and the application processes, selection methods, and/or criteria for competitive candidates.

By contrast, another commenter recommended that the Department eliminate the requirement to provide 30 days advance notice of apprenticeship openings. This commenter reasoned that when an apprenticeship opening occurs, it may not always be feasible to provide referral sources with 30 days advance notice, particularly when new openings occur as a result of a new project or when someone suddenly discontinues participation in the apprenticeship program. Another proposed that the Department revise the provision to read “provide recruitment sources notice of such openings within 30 days of the opening being published,” that is, 30 days after the opening. Finally, one commenter said the time set forth in the regulation should not be “preferred,” but rather a concrete amount of time.

We note in the first instance that the proposed language mirrored a provision at § 30.4(c)(1) of the existing regulations that established 30 days in advance as a firm deadline, rather than a preferred one. Thus, the intent was to carry over an obligation that was familiar to sponsors, but provided more flexibility to account for differing logistical possibilities. Taking into consideration the comments we received on both sides, we believe this approach remains the best one for those reasons, and thus we retain the proposed text in the Final Rule.

Paragraph 30.3(b)(4): Maintaining Apprenticeship Programs Free From Harassment, Intimidation, and Retaliation

Proposed § 30.3(b)(4) required 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. The proposal included four specific requirements set forth in separate subparagraphs: (i) Communicating to all personnel that harassing conduct will not be tolerated; (ii) providing anti-harassment training for all personnel; (iii) ensuring that facilities and apprenticeship activities are available to apprentices without regard to protected bases; and (iv) establishing procedures for handling and resolving complaints about harassment.

Several commenters generally supported the proposal. Numerous advocacy organizations, a professional association, and individual commenters expressed support for anti-harassment protections as being critical to prevent and confront the discrimination that is often pervasive at work sites, including sexual harassment and stereotypes, and to increase retention over time. One individual commenter stated that when women apprentices are isolated on jobs with only men they are subject to harassment and unsafe working conditions. Several women submitted comments describing their personal experiences being subject to sexual harassment as an apprentice on a work site. An advocacy organization commented that age-based harassment is a growing problem, citing EEOC Enforcement & Litigation statistics.

Several advocacy organizations urged the Department to strengthen further the proposed anti-harassment provisions in § 30.3(b)(4). One of these organizations cited a study that it asserted shows that 3 in 10 women respondents in an interview study reported frequent sexual harassment, harassment on the basis of their sexual orientation, or on the basis of their race or ethnicity. In particular, these organizations asserted that strong anti-harassment measures will help ensure that more women complete their apprenticeship programs and recommended that the Department add to the anti-harassment measures at § 30.3(b)(4)(i)–(iv) a requirement that sponsors must make all work assignments and training opportunities available without regard to the protected

bases under the proposed rule. This principle is already protected by § 30.3(a)(1).

An industry association recommended that the Department clarify what “workplace” means in § 30.3(b)(4) because, in many cases, apprenticeship sponsors are not the employers of the apprentices and only have control over what takes place within their own facilities. To address this concern, the Department has replaced the term “workplace” with “apprenticeship program,” to clearly indicate the sponsor’s role in preventing harassment, intimidation, and retaliation. This can apply to both individual and group sponsors, in the manner discussed previously.

One commenter suggested strengthening the proposed § 30.3(b)(4)(i), which requires sponsors to communicate to all personnel that harassing conduct will not be tolerated, to include opportunities for apprentices to share information about harassment or intimidation on the job or at school to identify common problems, which could create a valuable feedback mechanism for sponsors interested in confronting harassment. The Department also received significant comments regarding proposed § 30.3(b)(4)(ii) requiring that sponsors “provide anti-harassment training to all personnel.” A number of commenters expressed concerns about the costs they asserted sponsors would incur as a result of the proposed requirement that sponsors must provide anti-harassment training to all personnel. For example, a national JATC urged the elimination of this provision in the Final Rule because many union-sponsored apprenticeship programs are statewide or regional and the costs of bringing in every journeyworker for anti-harassment training would impose a large burden on the program. Further, this commenter reasoned that the provision is unnecessary because contractors are required by law to maintain a nondiscriminatory workplace and union representatives can assist in helping them do so. In contrast to the comments raising the issue of burden, some commenters urged the Department to require additional training or add more specific language to the proposed requirement that sponsors must “provide anti-harassment training to all personnel.” These suggestions included requiring regular and ongoing professional development on cultural competency, anti-discrimination, and affirmative action requirements for apprenticeship training staff, instructors, administrators, and support staff, both in classroom-related

instruction and on work sites, as well as best practice guidelines.

To address these competing concerns, the Department has maintained the proposal’s requirements that sponsors communicate that harassment will not be tolerated and provide anti-harassment training, but we clarify the proposal in three ways. First, in response to concerns that the proposal’s requirement to provide training and communications to “all personnel” was too broad, we revise the Final Rule to state that sponsors must ensure these obligations reach “individuals connected with the administration and operation of the apprenticeship program, including all apprentices and journeyworkers who regularly work with apprentices.” This is narrower than the “all personnel” language proposed, but, as stated in the discussion of paragraph (b)(2) where this language is also used, should be broadly interpreted to include apprentices, supervisors, foremen, journeyworkers, and other non-supervisory employees working regularly alongside apprentices in the sponsor’s program. It would not require, for instance, communication to employees of participating employers who do not work in proximity to, or otherwise interact with, apprentices in these programs, although we maintain that the broadest possible communication of anti-harassment principles and obligations is a best practice.

Second, paragraph (b)(4)(i) of the Final Rule requires that sponsors are required to provide training for this same narrower category of personnel, and clarifies that this must not be a mere passive transmittal of information, but must include participation by trainees in a training program, such as attending a training in person or completing an interactive training program online.

Third, the Final Rule clarifies that the training content must include, at a minimum, the communication of the following information: A statement that harassing conduct will not be tolerated; a definition of harassment and examples of the types of conduct that would constitute unlawful harassment; and the right to file a harassment complaint. We believe communicating these elements as part of anti-harassment training is fundamental to creating an environment where it is broadly understood what constitutes harassment and that such harassment has no place in an apprenticeship program.

We expect that some sponsors, in the course of their normal business practices, already provide anti-

harassment training that covers some or all of what this Final Rule requires. To the extent that sponsors can simply modify existing training modules (including the orientation and information sessions set forth in paragraph (b)(2)(iii) above) to include this training obligation, doing so will limit the associated time and expense for compliance. Further, to help sponsors comply with this training obligation, the Department will provide technical assistance, including links to materials relevant to the required contents of the anti-harassment training, that sponsors and/or participating employers can use.

Proposed § 30.3(b)(4)(iii) required 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.” An individual commenter urged the Department to require job sites to have separate male and female restrooms. Some advocacy organizations urged the Department to require sponsors to have external locks on all single-user and sex-segregated restrooms and changing facilities and to ensure that all restrooms and changing facilities are enclosed, including a roof, to ensure privacy between the sexes and support safety and health measures in accordance with the findings and recommendations of the Advisory Committee on Occupational Safety and Health in its report “Women in the Construction Workplace: Providing Equitable Safety and Health Protection.” Commenting that unsafe sanitary facilities are a large challenge for women in nontraditional trades, two individual commenters also recommended that the regulations ensure that women have access to secure, safe, locked sanitary facilities. The Department notes that rules regarding the sanitation of restrooms and changing facilities apply more broadly to workplaces than to those that are part of an apprenticeship program and this type of specificity was not proposed in the NPRM. Nonetheless, the language “to assure privacy” implies that such restrooms and changing facilities must be secure. For this reason, the Department does not change the proposal on this account.

One advocacy organization suggested that the Department should include specific language regarding access to appropriate sex-segregated facilities for all workers in apprenticeship programs. Numerous other advocacy organizations urged the Department to clarify that program sponsors must permit transgender persons to access restrooms

and changing facilities based on their gender identity. As discussed earlier, § 30.3(a)(2) of the regulation provides that the Department will look to relevant legal authorities to interpret whether sponsors are engaging in unlawful sex discrimination.⁶⁷ The Department will continue to monitor the developing law related to the issues raised by the commenters, and will consider issuing further guidance on this subject as appropriate. Accordingly, the proposed paragraph (b)(4)(iii) is retained in the Final Rule as paragraph (b)(4)(ii).

Proposed § 30.3(b)(4)(iv) required that sponsors implement procedures for handling and resolving complaints about harassment and intimidation. An individual commenter requested that the Department require sponsors to post such internal procedures in common areas of schools, work sites, and meeting spaces. The requirement to “establish and implement” implies providing notice that such procedures exist and posting such procedures where apprentices would see them. The Final Rule retains proposed paragraph (b)(4)(iv) in the Final Rule as paragraph (b)(4)(iii), with the addition of a line stating that the establishment and implementation of procedures for handling and resolving complaints applies to complaints about retaliation, as well as harassment and intimidation. This is in keeping with the broader focus of paragraph (b)(4).

Paragraph 30.3(b)(5): Compliance With Federal and State Equal Employment Opportunity Laws

Proposed § 30.3(b)(5) required 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. Proposed paragraph (b)(5) largely duplicates the existing § 30.10.

An SWA commented that the § 30.3(b)(5) assignment of EEO obligations to the sponsor “or [in the case of a] joint apprenticeship training committee, parties represented on such

committee” seems to transfer responsibility from a sponsor to the applicable managers and union officials, which would protect the sponsor from ever being sanctioned (*i.e.*, deregistered). The commenter asked why this privilege applies only to joint committees and whether non-joint committees are materially different in this regard. The Department clarifies that, as stated earlier, the obligations of this part apply to all sponsors. It recognizes that the language in parentheses “or where the sponsor is a joint apprenticeship committee, the parties represented on such committee” could be understood as an exception. Therefore this language has been stricken.

Moreover, this commenter asserted that the reference to other laws in proposed § 30.3(b)(5) would require registered apprenticeship stakeholders to enforce policies of programs and systems that are outside of their familiar venue (*e.g.*, vocational rehabilitation, gender equity, or disability rights). The commenter asked whether officials in those other policy areas will have reciprocal duties to enforce registered apprenticeship standards. In response, the Department notes that proposed § 30.3(b)(5) carried forward the provisions from existing § 30.10. With this in mind, we clarify that this proposed provision is not intended to incorporate by reference the requirements of all Federal and State non-discrimination laws and regulations. Rather, it recognizes that many sponsors may already be subject to such laws, etc., and to the extent they are, they must comply with them. Failure to do so may be grounds for enforcement action under proposed § 30.15. Such action would only be taken if the violations of other Federal and State non-discrimination laws are applicable to the sponsor and relate to the employment opportunity of apprentices. To make this clear, language from existing § 30.10, “if such noncompliance is related to the equal employment opportunity of apprentices and/or graduates of such an apprenticeship programs under this part,” has been inserted in the Final Rule.

Paragraph 30.3(c): Equal Opportunity Pledge

Proposed § 30.3(c) carried forward the requirement set forth in the current § 30.3(b) for an equal opportunity pledge and include age (40 or older), genetic information, sexual orientation, and disability on the list of bases upon which a sponsor must not discriminate, and included a parenthetical stating that

⁶⁷ Multiple cases have held that failure to provide access to restrooms consistent with an individual's gender identity violated Title VII. See *Lusardi v. Dep't of Army*, EEOC Appeal Doc. 0120133395, 2015 WL 1607756, at *8 (April 1, 2015); *Hart v. Lew*, 973 F. Supp. 2d 561, 581–82 (D. Md. 2013) (recognizing a transgender plaintiff's title VII sex discrimination claim based in part on her employer's repeated denial of access to the women's restroom). However, as noted previously, the effect of the preliminary injunction issued in *Texas v. U.S.*, No. 7:16-cv-00054–O, 2016 WL 4426495 (N.D. Tex. Aug 21, 2016) is unclear at the time this rule went to publication.

sex discrimination included discrimination on the basis of gender identity and pregnancy. Apart from the comments addressed earlier recommending that the ground of sex discrimination expressly recognize sexual orientation discrimination and sex stereotyping as additional forms of sex discrimination, which has already been discussed, no other comments were received. Accordingly, the text is adopted as proposed.

Paragraph 30.3(d): Compliance

In order to clarify the time a sponsor has to comply with obligations in this rule, rather than a catch-all “effective date” provision as was set forth in the proposed § 30.20, the Final Rule sets forth in the specific sections, as needed, when a sponsor must come into compliance with the obligations set forth in that section. If no such date is provided, it is intended that the sponsor must comply with a particular section as of the effective date of the Final Rule.

Proposed § 30.20 required that currently registered apprenticeship programs have 180 days to come into compliance with the provisions of § 30.3, but did not specify a similar compliance deadline for sponsorships newly registered after the effective date. This new § 30.3(d) carries over the 180-day compliance date for currently registered programs from the proposed § 30.20, and clarifies that sponsors registered after the effective date will need to comply with § 30.3 upon registration or 180 days after the effective date of this rule, whichever is later. This is consistent with the proposal and will ensure that sponsors registered shortly after the rule’s effective date in no circumstance will have to come into compliance more quickly than currently registered sponsors.

Affirmative Action Programs (§ 30.4)

The existing § 30.4 set forth the regulatory requirements with respect to AAPs, addressing: The adoption of an AAP 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 AAP were found in the existing part 30 at § 30.3(e) and (f).

The NPRM proposed to restructure this section in order to streamline, clarify, update, and improve the AAP requirements by making clear the purpose of AAPs, stating who must adopt an AAP, listing the required elements of AAPs, explaining the exemptions for maintaining an AAP, and laying out the proposed new timing for internal review of AAPs.

A number of commenters expressed concern with the burden associated with maintaining AAPs generally. For example, a national JATC remarked that the proposed AAP requirements would put a time and resource burden on sponsors and an individual commenter warned that the proposed rule could divert already-limited resources away from training programs and opposed any rules that would increase costs for purposes of tracking and reporting. A national JATC expressed concern that proposed § 30.4 would make affirmative action requirements more difficult to understand and comply with in general.

The Department understands the voluntary nature of apprenticeship and that many program sponsors are under resource constraints, but notes that the requirement to maintain an AAP is not a new requirement and that all non-exempt sponsors (*i.e.*, sponsors with 5 or more apprentices) are currently required to develop and maintain such plans with respect to women and minorities. As explained in the NPRM, maintaining an AAP need not be an unduly burdensome undertaking. Thousands of registered apprenticeships with AAPs have been established under the existing regulations, and many have maintained and grown the number of apprenticeships and the skill of their individual workers notwithstanding the AAP obligations, and because of these obligations have taken strides to diversify their program to more closely reflect the available workforce. While these regulations add some new obligations to the AAP, the intent was to 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 in the future. The Department has thoroughly considered the concerns raised by the commenters with regard to burden and, as described in the discussions of sections 30.4–30.8 herein, the Final Rule contains several changes from the proposal designed to reduce further the burden of AAP compliance for sponsors

while maintaining an effective overall program.

Paragraph 30.4(a): Definition and Purpose

Proposed § 30.4(a) included a revised definition of “affirmative action program” and explained that, in addition to identifying and correcting underutilization, AAPs also are intended to institutionalize the sponsor’s commitment to inclusion and diversity 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.

Multiple commenters, including a national JATC and SWAs, disagreed with the premise laid out in paragraph (a)(2) 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.” These commenters argued that the goals set forth in § 30.4(a) do not take into account the societal and cultural factors that influence an individual’s decision to pursue apprenticeship and that lack of diversity is not necessarily a direct result of discrimination, and suggested that the Department remove paragraph (a)(2). Specifically, one commenter said that it is impossible for the sponsor to address underlying societal problems that influence lack of participation by underrepresented groups, such as lack of access to childcare or transportation. Some commenters remarked that compliance with affirmative action requirements should be determined by whether the sponsor has made significant efforts to meet its goals and timetables.

We respectfully disagree with many of the comments on this proposed language, which mirrors language in the OFCCP affirmative action regulations and describes well-established rationales for affirmative action. The idea behind maintaining an AAP is to combat any existing societal factors that may have been influenced by previous discriminatory norms and practices and that may continue to deter underrepresented groups from seeking jobs in certain sectors. The data cited at the beginning of this preamble demonstrates that stark underutilization of the protected groups persists to the present. While some amount of this disparity may not be directly attributable to discrimination, the comments we received from individuals

in the trades and advocacy organizations describing widespread harassment and other behavior that has a chilling effect on these groups entering apprenticeships cannot be ignored. While a sponsor's goals are aspirational, it should take underutilization as a signal that it should look closely at its employment and outreach practices to ensure that its practices are not preventing underrepresented groups from applying to, participating, and advancing in apprenticeship. The targeted outreach, recruitment, and retention practices outlined in § 30.8 are designed to help sponsors experiencing underutilization overcome societal barriers to apprenticeship that may exist in that field. As discussed more fully in § 30.6, this is not a purely arithmetic exercise. Each sponsor's compliance with its affirmative action obligations will be determined in significant part by reviewing the nature and extent of the sponsor's good faith affirmative action activities and the appropriateness of those activities to identify equal employment opportunity problems. A sponsor's compliance is measured by whether it has made good faith efforts to meet its goals; failure to meet goals is not itself a violation of these regulations.

An SWA requested a definition of the term "barriers" as it applies to § 30.4(a)(1) and (a)(2), and requested clarification about how to detect and remove barriers. A national JATC and a national union suggested that the Department provide guidance on "specific, practical steps" to address barriers to equal opportunity to comply with § 30.4(a)(2).

"Barriers" are any practices that prevent individuals from realizing an equal opportunity to apply for and participate in apprenticeship programs. These could include lack of effective outreach so that certain populations are unaware of apprenticeship opportunities, selection mechanisms that are not job related that disfavor certain protected groups, attitudes toward or treatment of certain individuals that are hostile or otherwise unwelcoming, or the failure to provide equal opportunity in training, pay, work assignments, discipline, or other employment actions. AAPs are tools designed to assist a sponsor in detecting and diagnosing where barriers may exist in its program and how they may be impacting certain groups. By documenting and collecting information at various stages of its program, including recruitment, selection, training, and assignment, a sponsor can analyze whether any element of its program is adversely impacting

individuals within certain racial, sex, or ethnic groups. If a sponsor discovers that its program is underutilized for women or one or multiple underrepresented groups, this may be a sign that barriers currently exist for those groups. The Department has identified specific steps that a sponsor must take with regards to its outreach, recruitment, and retention activities if it discovers that it is underutilized, as set forth in § 30.8, *infra*. Each sponsor is also encouraged to take any additional steps it concludes could help eliminate barriers. The Department can also provide more individualized guidance and technical assistance to sponsors in order to help identify and overcome any barriers to equal opportunity in apprenticeship.

Commenters, including a national JATC and a national union, suggested that the Department should clarify § 30.4(a)(3), which refers to internal auditing as a tool to measure the sponsor's progress in achieving an apprenticeship program that would be expected absent discrimination, by specifying where the discrimination is presumed to take place (*e.g.*, on the construction site or in the classroom or other training centers). One commenter suggested that this internal auditing should be used to find specific areas of the sponsor's program where practices might be causing a disparate impact on certain groups throughout different phases of the program.

AAPs are designed to assist sponsors in identifying possible discrimination that could be occurring at any point in the apprenticeship program, whether that discrimination is occurring in the application process, in job assignments, through harassment at a work site, or any other element of the program. There is no single step in the apprenticeship program where discrimination is presumed to occur and the internal audit and review that accompanies a sponsor's AAP should be thorough and detailed enough to allow the sponsor to learn of any potential discrimination throughout its program. The Department encourages each sponsor, when reviewing its compliance with AAP obligations, to identify any specific areas or practices that may be adversely affecting certain groups. An AAP is designed to be a tool to assist sponsors in identifying any specific practices that may be deterring or excluding women and/or minorities from participating fully in the program.

Commenters also sought guidance on how the EEO responsibilities of JATCs might differ from those of non-joint committees that directly employ apprentices. Similarly, an industry

association asserted that it would be difficult to meet the requirements detailed in § 30.4(a)(4) related to monitoring, examining, evaluating, and revising employment decisions and policies because apprentices may be involved in a JATC program that involves work for multiple employers, arguing that these programs would be unable to monitor the employment policies of each employer. An SWA commented that the proposed rule language confuses the roles of sponsors and employers, and suggested that the language could be clarified to define specific new responsibilities for sponsors.

These comments raise issues addressed previously in the discussion of §§ 30.1 and 30.3. Generally speaking, it is—and has been historically under these regulations—the responsibility of the sponsor to ensure that all aspects of its program are being administered in a non-discriminatory manner and to implement an AAP. This clearly applies to the sponsor's own employment practices, policies, and decisions. In programs where participating employers, rather than the sponsor, control certain aspects of the apprenticeship experience, ensuring the program's broad compliance with affirmative action obligations has been accomplished through written agreements between sponsor and employer setting forth procedures to ensure that employment opportunity is being granted. This would include sponsors communicating with participating employers about policies that could be resulting in discrimination and addressing complaints of discrimination. As stated previously, while this requires a degree of purposeful oversight on the part of the sponsor, it is consistent with past practice in group sponsorships and is necessary so as to prevent expansive loopholes that could frustrate the purpose of this part.

An industry association suggested that the Department should use the term "equal opportunity program," as opposed to "affirmative action program." The Department declines to accept this suggestion. As is made clear by the definition of "affirmative action program" that was contained in the NPRM, and that is adopted in this Final Rule, an AAP is "more than mere passive nondiscrimination" and requires sponsors 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." They share many similarities with "affirmative action

programs” administered by OFCCP. Referring to these programs as “affirmative action programs,” a broadly used and well understood concept, reinforces the idea that sponsors must not only refrain from discriminating against apprentices and applicants for apprenticeship, but must also take positive steps to correct any barriers to equal employment. Additionally, many sponsors already maintain AAPs under the current regulations, and changing the name of the program would create unnecessary confusion and inconsistency.

Paragraph 30.4(b): Adoption of Affirmative Action Programs

Proposed § 30.4(b) detailed who must adopt an AAP, and further stated that, unless otherwise exempted by proposed § 30.4(d), each sponsor must develop and maintain a written AAP, which must be made available to the Registration Agency any time thereafter upon request.

A comment from an SWA stated that affirmative action activities proposed would be difficult for smaller apprenticeship program sponsors with limited staffing and financial resources and may discourage potential new sponsors from registering their programs. An exemption for smaller apprenticeship programs is discussed in § 30.4(d), below. With regard to the more general burden concerns dissuading entities from entering into or continuing registered apprenticeship programs, the Final Rule allows sponsors, both existing and new, more time to comply with AAP requirements than was proposed in the NPRM. Sponsors will have two years, either from the effective date (for sponsors registered with a Registration Agency at the time this Final Rule becomes effective) or from the date of registration (for new sponsors) in which to complete a written AAP. Details regarding the compliance date of each of these components can be found in the respective sections of this Final Rule, but in general, the Final Rule provides more time than the NPRM to complete these steps, allows more time between subsequent reviews of these obligations, and increases the assistance provided by Registration Agencies to sponsors in order to complete these obligations. As one example, during a new apprenticeship program’s provisional review conducted within one year of registration, the Registration Agency will provide further guidance to assist in the completion of the initial written AAP.

Paragraph 30.4(c): Contents of Affirmative Action Programs

Proposed § 30.4(c) provided an outline of the five required elements of an AAP: (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.

The Department’s responses to specific comments addressing the five required elements of AAPs are explained in those respective sections of the preamble (§ 30.5–§ 30.9). In addition to the five elements outlined above, a few advocacy organizations urged the Department to include sexual orientation in AAPs and suggested that individuals should be given the opportunity to self-identify as lesbian, gay, bisexual, or transgender (LGBT). The Final Rule adds sexual orientation as a protected basis upon which a sponsor may not discriminate, but, consistent with OFCCP’s AAPs, it does not include sexual orientation as a basis upon which a sponsor must collect information or engage in action-oriented programs.

A national JATC encouraged the Department to retain the existing § 30.4(c), which provides, in part, that “the Department may provide such financial or other assistance as it seems necessary to implement the requirements of this paragraph.” This commenter said that deleting this section sends the wrong message to the regulated community and the public because it appears the Department is leaving the JATCs to use their own resources to comply with requirements.

While the Department will provide extensive technical assistance to sponsors in complying with the AAP obligations of this Final Rule, as discussed in greater detail in later sections, it has always been and will continue to be the responsibility of each sponsor to allocate sufficient resources to ensure that its program is being operated in a non-discriminatory manner. Nonetheless, the Department does not need a regulatory requirement in order to provide such assistance and the Department may continue to offer such assistance in the future. Accordingly, the Department declines to retain the prior language of § 30.4(c), and adopts the language in proposed paragraph (c) without change.

Paragraph 30.4(d): Exemptions

Proposed § 30.4(d) set forth the two exemptions to the requirement that a sponsor develop an AAP: Programs with fewer than five apprentices; and programs already subject to an approved equal employment opportunity program providing for affirmative action in apprenticeship that includes the use of goals for each underrepresented group. These exemptions are the same as those that were contained in the existing regulations. With regards to the exemption for programs subject to an approved equal employment opportunity program, however, proposed § 30.4(d) required that a sponsor with an approved equal employment opportunity program agree to extend that program to include individuals with disabilities to ensure that all protected bases set forth in the proposal would be addressed and that the sponsor was taking the appropriate actions to ensure that protected individuals are employed as apprentices and advanced in employment.

Paragraph (d)(1) of this section exempted sponsors with fewer than five apprentices from the AAP obligations. Two industry associations, an SAA, and an individual commenter expressed support for the exemption for programs with fewer than five apprentices. One industry association commented that the exemption should be expanded to exempt even larger programs from the AAP requirement. In contrast, many commenters suggested that all sponsors should be required to create AAPs, regardless of the size of the apprenticeship program, arguing that the exemption would exclude a significant portion of apprenticeship programs from the equal opportunity requirements that the regulations aim to provide. Two national unions commented that the proposed exemption is contrary to the recommendation of the Advisory Committee on Apprenticeship. These commenters suggested that the Department should require all programs to maintain AAPs but support those programs with limited resources through technical assistance.

Commenters also expressed concern that exempting small programs would exclude programs in the early years of growth, when the AAP has the greatest potential for positive, long-term impact. A national union and a national JATC warned that there would be faster growth in small programs rather than large programs, and that these new programs would not have to maintain AAPs under the exemption. An SAA concluded that, at a minimum, small

sponsors should be required to provide a strategy for outreach and recruitment of a diverse workforce.

A national union and an industry association stated that the staff and resource capacity that would be needed to comply with the affirmative action requirements would also be needed to comply with the universal outreach requirements in § 30.3, and therefore there is no additional reason to exempt small programs from the AAP requirements. Similarly, two national unions argued that, by the Department's own analysis, the burden to develop and maintain an AAP would be minimal, and the benefits of ensuring EEO for all apprentices would outweigh whatever burden was associated with maintaining the AAP. Some commenters also argued that exempting small programs was inconsistent with other Departmental programs, including those applying to federal contractors.

Many commenters further argued that the exemption should not be based on number of apprentices, but on the resources available to the sponsor. For example, some commenters suggested that the exemption should be tied to the sponsor's total number of employees, rather than the number of apprentices, or to the contributions received by the sponsor. Several unions and an industry association commented that most large apprenticeship programs are trusts created by collective bargaining agreements and are funded by contributions, which often have limited flexibility in terms of resource allocation and subjects programs funded by collective bargaining to the same cost-sensitivity as small programs. On the other hand, a State agency commented that entities with fewer than five apprentices are often large employers with sufficient resources to comply with an AAP. A national union commented that the exemption should only apply to sponsors that truly do not have the resources to maintain an AAP, and should not just apply to small programs across the board.

An SWA also asked whether the exemption would apply to sponsors that operate multiple programs, each with fewer than five apprentices, but with more than five apprentices across all programs.

Acknowledging the range of opinions on this topic, the Final Rule retains the current exemption without change. Although some commenters argue that the AAP requirement is so burdensome that even fewer programs should be required to maintain these plans, the majority of commenters and the Advisory Committee on Apprenticeship supported eliminating the exemption

altogether, claiming that the benefits of EEO far outweighed any burden imposed by maintaining an AAP. The Department agrees that the exemption should not be expanded, as currently approximately seventy-five percent of apprenticeship programs already fall within this exemption, and no compelling evidence has been presented to increase the apprenticeship threshold for the exemption.

However, the Department believes that eliminating the exemption entirely would be detrimental as well. While the creation and management of an AAP need not be an unduly burdensome process, the exemption for programs with fewer than five apprentices is a longstanding one. We further disagree with the comment asserting that the obligations under § 30.3 are the same as those required by the AAP; the AAP contains data collection and analysis obligations that § 30.3 does not. Although some commenters noted that not all small programs have resource constraints and that, conversely, not all large programs have resources sufficient to conduct AAPs, the Department assumes that programs with fewer than five apprentices will generally have fewer staff members administering the program than those with significantly more apprentices. And, for any larger programs with limited resources, these programs are currently subject to the AAP requirements and should therefore have already absorbed the cost of conducting an AAP into their operational budget. Furthermore, the Department will provide technical assistance to programs in developing their AAPs to ease any burden associated with this requirement.

In addition to the Department's concerns regarding the burden imposed on small programs, the Department also notes that programs with fewer than five apprentices may be less likely to generate enough data to provide meaningful utilization analyses, given the smaller sample size presented by each apprenticeship class. Moreover, in light of the stronger equal opportunity standards—as outlined in § 30.3—that now apply to all sponsors, even those programs that are not required to maintain AAPs will be required to take specific, proactive steps to ensure nondiscrimination and increase their recruitment and outreach efforts. The Department believes that these requirements will increase the participation of underrepresented groups across all programs, including those with fewer than five apprentices.

In response to those comments claiming that the exemption for small sponsors is inconsistent with the

requirements imposed upon federal contractors, the Department notes that, while the nondiscrimination provisions of Executive Order 11246, which are administered by the Department's OFCCP, apply to contractors regardless of size so long as they have qualifying contracts totaling \$10,000 or more in a calendar year, OFCCP's AAP requirements only apply to those contractors with 50 or more employees and a single contract of \$50,000 or more.⁶⁸

Finally, in response to the SWA's question regarding the application of the exemption, any program that employs fewer than five apprentices is exempt from the AAP requirement, regardless of the size of any other programs that the sponsor may administer.

With regard to paragraph (d)(2)'s exemption of programs subject to approved equal employment opportunity programs, which is carried over from the existing rule in large part, many commenters supported the exemption for programs that were already in compliance with an AAP, so long as that AAP was extended to cover individuals with disabilities. Some commenters sought clarification on how the exemption would operate. For example, a State agency requested clarification as to whether a sponsor would need to develop an AAP under proposed § 30.4 if apprenticeship is not specifically dealt with as a sub-classification or sub-goal in a plan developed for compliance with other Federal programs such as E.O. 11246. Additionally, an industry association asked for clarification as to whether or not there would be an exemption for association program sponsors that obtain apprentices from participating employers that are already in compliance with other AAP requirements. With regard to the issue of including apprenticeship as a sub-classification or sub-goal, the sponsor would need to demonstrate that its plan extended to the operation of its apprenticeship program, meaning that the apprentices would need to be covered by the plan's nondiscrimination and affirmative action standards. The sponsor would not need to develop separate goals for its apprenticeship program, however, so long as the goals established pursuant to the pre-existing plan are likely to equal or exceed the goals that would be required pursuant to this Final Rule. With regard to the second request for clarification, a sponsor must develop its own AAP and may not simply rely on an AAP in place for its participating employers.

⁶⁸ See 41 CFR 60–1.5, 60–2.1.

Paragraph 30.3(e): Written Affirmative Action Plans

Finally, proposed § 30.4(e) incorporated the existing practice of requiring internal reviews of AAPs on an annual basis, but also allowed a sponsor who could demonstrate that it was 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, to wait two years to complete its next AAP review. The Department sought 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.

Several advocacy organizations expressed support for allowing sponsors to wait two years to complete the next internal AAP review if the review does not indicate underutilization or any necessary modifications. These commenters suggested, however, that this extension on the review period should only be allowed for sponsors that have not received any substantiated complaints of discrimination, arguing that this would provide a strong incentive for meeting affirmative action and nondiscrimination obligation. An SWA expressed concern that this requirement might be overly burdensome, and requested guidance on how Registration Agencies should enforce the requirement to self-monitor. Some advocacy groups were also concerned that external review mechanisms should be in place. A few commenters suggested that sponsors should be required to submit their written AAPs, or a summary of their annual or biannual review, to the Registration Agency upon completion. Similarly, an individual commenter suggested that sponsors should be required to publish written AAPs, goals, and timetables on their Web sites to increase transparency, accountability, and community engagement. In order to better understand whether participation among underrepresented groups is improving, an advocacy organization also urged the Department to publish the participation of apprentices by sex, race, ethnicity, and disability status annually. Finally, an individual commenter asked for clarification as to whether or not AAPs need to be approved by the Registration Agency prior to implementation.

The Department removes the proposed paragraph 30.4(e) from the Final Rule and instead addresses the timeline for completing and/or updating the particular elements of an AAP within each of those respective sections of the Final Rule. As set forth in these sections, the schedule for each respective AAP element will also apply uniformly and will not depend whether a sponsor has met its utilization goals. While the biannual review schedule for sponsors meeting their goals would have reduced the burden for those sponsors from what is required under the existing regulations, the Final Rule's timeline for the review of AAP elements in many cases further reduces the frequency with which sponsors need to review certain elements of their AAPs, thereby reducing burden even further for all covered sponsors. This will also increase consistency in sponsor obligations and streamline compliance reviews for Registration Agencies.

In place of the proposed paragraph 30.4(e), the Final Rule sets forth the obligation for creating a written AAP document. Written AAPs are already required under the existing regulations, and are required to be updated annually per existing § 30.8. However, in practice, most sponsors did not fully update their written AAPs until they were scheduled for a compliance review, for reasons discussed further in § 30.5, below. Paragraph 30.4(e) establishes that initial written AAPs must be completed within 2 years of the effective date of the Final Rule for sponsors with existing apprenticeship programs, and within 2 years of registration for all apprenticeship programs registered after the effective date. Written AAPs must be subsequently revised every time the sponsor completes workforce analyses for race, sex, and disability as required by §§ 30.5(b) and 30.7(d)(2) of this part. In order to facilitate compliance and ease the burden of this obligation, the Department will provide model written AAPs that each sponsor may tailor to its own program. The Department will also provide a timeline chart that clearly sets out when the sponsor must comply with each AAP obligation.

In response to those commenters suggesting that sponsors should publish or submit their written AAPs to the Registration Agency, the Department declines to adopt these suggestions, as doing so would be unnecessarily burdensome both for the sponsor and the Registration Agency. Instead, the Registration Agency will ensure during the sponsor's compliance review that the sponsor properly conducted and documented all reviews and analyses

that were required between compliance evaluations. OA will also look into providing more information regarding diversity in apprenticeship on its Web site. Regarding the requests for clarification, existing written AAPs do not need to be submitted to the Registration Agency, but will be reviewed for compliance with this Final Rule at the sponsor's next compliance review.

Utilization Analysis for Race, Sex, and Ethnicity (§ 30.5)

In the NPRM, the Department proposed to move the topic in the existing § 30.5, selection of apprentices, to § 30.10. In its place, the Department proposed a new § 30.5, which provided 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. This proposed § 30.5 clarifies and expands upon the existing § 30.4(e), "Analysis to determine if deficiencies exist," which requires the sponsor to compute availability for minorities and women in its program. The existing § 30.4(e) required that sponsors take at least five factors into account when determining whether deficiencies exist. It did not, however, explain how these factors relate to the availability of qualified individuals for apprenticeship, nor did it indicate how a sponsor should consider or weigh each of these factors when determining availability.

In short, proposed § 30.5 was intended to incorporate elements of the existing process for analyzing race, sex, and ethnicity utilization while clarifying and streamlining the process for determining availability and utilization. This was to be accomplished by decreasing the number of data sources sponsors must analyze in determining the labor market composition, clarifying the steps required to do the utilization analysis, and providing clear directions for establishing goals. However, we received a number of comments that the revisions were not clear, and placed additional burden on sponsors to conduct analyses that they historically had not undertaken, but rather were performed with the assistance of Registration Agencies at compliance reviews. As described below, in response to these comments, the Final Rule provides further clarity sought by the commenters and reassigns the

burden associated with these analyses so they more closely resemble existing practice.

Paragraph 30.5(a): Purpose

Proposed § 30.5(a) explained that the purpose of a utilization analysis was “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.” It further explained that where there was significant disparity between availability and representation in the sponsor’s apprenticeship program, the sponsor was required to establish a utilization goal.

The Department received one comment on this paragraph, which asked the Department to define or clarify what it meant by “significant disparity.” As discussed in reference to § 30.6, a sponsor may use several different methods for calculating underutilization, although the most frequently used are the “80 percent rule,” and the “two standard deviation rule.” A finding of underutilization pursuant to either of these methods means that there is a significant disparity between the sponsor’s utilization of that particular group within its apprenticeship workforce and that group’s availability in the relevant recruitment area.

Paragraph 30.5(b): Analysis of Apprenticeship Program Workforce

The NPRM laid out the first step of the utilization analysis in proposed § 30.5(b), which required sponsors to identify the racial, sex, and ethnic composition of their apprentice workforces. Rather than review the composition for each occupational title represented in a sponsor’s apprenticeship program, proposed § 30.5(b) simplified the analysis by only requiring the sponsor to group the occupational titles represented in its registered apprenticeship program by industry.

Some commenters were confused about the extent of the sponsor’s workforce that would be included in the program’s workforce analysis. For example, a State Department of Labor questioned whether journeyworkers should be included in the apprentice workforce, and a national union urged the Department to state that entities operated by the sponsor under another name should also be covered for

purposes of the utilization analysis. For purposes of conducting the apprentice program workforce analysis, sponsors should include all active apprentices. Sponsors should not include apprentices or employees who are not enrolled in the program in question. Unlike laws governing federal contractors, this Final Rule only regulates sponsors with regard to the administration of its apprenticeship program; this Rule does not require sponsors to conduct utilization analyses for its non-apprentice workforce.

Several commenters, including an SWA and a national union, expressed concern with assessing the racial, sex, and ethnic composition of a program by industry, as opposed to by occupation. Some commenters argued that grouping occupations by industry could result in industries that consist of occupations with varying skill level requirements, advancement opportunities, and compensation, and that this grouping could be conducted in an arbitrary manner. Other commenters were concerned that grouping occupations by industry would make it more difficult to know if female or minority apprentices were being concentrated in lower paying positions within an industry, or in positions with little potential for advancement. One commenter also asserted that the industry-wide requirement conflicts with the directive in proposed § 30.5(c)(3) that “in determining availability, the sponsor must consider at least the following factors for each occupational title represented in the sponsor’s registered apprenticeship program.”

The Department agrees with many of these comments, and therefore the Final Rule requires each sponsor to group its apprenticeship programs by occupational title, rather than by industry, for purposes of conducting the workforce analysis. This will require the sponsor to identify each occupation within its apprenticeship program according to the methods currently used (either by RAPIDS code or the appropriate six-digit Standard Occupational Classification (SOC) or O*NET code⁶⁹) and then, for each occupation represented, the sponsor must identify the race, sex, and ethnicity of its apprentices within that occupation. The Department believes that this approach will provide a more precise mechanism for assessing the demographic composition of a sponsor’s apprenticeship program, using the most discrete data set, and will allow each sponsor to review its workforce for

those issues identified in the comments, such as channeling or the concentration of women and minorities in certain occupations that may earn lower wages or have fewer advancement opportunities than other similar occupations. This method will also be more consistent with the methods many sponsors currently employ to evaluate their workforces, thereby making it easier for sponsors to come into compliance with this Final Rule. With regard to the last comment, the inclusion of “occupational title” in the proposed § 30.5(c)(3) was an inadvertent error; it was intended to be “industry,” for consistency with the remainder of the utilization analysis. As discussed below, however, the Final Rule contains a slight revision to the utilization and availability analyses, requiring that they be done according to “major occupation group” rather than industry, and so this provision has been changed in the Final Rule to say “major occupation group.”

The Final Rule also clarifies the timing for conducting the apprenticeship program workforce analysis. As detailed below, the Department received many comments from sponsors expressing concern with the potential burden of conducting their own availability analysis. In response, the Final Rule incorporates a procedure much more similar to the existing one, wherein Registration Agencies actively assist sponsors in conducting their availability analysis and setting their utilization goals. Under paragraph (c), therefore, a sponsor will be required to work with the Registration Agency at the time of its regular compliance review to reassess the availability of women and minority groups within its relevant recruitment area and to update its utilization goals, if necessary. Under paragraph (b), however, each sponsor will retain the responsibility for conducting its workforce analysis pursuant to the steps discussed above. The Department is adding paragraph 30.5(b)(2) to clarify that each sponsor must conduct a workforce analysis at each regular compliance review, and again if three years have passed without a compliance review.

The Department is also clarifying, in new paragraph 30.5(b)(3), when each sponsor will first need to come into compliance with this provision and conduct its initial workforce analysis pursuant to this section. For a sponsor registered with a Registration Agency as of the effective date of this Final Rule it will have up to two years from the effective date in which to conduct its initial workforce analysis. As discussed above, this does not require the sponsor to conduct an availability analysis, or to

⁶⁹ <https://www.onetonline.org/> (last accessed June 9, 2016).

set utilization goals. Each sponsor should continue operating under its existing goals until its next compliance review. A new sponsor registering after the effective date of this Final Rule will have two years from the date of its registration in which to complete its first workforce analysis. Following the initial workforce analysis, a covered sponsor will conduct workforce analyses at each regular compliance review and once between compliance reviews, no later than three years after the sponsor's most recent compliance review, as mentioned above.

Paragraph 30.5(c): Availability Analysis

The next step in the utilization analysis, under existing practice and pursuant to proposed § 30.5(c), was to determine the availability of qualified individuals by race, sex, and ethnicity. The purpose of the availability analysis, as explained in the NPRM, 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. Proposed paragraph § 30.5(c) described the steps required to perform an availability analysis, simplifying the process by reducing the number of factors sponsors must consider from five to two. The two factors proposed were: (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. In addition, proposed § 30.5 required 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.

The Department received numerous comments on the availability analysis. The majority of comments received from sponsors expressed confusion over how to conduct an availability analysis and concern that conducting such an analysis would be unduly burdensome for sponsors. Many commenters urged the Department to retain current § 30.4(g), which states that the Department shall provide data and information on minority and female labor force characteristics for each Standard Metropolitan Statistical Area, rather than placing the burden on

sponsors to derive this information. Two national unions said its survey of affiliates' apprenticeship programs indicated that the process of establishing this benchmark is not something in which most sponsors currently engage, and that they were unaware of any data sources that measure abilities and interests. An industry association also sought guidance on how the construction industry specifically should be determining availability.

As mentioned above, in response to the perception held by many sponsors that conducting an availability analysis and setting a utilization goal would be challenging for sponsors to do themselves, the Department is revising § 30.5(c) to comport more closely with the current practice wherein Registration Agencies work closely with each sponsor at its regular compliance reviews to develop and conduct an availability analysis and to set or reassess utilization goals for race, sex, and ethnicity, if necessary. Paragraph 30.5(c)(3) has been revised to clarify that the responsibility for conducting availability analyses will not fall solely to the sponsor, and that the sponsor and the Registration Agency will work together to conduct availability analyses. The Department is also revising paragraph 30.5(c)(5) to remove references to specific data sources for use in availability analyses. This was included in the NPRM in order to help sponsors complete utilization analyses, but the Final Rule instead will follow the existing practice of Registration Agencies taking the lead in performing these analyses. Accordingly, paragraph 30.5(c)(5) of the Final Rule includes a more general statement that availability "will be derived from the most current and discrete statistical information available."

The Department also notes that, although it is adopting commenters' suggestion that the workforce analysis be conducted at the occupation level, the Final Rule requires that availability and utilization analyses be conducted according to major occupation group. A major occupation group, or job family, is a grouping of occupations based upon work performed, skills, education, training, and credentials.⁷⁰ All Standard Occupational Classification (SOC) codes are organized into 23 major occupation groups and the first two digits of an O*Net or SOC code correspond to the appropriate major occupation group.⁷¹

⁷⁰ <https://www.onetonline.org/find/family> (last accessed June 13, 2016).

⁷¹ http://www.bls.gov/soc/major_groups.htm (last accessed June 13, 2016).

As explained in the NPRM, the Department had proposed grouping occupations by industry in order to allow sponsors with small numbers of apprentices in each occupation to aggregate their apprentices in a way that would provide a more meaningful statistical analysis. The Department has determined that aggregating by major occupation group serves the same general purpose as aggregating by industry, but is more consistent with the format used for the occupation-level workforce analysis. Sponsors and Registration Agencies will more easily be able to group the program's occupations into major occupation groups than industries.

This system that combines occupation-level workforce review with major occupation group-level utilization analyses will allow each sponsor to review its workforce for barriers or problems at a more discrete level, but to then use a more aggregated data set for purposes of assessing availability (and setting utilization goals, if necessary). Furthermore, permitting sponsors to aggregate occupations into major occupation groups would minimize the administrative burden for sponsors and Registration Agencies performing the analyses, particularly for those sponsors who have apprenticeship programs in which more than one occupational title is represented. Accordingly, each sponsor will organize the occupational titles represented in its apprenticeship program by major occupation group or job family, and will then compare the racial, sex, and ethnic representations within each of those major occupation groups to the representations of those groups available in the relevant recruitment area according to each major occupation group. For the many sponsors with only one major occupation group represented in their program, this may involve performing a single utilization analysis for the entire program.

The Final Rule adds a paragraph 30.5(c)(6) to establish the schedule for conducting availability analyses. As indicated above, this new paragraph makes clear that a sponsor need only conduct an availability analysis in conjunction with the Registration Agency at the time of the sponsor's compliance review. A sponsor need not conduct separate availability analyses in between compliance reviews. At a sponsor's compliance review, the sponsor will work with the Registration Agency to define its relevant recruitment area, and the Registration Agency will assist the sponsor in calculating the availability of women

and minorities in the relevant recruitment area.

In the NPRM, the Department referred to those individuals who were eligible and available for apprenticeship as having “present or potential capacity for apprenticeship.” This term was drawn from § 30.4(e)(5) of the existing regulations. This fact notwithstanding, several commenters were unsure of what it meant to have present or potential capacity for apprenticeship, and how they were supposed to identify those available individuals that have present or potential capacity for apprenticeship within the broader labor force. An industry association said the requirement to measure “potential” capacity should be deleted because an applicant must have immediate capacity to enter the program. Relatedly, commenters also sought clarification on how to apply educational or skill requirements when calculating availability. Some commenters noted that, in addition to any educational requirements, an individual’s mechanical aptitude, high school transcript, prior work experience, and interest were all factors that should be considered in deciding who has “present or potential capacity.” A national union also asked whether JATCs may exclude persons who fail to meet physical standards in determining potential capacity for apprenticeship. An individual commenter asked if “potential capacity for apprenticeship” would refer to apprenticeship programs requiring prior occupational training as a minimum requirement.

Some commenters, on the other hand, were concerned that limiting the availability analysis to those individuals who had “present or potential capacity” could exclude relevant individuals from the sponsor’s availability analysis. Many commenters urged the Department to clarify explicitly that apprenticeships are entry-level positions, generally requiring no previous experience or minimal requirements other than being at least 18 years of age and holding a high school diploma or equivalent and that a particular group’s availability figures for apprenticeship programs would largely correspond its representation within the overall civilian labor force in the relevant recruitment area. To do otherwise, these commenters argue, could perpetuate existing underrepresentation of women and people of color in apprenticeship industries.

As discussed above, the Department hopes that its continued involvement in assisting sponsors with performing the availability analysis will help to answer these questions and allay commenters’

concerns. Additionally, in response to the comments received, the Department is replacing the term “individuals available with the present or potential capacity for apprenticeship” with “individuals who are eligible for enrollment in the apprenticeship program.” This change makes clear that the availability analysis should focus on those individuals who meet the basic qualifications for the apprenticeship program. However, in following with basic precepts of employment law, sponsors may not use basic qualifications or other criteria that have an adverse impact on one or more protected groups unless they are job-related and consistent with business necessity. This does not mean that every available individual would be accepted into an apprenticeship program, only that any one of those individuals could potentially be selected as an apprentice. A sponsor may still refine its applicant pool, through interviews or other selection procedures, by determining which individuals would be best suited for an apprenticeship.

In response to commenters inquiring about the source of data to use for determining availability, we note that this may vary depending on the nature of the apprenticeship, and so the Final Rule states only that current and discrete data shall be used. In some cases, such as in certain entry-level apprenticeships, the best data to determine eligibility may be the civilian labor force participation rate. Sponsors that apply minimum educational or certification requirements may work with their Registration Agency to further refine the relevant labor pool by calculating the availability of those individuals meeting the requirements of that program.

Many commenters also sought guidance on how to define their relevant recruitment area. One commenter was confused as to how to draw its relevant recruitment area because it advertises on the internet and could possibly draw applicants from anywhere. Another commenter asserted that the labor market areas cited in the existing rule, which are based on metro- and micro-political statistical boundaries and reflect workforce commuting patterns, are the most objective, unbiased, and realistic scope for recruitment. An SWA also explained that some sponsors are correctional facilities that recruit apprentices solely from inmates assigned to their facility and requested clarification that, in those cases, the “relevant recruitment area” for a correctional program could be limited to the actual facility, rather than the surrounding area.

The relevant recruitment area is defined in paragraph 30.5(c)(4) as the geographical area from which the sponsor usually seeks or reasonably could seek apprentices. A relevant recruitment area is similar to a labor market area, but focuses more on where the sponsor draws apprentices from, rather than where workers reside in surrounding geographic areas. A relevant recruitment area recognizes that individuals may be willing to relocate in order to participate in an apprenticeship program. So, for instance, if the sponsor regularly advertises and recruits in areas that would require an individual to relocate, that would make the sponsor’s relevant recruitment area broader than their labor market area.

Each sponsor’s relevant recruitment area is unique and may depend on how that sponsor chooses to advertise its apprenticeship program and the distance that past apprentices were willing to travel to attend the apprenticeship program. Proposed § 30.5 attempted to offer sponsors greater flexibility in defining this area so long as the sponsor justified the scope of its recruitment area and did not draw the relevant recruitment area in such a way as to have the effect of excluding individuals based on race, sex, or ethnicity from consideration. A sponsor may determine that a metro- and micro-political area, such as those used under the existing regulation, is the best representation of its relevant recruitment area. In that case, a sponsor may continue to utilize the availability data for that metro- and micro-political area.

While it is possible that a sponsor could attract an applicant from outside its standard recruitment area, the sponsor’s availability analysis need only account for those individuals available for apprenticeship who are likely to be reached by the sponsor’s recruitment efforts and who are likely able to commute or relocate to the program. For those sponsors advertising on the internet, the advertisement may reach a national or international audience, but the sponsor would need to consider whether individuals from other cities or states are likely to commute from those locations when the sponsor is drawing its relevant recruitment area. Similarly, a correctional facility sponsor that only recruits from within its own inmate population would simply need to explain in its written AAP that the recruitment area is limited to that facility because of the focus and requirements of the apprenticeship program. The Department will provide technical assistance to sponsors in

determining the appropriate relevant recruitment area, and sponsors are encouraged to work with their Registration Agency in unique situations.

With regards to the second factor in the availability analysis, two commenters took issue with the use of the term “employees” in proposed § 30.5(c)(3)(ii). An industry association said the requirement to analyze the numbers of current “employees” does not make sense for program sponsors that do not “employ” any apprentices. The commenter suggested that perhaps the proposed rule intended to reference minorities and women “participating” as apprentices, which is not as confusing as use of the term “employees.” Similarly, a national union stated the term “employee” is inapplicable to JATCs that do not employ apprentices or persons seeking to become apprentices. The commenter recommended that the Department provide guidance that is germane to joint labor-management committees in determining the availability of qualified individuals for apprenticeship.

The Department acknowledges that not all sponsors will recruit from within their own workforce, and that the sponsor’s current employees, or the employees of participating employers, may not be relevant to the sponsor’s availability. In response to these comments, the Department notes that sponsors may accord the two factors in determining availability different weights. So, for example, a sponsor that conducts only external recruiting, and does not accept any of its employees into the apprenticeship program, would not give this factor any weight. On the other hand, a sponsor that drew apprentices equally from external sources and from within its own workforce would weigh the two factors equally. Additionally, the Final Rule revises this factor to reflect that any employees being considered in the availability analysis should be those “who are eligible for enrollment in the apprenticeship program” rather than who have “the present and potential capacity for apprenticeship,” for the reasons discussed above.

Paragraph 30.5(d): Rate of Utilization

Finally, proposed § 30.5(d) required each sponsor to establish a utilization goal when the sponsor’s utilization of women, Hispanics or Latinos, or individuals of a particular racial minority group is “less than would be reasonably expected given the availability of such individuals for apprenticeship.” This requirement is

largely carried over from the existing regulations at § 30.4(d)(3) and (4).

Some commenters, including numerous advocacy organizations, urged the Department to clarify that the phrase “less than would be reasonably expected” means that the sponsor’s utilization of women, Hispanics or Latinos, and/or individuals of a particular ethnic or racial minority group is “less than the percentage available for apprenticeship in the relevant recruitment area.” Another advocacy organization asked the Department to clarify that “utilization” should be understood as a measure of the number of hours worked by women apprentices and apprentices of color, rather than a measure of the number of women apprentices or apprentices of color accepted into the program. A State Department of Labor requested that the language from the preamble clarifying the methods by which a sponsor can calculate underutilization (e.g., “the 80 percent rule”) be promulgated as part of the rule.

The Department adopts § 30.5(d) largely as proposed, but clarifies that a sponsor’s utilization of women, Hispanics or Latinos, or individuals of a particular racial minority group is “less than would be reasonably expected” when the utilization falls significantly below that group’s availability in the relevant recruitment area. Sponsors are permitted to calculate their utilization using any appropriate model, but recognizing that 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) or the “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) are most commonly employed. The Department declines to include this in the regulatory text, but notes that either of these methods would be considered appropriate under the Final Rule. The Department also declines to measure utilization in terms of hours, as the availability data used in utilization analyses is recorded in terms of individuals, not hours worked, so it is unclear what benchmark a sponsor could use to compare the number of hours worked by individuals of particular racial, sex or ethnic groups. Additionally, sponsors are required to make job assignments in a non-discriminatory manner.

The Department also reiterates that a finding of underutilization does not by itself constitute a violation. However, as

described in § 30.8, upon determining that the sponsor is underutilizing a particular racial, sex, or ethnic group, and setting a utilization goal for that group, the sponsor must engage in targeted outreach, recruitment, and retention efforts to attempt to reduce or eliminate any barriers facing the underutilized group.

Establishment of Utilization Goals for Race, Sex, and Ethnicity (§ 30.6)

In the NPRM, the Department proposed to move current § 30.6, entitled “Existing lists of eligibles and public notice,” to § 30.10, and insert a new § 30.6 that described the procedures for establishing utilization goals. Proposed § 30.6 would carry over, clarify, and expand upon existing procedures set forth in § 30.4(f) of the existing part 30, which required a sponsor to establish goals and timetables based on the outcome of the sponsor’s analyses of its underutilization of minorities in the aggregate and women. The existing part 30 does not provide specific instructions on how to set a goal, and the form of goal that a sponsor is required to set depends on the nature of the selection procedure used.

Proposed § 30.6 simplified the goal-setting process by requiring only one type of goal, regardless of the selection procedure used, and eliminated references to timetables. It also specified that a sponsor’s utilization goal for a particular underutilized group in its apprenticeship program must be at least equal to the availability figure derived for that group in the utilization analysis, and only required that goals be set for the individual racial or ethnic group(s) that the sponsor identified as being underutilized, rather than for minorities in the aggregate. Finally, proposed § 30.6 made clear that quotas are expressly forbidden and that goals may not be used to create set-asides or supersede eligibility requirements for apprenticeship.

Many commenters, including JATCs, individuals, and SWAs, supported the establishment of goals generally, but stated that goals equal to the percentage of available apprentices in some segments of the population is unrealistic, particularly with regards to women in certain industries. Sponsors worried that, despite increased outreach efforts to women, they would still struggle to meet their goals because women were not applying for positions and suggested that sponsors not be unduly penalized in this situation. There were some commenters, though, that objected to the use of goals entirely, arguing that utilization goals would

coerce program sponsors to implement unconstitutional hiring quotas and cited to *Lutheran Church—Missouri Synod v. FCC*⁷² for the proposition that the imposition of goals encourages employers to grant preferences to applicants based on their race, ethnicity or gender.

Advocacy groups and individuals, however, wanted to ensure that sponsors made real progress in increasing the representation of women and minorities in their apprenticeship programs. An individual commenter suggested that the Department require apprenticeship programs with low numbers of female apprentices to report their utilization rate to the Registration Agency and that such programs be audited annually until their numbers rise. Others suggested that sponsors should implement interim goals to ensure steady progress towards accomplishing the § 30.6 utilization goal. Several commenters urged the Department to make clear that compliance with the AAP requirements will be determined by whether the sponsor has made a good faith effort to meet its goals and timetables. These commenters further stressed that good faith efforts should be judged by whether the sponsor is following its AAP and attempting to make it work, including evaluation and changes in the program when necessary to increase utilization of minorities.

The Department largely adopts proposed § 30.6 in the Final Rule, but amends paragraph (a) to make clear that a utilization goal is set for each major occupation group where underutilization is found and that a sponsor will set its utilization goals with the Registration Agency at the time of its regular compliance reviews. These goals will still reflect the availability percentage of the particular racial, sex, or ethnic group in the relevant recruitment area, as described in the NPRM. Again, the Registration Agency will assist the sponsor in conducting the availability analysis during the sponsor's compliance review and the goals established under this section will reflect the availability percentages as determined in that analysis. While some sponsors may fall short of these goals, the Department reminds sponsors that their determination that a utilization goal is required constitutes neither a finding nor an admission of discrimination, and that a sponsor's compliance will be determined based upon its good faith efforts to eliminate impediments to equal employment

opportunity and not purely on whether the sponsor has met its goals.

In response to concerns that these aspirational goals nevertheless have the effect of rigid quotas, the Final Rule, as did the NPRM, goes to great lengths to explicitly state that these goals are not and should not be interpreted to serve as quotas, and that they do not permit sponsors to create set-asides for specific groups. In response to the comment regarding *Lutheran Church—Missouri Synod v. FCC*, the Department notes that this Final Rule makes merit selection principles the basis for all employment decisions. This regulation requires both that employment decisions be made in a nondiscriminatory manner and that utilization goals may not be used to supersede merit selection or justify a preference being extended to any person on the basis of race, sex, or ethnicity. The clear distinction between this framework and a rigid quota system is further evidenced by the fact that sponsors will not be held liable for any violation of this part simply for failing to meet a utilization goal. By contrast, sponsors explicitly can be held liable for any personnel decisions made on the basis of a protected category, which would include preferential treatment in order to meet a goal.

The Department also declines to set any specific goals for women and minorities that sponsors must reach, and further declines to require sponsors to reach tiered or interim goals. If the Registration Agency determines that a sponsor is not meeting its goals, the Registration Agency will work with that sponsor to identify potential problem areas in the program and devise corrective, action-oriented programs pursuant to § 30.8.

Commenters also sought clarification on some aspects of proposed § 30.6. For example, a State agency requested clarification regarding what it meant to have “just one type of goal” for an apprenticeship program. To clarify, the new requirement that a sponsor only set “one type of goal” means that the sponsor will set the same type of utilization goal for each racial, sex, and ethnic group within its apprenticeship workforce, regardless of the way in which the sponsor selects its apprentices. This is in contrast to the existing requirement to set a different goal depending on which selection method the sponsor uses. For selections based on rank from a pool of eligible applicants, for instance, sponsors are currently 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 Final Rule will simplify this process, such that the sponsor's goals will simply reflect the utilization of that race, sex, or ethnic group in the sponsor's overall workforce.

Finally, the Final Rule slightly revises paragraph (d)(3), which reaffirms that goals do not create “set asides” nor are intended to achieve equal results, to more closely conform with similar language in OFCCP's 41 CFR part 60–2 regulations.

Utilization Goals for Individuals With Disabilities (§ 30.7)

The existing § 30.7 is reserved. In the NPRM, the Department proposed to assign a new section entitled “Utilization goals for individuals with disabilities” to § 30.7, which would establish a single, national utilization goal of 7 percent for individuals with disabilities that applies to all sponsors subject to the AAP obligations of this part. As with utilization goals for race, sex, and ethnicity, the utilization goals for individuals with disabilities is designed to establish a benchmark against which the sponsor must measure the representation of individuals with disabilities in the sponsor's apprentice workforce by major occupation group, in order to assess whether any barriers to EEO remain. However, in contrast to the framework set forth for establishing utilization goals for race, sex, and ethnicity, the proposed § 30.7 established one goal for every covered sponsor, regardless of the availability data in that sponsor's particular relevant recruitment area.

Paragraph 30.7(a): Utilization Goal

Proposed § 30.7(a) put forth the national utilization goal of 7 percent for individuals with disabilities, derived in part from disability data collected as part of the American Community Survey. This goal mirrors that established by OFCCP in the affirmative action obligations of its section 503 regulations, which now apply to hundreds of thousands of Federal contractor and subcontractor and Federally-assisted contractor and subcontractor establishments. Advocacy organizations generally supported the establishment of this utilization goal and stated that the goal, if met, could result in an additional 26,000 job training opportunities for persons with disabilities. Some commenters sought higher goals or inquiry into other data sources to establish this goal. One advocacy organization suggested that

⁷² 141 F.3d 344 (D.C. Cir. 1998).

the utilization rate should be 16.5 percent, which is equal to the current percentage of individuals with disabilities within the working-age population, or that sponsors should base their goal for individuals with disabilities on demographic statistics of persons with disabilities in their geographic location. Other advocacy organizations suggested that the Social Security Administration, the Department of Education, academic Rehabilitation Research and Training Centers, associations for State workforces, vocational rehabilitation agencies, special education transition programs, disability advocacy organizations, Independent Living Centers, Career One-stop centers, and IDEA-funded parent centers could all be sources of information on the availability of individuals with disabilities in the relevant area. Still other advocacy organizations recommended the Department raise the utilization goal by adopting a methodology that utilizes the ADA's broader definition of "disability," rather than the American Community Survey, which the commenter said uses a more narrow definition of "disability" than the ADA. To ensure that people who have severe disabilities are not neglected, an advocacy organization recommended that the Department establish an additional sub-goal of 3 percent for individuals with targeted severe disabilities.

A number of JATCs and industry associations, on the other hand, worried that the 7 percent goal was unrealistically high because of the physical demands of their apprenticeship programs and because self-identification is voluntary and persons with disabilities are reluctant to identify as disabled. For example, an industry association stated that this utilization goal would be particularly burdensome for the trucking industry because many individuals with disabilities are prohibited from driving commercial motor vehicles, and a local JATC stated that it would be difficult to place disabled individuals with its partner construction contractors because of their workers compensation insurance providers and the fact that a condition of their disability compensation may preclude them from working on a construction site. Some of these commenters recommended that the goal be phased in, or gradually increased over time. One company recommended that the Department observe each industry for two years and establish better-suited goals. Another commenter expressed concern with the

proposed 7 percent utilization goal, stating that persons with disabilities are already protected from discrimination by existing Federal regulations and expressed doubt that utilization goals are attainable given geographic disparities as well as differing abilities and qualifications of those seeking employment. An industry association suggested the Department adopt the same goals as established by the OFCCP under section 503, which applies to Federal contractors and subcontractors. A national JATC commented that the Department should review the goal on an annual basis.

As stated in the NPRM, the Department believes that a utilization goal for individuals with disabilities 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 apprenticeship. Both the unemployment rate and the percentage of working-age individuals with disabilities who 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, but the Department believes that the establishment of this utilization goal could create more accountability within a sponsor's organization and provide a much-needed tool to help ensure that progress toward equal employment opportunity is achieved.

The Department explained in great detail in the NPRM the process that OFCCP used when it issued revised regulations implementing section 503 and established the same national utilization goal of 7 percent for individuals with disabilities for all covered contractors. OFCCP derived this utilization goal in part from the disability data collected as part of the American Community Survey (ACS). Although the definition of disability used by the ACS is not as broad as that in the ADA and proposed here, and therefore may not capture all of the individuals who would be considered disabled under this Final Rule, the Department has concluded, for reasons discussed extensively in the NPRM, that the ACS is the best source of nationwide disability data available today, and, thus, an appropriate starting place for developing a utilization goal. The Department, therefore, declines to change the goal, or to implement tiered goals that would not be reflective of the

availability of individuals with disabilities.

OFCCP arrived at the 7 percent figure by starting with the mean disability data for the "civilian labor force" and the "civilian population" across EEO-1 groups, based on the 2009 ACS data, which resulted in 5.7 percent as a starting point. This figure 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 who are eligible 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.

The Department was also concerned that this availability figure did not take into account discouraged workers, or the effects of historical discrimination against individuals with disabilities that has suppressed the representation of such individuals in the workforce. OFCCP estimated the size of the discouraged worker effect by comparing 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. Adding this figure to the 5.7 percent availability figure above results in the 7.4 percent, which OFCCP rounded to 7 percent. OA agrees that this calculation reflects the most accurate availability figure currently available, and therefore adopts the 7 percent utilization goal. Pursuant to proposed 30.7(c), which the Department adopts in this Final Rule, OA will review the goal periodically and update the goal as appropriate.

The Department revises paragraph (a), however, to reflect that the utilization goal will apply to each major occupation group within a sponsor's apprentice workforce, rather than to each industry, as was proposed in the

NPRM. This is consistent with the changes adopted for the utilization analyses for race, sex, and ethnicity. The reasons for using major occupation groups, rather than industry, in the utilization analysis are addressed in the discussion of § 30.5(c).

In response to those commenters who advocated that sponsors should be able to derive their own availability figures for individuals with disabilities within the sponsor's relevant recruitment area, the Department notes that replicating the race, sex, and ethnicity goals framework would not be the most effective approach for the establishment of goals for individuals with disabilities. Sponsors establishing goals for minorities and women typically use the Special EEO Tabulation of census data to assist them. The results of the decennial census can be tabulated for hundreds of occupation categories and thousands of geographic areas. However, because the ACS disability data is based on sampling, and because the percentage of that sample who identify as having a disability is considerably smaller than the percentage that provide race and gender information, it cannot be broken down into as many job titles, or as many geographic areas as the data for race and gender. In addition, the race, sex, and ethnicity goals framework does not include consideration of discouraged workers in computing availability, a factor particularly important in the context of disability. Accordingly, the Department is retaining the 7 percent national utilization goal and declines to allow sponsors to set their own goals based on availability in the relevant recruitment area.

The Department also declines to adopt a sub-goal at this time. The commenters suggesting a sub-goal did not provide a clear methodology or data source for the identification of a sub-goal target. Moreover, establishing a sub-goal would, in many instances require sponsors to ask for detailed disability-related information, beyond the mere existence of a specific condition, so that the sponsor could determine whether an individual has a "severe" physical or mental impairment that is encompassed by the sub-goal. This does not mean that sponsors may not, on their own, for affirmative action purposes, establish appropriate mechanisms and goals to encourage the employment of individuals with significant or severe disabilities. However, these regulations do not include such requirements.

As stated above, many sponsors were concerned that they would not be able to meet the 7 percent utilization goal

because of the physical demands of their industry. First, the Department notes that the goal only applies to "qualified individuals with disabilities," and the application of a utilization goal does not require or authorize a sponsor to hire an individual who is not eligible or qualified for apprenticeship. The objection to adopting a utilization goal at all, however, is based on the flawed notion that individuals with disabilities as a group are incapable of working in these jobs. As stated previously in this preamble, the Department acknowledges that some individuals with certain disabilities may not be able to perform some jobs, but this Final Rule does not require a sponsor to hire an individual who cannot perform the essential functions necessary for apprenticeship, or who poses a direct threat to the health or safety of the individual or others.

Additionally, the goal is not a quota and failure to meet the goal will not, in and of itself, result in any violation or enforcement action. The Registration Agency will look at the totality of the sponsor's affirmative action efforts to determine whether it is in compliance with its affirmative action obligations under this section. As discussed below, if the sponsor has complied with the requirements of this part and no impediments to equal employment opportunity exist, then the fact that the sponsor does not meet the goal will not result in a violation.

Lastly, some sponsors were concerned that the new utilization goal would be unduly burdensome for sponsors to comply with. A regional JATC commented that forcing sponsors to identify individuals with disabilities, especially mental or intellectual disabilities, puts a burden on sponsors if the program must hire a psychiatric professional to conduct evaluations.

First, the Department notes that all sponsors covered by § 30.4(b) are currently required to maintain an AAP and conduct a utilization analysis for race, sex, and ethnicity, so the additional utilization analysis for individuals with disabilities will pose minimal burden, especially because the sponsor is not responsible for setting the utilization goal. Second, the identification of individuals within the apprenticeship workforce that have a disability is done through self-identification, and the sponsor should not be attempting to identify individuals with disabilities who do not self-identify. If an apprentice has an obvious visible disability (*i.e.*, someone is blind or missing a limb), a sponsor may include that individual as an individual

with a disability within its workforce analysis. Otherwise, a sponsor should be relying only on self-identification as the method for capturing disability within its apprenticeship workforce. A sponsor should also not be attempting to verify whether an apprentice does, in fact, have a disability. Further detail on how the self-identification mechanism should work is set forth in the discussion of § 30.11, below.

To further ease any burden upon sponsors associated with the implementation of the utilization goal for individuals with disabilities, sponsors will have additional time to come into compliance with these provisions. The revised compliance dates are detailed in paragraph 30.7(d)(2), below.

Paragraph 30.7(b): Purpose

Proposed § 30.7(b) explained that the purpose of the utilization goal for individuals with disabilities was to establish a benchmark against which the sponsor must measure the representation of individuals with disabilities in the sponsor's apprentice workforce and that the goal was to serve as an equal opportunity objective that should be attainable by complying with all of the affirmative action requirements of part 30.

The Department received no comments on this specific paragraph. The Final Rule changes the reference from "industry" to "major occupation group" to be consistent with changes in other sections, and makes other non-substantive edits so the text of the regulation conforms more closely to the corresponding section of OFCCP's section 503 regulations.

Paragraph 30.7(c): Periodic Review of Goal

Proposed § 30.7(c) stated that the Administrator of OA would periodically review and update the national utilization goal, as appropriate. The Department received one comment on this paragraph from a national JATC that expressed support for a fixed utilization goal but cautioned that because of the untested nature of the proposed 7 percent goal the Department should review the goal on an annual basis.

The Department declines to adopt a set review period for the goal. This flexibility will enable the Administrator to review the goal whenever it is deemed necessary. Accordingly, the Department adopts paragraph (c) without change.

Paragraph 30.7(d): Utilization Analysis

Proposed § 30.7(d) set out the steps that the sponsor must use to determine

whether it has met the utilization goal. Similar to the utilization analysis required under § 30.5 for race, sex, and ethnicity, proposed § 30.7(d) stated that the sponsor must first conduct a review of its apprenticeship workforce to evaluate the representation of individuals with disabilities in the sponsor's apprentice workforce grouped by industry. The sponsor identifies the number of apprentices with disabilities based on voluntary self-identification by the individual apprentices. This figure would then be compared to the 7 percent utilization goal to determine if the sponsor is underutilizing individuals with disabilities. Proposed § 30.7(d)(3) required 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)).

An advocacy organization supported the proposed disability workforce analysis requirements in § 30.7(d)(2) because it would ensure that individuals with disabilities will be represented in all industries. A number of commenters, however, opposed the utilization analysis because it would require identifying those individuals within the sponsor's program that had a disability. Many commenters worried about asking applicants and apprentices to self-identify as having a disability and were concerned that a lack of self-identification would make it difficult for sponsors to meet the utilization goal. An industry association argued that although the D.C. Circuit upheld the OFCCP's adoption of a utilization goal for individuals with disabilities in the case of *Associated Builders and Contractors, Inc. v. Shiu*,⁷³ the holding in that case did not justify extension of the identical data collection and utilization analysis in the apprenticeship context. Finally, a State Department of Labor sought clarification as to when, under proposed § 30.7(d)(3), sponsors would be required to evaluate their utilization of individuals with disabilities and how that timing related to the timing for review of AAPs established in proposed § 30.4(e).

Comments expressing specific concerns about asking individuals to self-identify are addressed later in the preamble under § 30.11. In response to those commenters who expressed concerns with meeting the goal as a result of under-reporting by apprentices with disabilities, the Department concedes the possibility that self-reported data regarding disability, as with any demographic data employers

maintain, will not be entirely accurate. While not perfect, the data that will result from the invitation to self-identify will nevertheless provide the sponsor and the Department with important information that does not currently exist pertaining to the participation of individuals with disabilities in the sponsor's applicant pools and labor force. This will allow the sponsor and the Department to better identify and monitor the sponsor's hiring and selection practices with respect to individuals with disabilities, and to more effectively ensure that the benefits of apprenticeship are accessible to individuals with disabilities. The Department again reminds sponsors that failure to meet the utilization goal for individuals with disabilities is not itself a violation of this Final Rule, and so sponsors will not be penalized if they fail to meet the goal because some apprentices with disabilities choose not to self-identify.

As was the case for OFCCP in *Associated Builders and Contractors, Inc. v. Shiu*, the Department is concerned that individuals with disabilities have lower participation rates in the workforce and higher unemployment rates than those without disabilities. We therefore seek to advance the employment of qualified individuals with disabilities through this Final Rule. To do so is well within the Department's authority to "formulate and promote the furtherance of labor standards necessary to safeguard the welfare of apprentices . . ." ⁷⁴ In *ABC v. Shiu*, the court upheld the 7 percent national utilization goal established by OFCCP and stated that "the agency adequately explained why the best available data did not allow it to create a tailored goal and why the uniform goal advances its regulatory objective." ⁷⁵ The Department sees no reason to depart from that analysis here.

As we did for the workforce analysis for race, sex, and ethnicity (discussed in § 30.5(b)), the Department is requiring that each sponsor conduct its apprentice workforce analysis for individuals with disabilities at the occupation level and its utilization analysis for individuals with disabilities at the major occupation level. This, again, will allow sponsors to be able to review their workforce at a more granular level, but will only require that utilization goals apply at the major occupation group level.

With regard to the timing of the workforce analysis that sponsors must conduct under this section, this should

be conducted at the same time that a sponsor performs its workforce analysis for race, sex, and ethnicity, pursuant to § 30.5(b). As explained in revised paragraph 30.7(d)(2)(ii), this process should be performed at each regular compliance review and no later than three years after a sponsor's most recent compliance review. Paragraph 30.7(d)(2) is revised to reflect this new schedule. Again, this schedule will apply uniformly across covered sponsors and will not depend on whether a sponsor has met its utilization goals.

Furthermore, as mentioned above, the Department is allowing both existing and new sponsors additional time in which to implement the apprenticeship workforce analysis requirements for individuals with disabilities. Similar to the compliance dates established in § 30.5, an existing sponsor will have two years from the effective date of this Final Rule in which to incorporate the 7 percent utilization goal into its AAP and to conduct a workforce analysis under this section. Paragraph 30.7(d)(2)(iii)(A) is revised to reflect this change.

Also, as with the workforce analysis for race, sex, and ethnicity, detailed in § 30.5(b), a sponsor registered with a Registration Agency as of the effective date of this Final Rule will have up to two years from the effective date in which to conduct a conforming workforce analysis for individuals with disabilities, pursuant to § 30.7(d)(2). This section of the Final Rule also establishes that new sponsors registering after the effective date of this Final Rule will have two years from the date of their registration to complete their written AAP.

Generally, the workforce analyses required by §§ 30.5(b) and 30.7(d)(2) should be performed simultaneously. Following the initial workforce analysis, all covered sponsors will be required to conduct workforce analyses at each regular compliance review and again if they have gone three years since their last compliance review. The schedule of evaluations is discussed in more detail in paragraph (d)(3), below.

Paragraph 30.7(e): Identification of Problem Areas

When the percentage of apprentices with disabilities in one or more industry groups was less than the utilization goal proposed in § 30.7(a), proposed § 30.7(e) required that the sponsor take steps to determine whether and where impediments to equal opportunity exist. Proposed § 30.7(e) explained that when making this determination, the sponsor must look at the results of its assessment of personnel processes and the

⁷⁴ 29 U.S.C. 50.

⁷⁵ 773 F.3d at 265 (D.C. Cir. 2014).

⁷³ 773 F.3d 257 (D.C. Cir. 2014).

effectiveness of its outreach and recruitment efforts as required by proposed § 30.9.

The Department received a few comments in regards to paragraph (e). An advocacy organization commented that this type of self-education is important to raising sponsors' attention to the pool of individuals with disabilities that could contribute to and benefit from their apprenticeship program. An industry association suggested that the Department revisit the requirements of § 30.7(e) as the proposed rule implied that failure to reach the utilization goal for individuals with disabilities meant that there must automatically be a barrier to equal employment. The commenter also requested examples of "impediments to equal opportunity" and sought guidance on how sponsors would be able to identify and measure such impediments. A national JATC was concerned that such a review process would require the assistance of a professional. Another national JATC expressed concern that the regulations did not account for the fact that non-attainment of the disability utilization goal does not mean that a program is discriminatory in its practices; rather, non-attainment could be that disabled individuals did not apply to the program, that they could not meet the requirements of the program, or they were unwilling to self-disclose disabilities.

With the exception of two changes discussed below, the Final Rule adopts § 30.7(e) as it appeared in the NPRM. The Department emphasizes that, if a sponsor is underutilizing individuals with disabilities, it does not mean that a problem area definitely exists or that the cause of the underutilization is discrimination. This finding simply serves as a notification to the sponsor that they must review their personnel processes and outreach to determine if such problem areas do exist. A sponsor is only required to engage in action-oriented programs, pursuant to §§ 30.7(f) and 30.8, if it discovers problem areas during the course of this review. To reflect this understanding, the regulatory text is changed slightly to read "the sponsor must take steps to determine whether *and/or* where impediments to equal employment opportunity exist" (emphasis added). As for types of "impediments to equal opportunity," these would be the same as the "barriers" described in § 30.4(a)(2) of this Section-by-Section Analysis. The Department also revises this paragraph in the Final Rule to indicate that utilization analyses will be conducted according to major

occupation group, rather than industry, consistent with changes in other paragraphs.

Paragraph 30.7(f): Action-Oriented Programs

In proposed § 30.7(f), the NPRM stated that if, in reviewing its personnel processes, the sponsor identifies any barriers to equal opportunity, it would be required to 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.

The Department received no comments on this paragraph that have not already been addressed elsewhere, and so adopts proposed § 30.7(f) without change.

Paragraph 30.7(g)

Proposed § 30.7(g) clarified that the sponsor's determination that it has not attained the utilization goal in one or more industry groups would not constitute either a finding or admission of discrimination in violation of part 30. The Department noted, however, that such a determination, whether by the sponsor or by the Registration Agency, would not impede the Registration Agency from finding that one or more unlawful discriminatory practices caused the sponsor's failure to meet the utilization goal and that, in that circumstance, the Registration Agency would take appropriate enforcement measures.

The Department received no comments on this paragraph. Accordingly, the Department is only revising this paragraph consistent with other changes throughout this section to clarify that the utilization analysis will be performed according to major occupation group.

Paragraph 30.7(h)

Finally, proposed § 30.7(h) stated that the 7 percent utilization goal must not be used as a quota or ceiling that limits or restricts the employment of individuals with disabilities as apprentices. One commenter argued that the proposed 7 percent utilization goal was essentially a national hiring quota for individuals with disabilities. An industry association expressed concern that even though the Department stated that the proposed 7 percent utilization rate for persons with disabilities was a "goal," program sponsors may feel pressure to meet the goal and hire individuals who may not be as qualified as other applicants. A local JATC argued that the proposed disability utilization

goal would invite claims of reverse discrimination and lawsuits by able-bodied persons who were not admitted to the program because of the inclusion of an applicant with a disability.

The Department declines to make any changes to paragraph (h), as these comments are premised on a flawed understanding of the function of the disability goal. The Department has made clear, both in this paragraph and throughout the preamble, that the goal is not a quota and failure to meet the goal will not, in and of itself, result in any violation or enforcement action. Rather, a failure to meet the goal simply triggers a review by the sponsor of its employment practices to determine if impediments to EEO exist. The goal is intended to serve as a management tool to help sponsors measure their progress toward achieving equal employment opportunity for individuals with disabilities and does not require disability-based decision making. The Department recognizes that a failure to meet the 7 percent utilization goal does not necessarily mean that the sponsor is discriminating against individuals with disabilities and that there may be other explanations. It is for this reason that proposed § 30.7(g) stated that a sponsor's determination that it has not attained the utilization goal in one or more job groups does not constitute either a finding or admission of discrimination in violation of this part. Finally, with regard to the comment fearing reverse discrimination actions, we note that the ADA, as amended, prohibits claims of discrimination because of an individual's lack of disability, and we interpret this Final Rule consistent with that.⁷⁶

Targeted Outreach, Recruitment, and Retention (§ 30.8)

The Department proposed to revise the existing § 30.8 entitled "Records" and to move that language to proposed § 30.12, as discussed later in the preamble. Proposed § 30.8 instead replaced the current requirements related to outreach and positive recruitment discussed in § 30.4(c) of the existing regulation by addressing the regulatory requirements related to targeted outreach, recruitment, and retention. Under proposed § 30.8, when a sponsor is underutilizing a specific group or groups pursuant to proposed § 30.6, and/or when a sponsor determines, pursuant to proposed § 30.7(f), that there were impediments to equal opportunity for individuals with

⁷⁶ 42 U.S.C. 12201(g).

disabilities,⁷⁷ the sponsor was required to undertake targeted outreach, recruitment, and retention activities 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 required under § 30.3(b)(3).

Paragraph 30.8(a): Minimum Activities Required

Proposed paragraph § 30.8(a)(1) set forth the minimum, specific targeted outreach, recruitment, and retention activities that the Department proposed to require of a sponsor that had found underutilization of a particular group or groups pursuant to § 30.6 and/or who had determined pursuant to § 30.7(f) that there were problem areas with respect to its outreach, recruitment, and retention activities impacting individuals with disabilities. These activities included, but were not 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. In the NPRM, the Department requested comments on whether there were circumstances under which sponsors would have difficulty completing any of these activities.

In addition, to foster awareness of the usefulness of a sponsor's outreach, recruitment, and retention activities, proposed § 30.8(a)(2) also required the sponsor to evaluate and document the overall effectiveness of its outreach, recruitment, and retention activities after every selection cycle for registering apprentices. This review was designed to allow the sponsor to refine these activities as needed, as set forth in proposed § 30.8(a)(3). Finally, proposed § 30.8(a)(4) required the sponsor to maintain records of its outreach, recruitment, and retention activities and any evaluation of these activities.

Several commenters supported the outreach, recruitment, and retention requirements in § 30.8. Multiple advocacy organizations stated that these minimum steps are among the most effective approaches, are more effective and efficient than general outreach, and should be reasonable for every program to undertake. Many advocacy organizations expressed support for the inclusion of linkage agreements between sponsors and groups representing underutilized populations given their proven success in increasing participation of underutilized populations. In response to the Department's request for information on how the proposed rule's targeted outreach requirements to organizations that serve individuals with disabilities would impact sponsors, an advocacy organization for persons with disabilities stated that it would welcome the opportunity to form relationships with apprenticeship sponsors.

Several commenters, on the other hand, asserted that the requirements in proposed § 30.8 would be too burdensome for apprenticeship programs. Unions and JATCs stated that the proposed requirements would be a drain on their resources and time. A national JATC said that while disseminating information on job opportunities was not a significant burden, as apprenticeship programs already do so, partnering with other groups would add a lot of time and work to the program. The commenter recommended that the current outreach, recruitment, and retention requirements under 29 CFR part 30 remain the same because the requirements to formally document its recruitment efforts after

every apprenticeship cycle, which are continuously occurring, would create even more burdens on their program. A number of JATCs and industry associations expressed concern about the proposed outreach, recruitment, and retention requirements and suggested that the § 30.8(a) activities should be suggestions, rather than requirements, and that sponsors should be given more flexibility in deciding what activities are most effective. An SWA also supported giving sponsors greater flexibility to encourage creative and diverse mechanisms to diversify their workforce.

The Department retains the four specific activities outlined in proposed § 30.8(a)(1) in the Final Rule, as several comments reinforced the Department's belief that these were effective mechanisms for outreach, recruitment, and retention, and that sponsors who discover they are underutilized should be required to use them to attempt to correct their underutilization. The Department believes that these minimum requirements provide sponsors with enough guidance to be effective in improving their outreach methods, but still leaves sponsors with flexibility to decide on other, additional recruitment mechanisms. The Department further believes that the four minimum activities outlined in § 30.8(a)(1) will not be overly burdensome for sponsors. As one sponsor pointed out, the requirements are largely 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.

Many commenters stressed that retention was a major issue for women because they are often targets for isolation, harassment, discrimination, stereotyping, and a lack of training rotation on the job. An advocacy organization expressed concern with minority apprenticeship completion rates, stating that, in 2013, 30.3 percent of African Americans completed their program in the construction industry in comparison to 46.7 percent of whites. Some commenters suggested that the Department create a separate section in the rule to address apprentice retention specifically, which should include requirements that apprenticeship program sponsors: (1) Analyze their apprentice retention rates for women, people of color, and individuals with disabilities; (2) set forth in their written AAPs the specific retention activities they plan to take for the upcoming program year, as appropriate; (3) conduct exit interviews of each apprentice leaving the sponsor's

⁷⁷ As set forth in more detail in the discussion of § 30.7, the different "triggers" for engaging in action-oriented programs for race/sex versus disability are necessary because of the differences in labor market demographic data maintained for each. Because disability data is not available at the granular level that race/sex data is, and because there is not a data source for individuals with disabilities that matches exactly with the definition of disability found in the ADA, this Final Rule, like the Section 503 Final Rule, includes an additional step wherein sponsors must identify whether impediments to equal employment opportunity exist before the sponsor is required to engage in good faith efforts to correct the problem.

apprenticeship program prior to completion; and (4) implement policy and professional development practices designed to build staff capacity to support and serve traditionally underrepresented groups. Individual commenters recommended using members of the workforce that represent the marginalized populations to perform outreach to the particular underrepresented group and recommended that the Department encourage mentoring as a means for increasing retention.

The Department recognizes the importance of retention activities in building greater diversity within apprenticeship programs, but declines to include these specific suggestions as mandatory. Many of the retention activities suggested by commenters were, in fact, already included in proposed § 30.8(b). Furthermore, the Department anticipates that sponsors will evaluate their program's completion rates as part of their review of personnel processes under § 30.9.

An advocacy organization also recommended that language be added to § 30.8 to require apprenticeship programs to work with their local workforce development system as a fifth required outreach, recruitment, and retention activity because the workforce development system serves individuals that are largely members of populations currently underrepresented in the registered apprenticeship system. Similarly, two State vocational rehabilitation (VR) agencies recommended that the Department revise § 30.8(a) to specifically refer to State VR agencies.

The Department notes that, pursuant to § 30.3(b)(3)(i), all sponsors are already required to maintain a list of current recruitment sources that will generate referrals from all demographic groups within the relevant area, and that these sources could include One-Stop Centers. However, recognizing that the public workforce system can play a key role in linking sponsors to a diverse pool of apprenticeship candidates, § 30.8(a)(1)(i) of the Final Rule includes reference to workforce system partners, including One-Stop Career Centers, as examples of entities to which sponsors must disseminate information regarding its apprenticeship program.

Two advocacy organizations suggested that the Department add the language "including those who serve underrepresented populations" to each of the four requirements detailed in proposed § 30.8(a)(1) through (4). The commenters stated that this language would not create an additional burden to apprenticeship programs and would

signal the Department's intent to reach these populations, creating opportunities for further engagement with these groups.

The Department agrees with these comments that the activities outlined in § 30.8(a)(1) should focus more on what type of population these outreach and recruitment efforts are reaching, rather than prescribing the specific organizations that sponsors must reach out to. Accordingly, § 30.8(a)(1)(i) of the Final Rule is revised to focus on disseminating information to organizations 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. The Final Rule further specifies that these organizations may include community-based organizations, local high schools, local community colleges, and local vocational, career and technical schools, thus providing the sponsor with greater flexibility in deciding which organizations will serve as the best partners in reaching out to the specific community in which the sponsor is underutilized.

Some commenters identified specific outreach, recruitment, and retention activities that they thought were not effective. A JATC stated that the proposed rule's newspaper advertising requirement in § 30.8(a)(1)(ii) would be a waste of money and suggested that the sponsors be given more flexibility to advertise in media formats that are more affordable and more effective in reaching targeted audiences. An industry association argued that registered apprenticeship programs should be encouraged—not required—to establish partnerships with pre-apprenticeship programs because this would effectively require apprenticeship programs to establish and operate their own pre-apprenticeship programs. Many commenters were concerned about what they perceived to be a requirement that sponsors establish pre-apprenticeship programs.

The Department agrees that some of these requirements, as written, may be overly prescriptive for sponsors. The Department is therefore making two additional changes to § 30.8(a). First, the Department will remove the requirement that sponsors advertise their apprenticeship opportunities in newspapers, referring instead to "appropriate media" which have a wide circulation in the relevant recruitment areas. Second, the Department reaffirms, as it did originally in the preamble to the NPRM, that 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. The Department also emphasizes that nothing in the Final Rule requires a sponsor to establish a pre-apprenticeship program; the rule only requires that sponsors leverage existing pre-apprenticeship programs as sources for recruitment into the sponsors' programs. To make this clear, the Department is amending § 30.8(a)(1)(iv) to read: "Establishment of linkage agreements or partnerships enlisting the assistance and support of pre-apprenticeship programs, community-based organizations, advocacy organizations, or other appropriate organizations, in recruiting qualified individuals for apprenticeship" (emphasis added). Amending the "and" to "or" also clarifies that linkage agreements need not be entered into with all of these organizations, but with any of the types of organizations that may assist in increasing outreach to underutilized groups.

Two national unions and a local JATC urged the Department to clarify whether the ERISA would permit joint labor-management programs governed by ERISA to use their resources to support pre-apprenticeship programs, such as by funding pre-apprenticeship programs or providing pre-apprenticeship training to the community. This comment was addressed within the larger discussion of how this rule coexists with ERISA fiduciary obligations in § 30.1, above.

A number of commenters also suggested examples of technical assistance that the Registration Agency could provide. For instance, several advocacy organizations recommended that the Department develop a standardized but customizable evaluation tool which would include the criteria that should be used to evaluate the effectiveness of such outreach, recruitment, and retention activity, and would allow sponsors to self-document deficiencies and self-identify remediation activities. Several advocacy organizations also recommended that the Department reference in the Final Rule and/or on its Web site the technical assistance tools and materials that can be used to facilitate sponsors' outreach, recruitment, and retention efforts, including those developed by Women in Apprenticeship Act (WANTO) grantees.

As resources permit, the Department will gather effective tools for compliance assistance and will work to provide guidance to sponsors reflecting

recommended practices for outreach, recruitment, and retention.

Paragraph 30.8(b): Other Activities

In addition to the activities required in proposed § 30.8(a), as a matter of best practice, proposed § 30.8(b) encouraged but did 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 included but were not limited to: (1) Use of journeyworkers and apprentices from the underutilized group or groups to assist in the implementation of the sponsor's AAP; (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.

Several advocacy organizations recommended that the Department make it mandatory for sponsors to conduct an exit interview with each apprentice leaving the program early, rather than an encouraged activity under § 30.8(b), reasoning that it would help program sponsors better understand the reason for early departure. An advocacy organization also recommended that the Department add direct entry as an encouraged, but not required, approach to outreach. Further, this commenter suggested that the Department should encourage program sponsors to administer their own in-house programs to prepare the members of targeted classes for the program's entrance exam. The Department declines to incorporate these activities into the regulatory text. Nonetheless, sponsors are once again encouraged to use these, or any other outreach, recruitment, and retention method that it feels will be most useful in increasing the diversity of its program.

Finally, some commenters put forth suggestions, or sought clarification, on how parties can work together to conduct outreach activities. An industry association recommended that the Department give smaller programs the option to pool their outreach efforts and have their efforts be executed by a single entity or a third party. An industry association stated that, while they do not oppose the proposed four required recruitment activities, association-sponsored programs that rely primarily

on their employer members to supply apprentices to chapter programs should be entitled to rely on the outreach and recruitment efforts of the actual employers of the apprentices in question. In such circumstances, this commenter suggested that association program sponsors should be exempted from requirements of § 30.8, and/or should be permitted to rely on the affirmative action efforts that their participating employer members have engaged in to establish the necessary outreach and recruitment efforts.

Sponsors are encouraged to work with each other, with their employers, with outside parties and organizations, and with industry groups and consortia, as appropriate, to improve the effectiveness of their outreach and recruitment efforts. Ultimately, however, it will be the sponsor's responsibility to ensure that its program is meeting the standards established in this Final Rule. The Final Rule does not provide for exemptions for joint-programs, and the Department declines to include one, for the reasons discussed in previous sections addressing the joint sponsor issue.

Review of Personnel Practices (§ 30.9)

Proposed § 30.9 required that any sponsor subject to the AAP 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.

Paragraph 30.9(a)

Several advocacy groups supported the proposed annual personnel processes review requirements under § 30.9 and recommended that it would be beneficial to involve apprentices and journeyworkers in the review. Another advocacy group supported the proposed proactive review approach in § 30.9 and recommended reviewing affirmative action measures as frequently as monthly during the first year, making the results of such reviews public, and involving community stakeholders in the reviews.

In contrast, several commenters disagreed with the annual review requirements. A State Department of Labor asserted that the proposed annual review of personnel process may be excessive and costly and could deter the opening and expansion of apprenticeship programs. A national JATC stated that although personnel process reviews were good business practice, the reviews should not be required every year. Instead, the JATC recommended reviews only in the event

that data indicate a deficiency in certain demographics and that the review would be a part of the effort to correct the deficiency. An industry association requested the Department eliminate the requirement that program sponsors review personnel practices every year and instead recommended that reviews be conducted on an "as needed" basis or no less than every 3 years. Commenting that sponsors do not indenture new participants every year, a State Department of Labor recommended that the Department require personnel process reviews only in advance of recruitment and that sponsors maintain records of these reviews to supply to the Registration Agency upon request.

In the NPRM, the Department commented that this requirement was a good business practice that many entities should already be conducting themselves to help determine whether they are in compliance with the EEO obligations that they have undertaken under current part 30. Indeed, the proposal drew upon provisions in the existing regulations, such as those providing for "periodic audits of affirmative action programs and activities" set forth under current § 30.4(c)(10). We disagree with the commenter suggesting that such reviews should occur only when a sponsor is underutilized in women or a particular racial/ethnic group. This is because the aim of ensuring that an apprenticeship program is operating free from discrimination goes beyond the simple numbers of individuals from various protected groups, and discrimination can exist absent a finding of underutilization. For instance, a careful review of personnel policies at the program, industry, and occupational level can uncover occupational segregation in which women and/or minorities are more likely to be in lower paying occupations than higher paying occupations, as well as unequal treatment in compensation, work assignments, performance appraisals, discipline, the handling of accommodation requests—all of which are important elements of equal employment opportunity that may go largely undetected in utilization analyses. Indeed, the idea that an AAP is purely numerical-driven helps to feed the flawed notion that it constitutes "quotas." The Final Rule is revised to clarify that these reviews are required whether or not there is underutilization, and that this review must look at program, industry, and occupational policies and practices to fully examine

whether there are impediments to equal employment opportunity.

We understand the concerns of commenters asserting that an annual review may be burdensome and serve to discourage interest in new entities creating apprenticeship programs, but have concluded that this review is a valuable exercise for sponsors to follow so that they can uncover any barriers to EEO within their programs. One commenter suggested that AAP reviews should include employment practices as well as personnel processes and administration of the program, reasoning that diverse work assignments and rotation among work processes are critical to apprenticeship training. The commenter said that creating record systems to capture actual on-the-job training and maintaining those records throughout the course of an apprenticeship is necessary to ensure quality training. The proposed rule (and in turn the Final Rule) incorporated these ideas, listing a number of employment practices that would be part of the review in § 30.9, and the recordkeeping requirement of § 30.12 requires retaining information relative to the operation of the apprenticeship program, specifying a number of employment actions relevant to apprenticeship including “hours of training provided.”

Several commenters requested clarification of the requirements in proposed § 30.9 as they would relate to group sponsors. A national union and a national JATC stated that proposed § 30.9 does not distinguish between JATCs and employers and, thus, imposes obligations on JATCs that are inapplicable to these programs since they do not employ apprentices or individuals seeking to be apprentices. The commenters stressed that because JATCs do not promote apprentices or establish wages, only the employers have the ability and obligation to address harassment and discrimination affecting recruitment and retention. Specifically, an industry association recommended that the Department remove the requirements in § 30.9(a), reasoning that the requirements to review the listed personnel practices would be impossible for joint employer apprenticeship programs in the construction industry to meet. The commenter stressed that construction apprentice programs provide training to apprentices who at various times work for different construction employers, all of whom have separate employment policies and procedures. The commenter reasoned that the construction apprentice programs have no ability to monitor employment

policies or procedures of each individual employer.

The Final Rule requires the review of all sponsors. As discussed in several previous sections raising the issue of how the obligations will apply to group sponsors, we recognize that certain personnel actions may be undertaken by participating employers, rather than the sponsors themselves. In such cases, the reviews may correspond to the structure of the sponsor’s program, but in keeping with historical practice and provisions of the existing rules, sponsors will need to coordinate with the participating employers in order to ensure that the sponsors are not coordinating apprenticeship programs with employers that are actively discriminating against the apprentices placed there. OA will provide further guidance modeling what an appropriate review will look like under these regulations.

An industry association requested clarification on how penalties would be assessed in the event of noncompliance with § 30.9. In particular, the commenter asked whether a penalty would be assessed against the sponsor entity or the individual EEO officer designated by the sponsor as “responsible” and “accountable” for overseeing and implementing the sponsor’s AAP, per proposed § 30.3(b)(1). As has been the case historically, OA’s interest is in apprenticeship programs that are successful—in the development of apprentices, employers, and in the promotion of equal employment opportunity. To that end, OA concentrates its resources on providing technical assistance so sponsors comply in the first place, and in the event violations occur, having sponsors voluntarily correct them. The latter part is embodied in the Final Rule’s discussion of compliance evaluation findings at § 30.13(b), below. However, if sponsors refuse to correct deficiencies identified, OA ultimately may seek to deregister the program per § 30.15 of the Final Rule.

Finally, as with previous sections describing AAP obligations, the Final Rule adds a new paragraph to § 30.9, at 30.9(a)(1), describing when sponsors must come into compliance with the obligations specified therein. In short, those who are already sponsors of registered apprenticeships as of the effective date of this rule will have two years to come into compliance with this section. Sponsors who register apprenticeship programs for the first time after the effective date of the rule will have two years from the date of registration to comply with this section.

Paragraph 30.9(b)

Proposed § 30.9 also required a sponsor to retain records of its annual review of personnel practices, and to identify any modifications that the sponsor has made or plans to make as a result of this review. A SWA requested clarification on the proposed § 30.9(b) requirement that program sponsors “include a description of its review.” The commenter stated that the language was unclear as to whether the rule required the sponsor to detail when and how steps were conducted and present its findings, or if the program sponsor was required to publish the procedure used for the review. Generally speaking, the memorialization of the review could include both of these things, but the focus should be on the former—how, when, and which personnel processes were reviewed, as well as any modifications made as a result of this review. As stated above, OA will provide further guidance modeling what an appropriate review would look like under this section, including a model written AAP.

Finally, a commenter requested that the Department remove the proposed § 30.9(b) requirement that sponsors include descriptions of these reviews in their written AAPs, reasoning that personnel processes may need to be revised frequently and should not be tied to AAP review schedules. Furthermore, the commenter argued that these reviews of personnel processes may be difficult for the Registration Agencies to monitor because there would be little consistency among sponsors as to how they perform the review.

As to the first point, we first clarify that not all personnel process revisions need to be retained, but only those made to the program “as a result of its review” required by § 30.9(a), that is, the review for EEO compliance. We note that also this review under § 30.9(a) occurs annually and the schedule for updating the written AAP is less frequent, occurring at each compliance evaluation and then again three years later if there has been no intervening compliance evaluation. As a matter of best practice, we would expect the sponsor to memorialize any changes made to their personnel practice at the time they are being made, but OA will measure compliance by whether the sponsor has memorialized the changes in its written AAP. While updating the written AAP occurs not less than every three years, each update should include the results of the reviews from each year since its last written AAP. As for the point regarding consistency, as stated above,

OA will provide models for what the review should include, which should help to promote some consistency.

Selection of Apprentices (§ 30.10)

Under the existing section covering selection of apprentices, § 30.5, sponsors could 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. Alternative selection methods could include, for example, the use of interviews as one of the factors to be considered in selecting apprentices, pre-apprenticeship programs, “direct entry” programs,⁷⁸ or a combination of two or more selection methods.

Proposed § 30.10 (renumbered due to reorganization of this part) sought to simplify the current regulatory requirements related to procedures used by sponsors to select apprentices to adopt any method for selection of apprentices, 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. Commenters expressed varying views, some general and some specific, on the proposed revisions.

With regard to general comments, a State JATC and an industry association supported the streamlined approach for apprenticeship programs articulated in § 30.10 and stated that the proposed rule would provide greater flexibility to apprenticeship programs in their selection methods. The State JATC argued that the current approach requiring program sponsors to utilize one apprenticeship selection process prevents programs from attracting a broader range of applicants because it does not account for factors like geographic location, wherein one selection method may be suitable for one location, but not another. The JATC reasoned that the “one size fits all”

approach disrupted the administration of intake practices at their training centers and was ineffective at reaching out to potential apprentices. Many commenters further supported the proposed requirement that sponsors’ selection method(s) be facially neutral in terms of race, color, religion, national origin, sex, sexual orientation, age (40 or older), genetic information, and disability (§ 30.10(b)(4)), as well as the requirement that sponsors must evaluate the impact of their selection procedure(s) on race, sex, and ethnic groups (Hispanic or Latino/non-Hispanic), but some requested that gender identity, pregnancy, and caregiver status be added to this list. We decline to do so, for reasons previously provided.

However, several commenters generally preferred the current requirements relating to selection of apprentices because they were specific and descriptive, and expressed concern that the proposed regulations were lacking in this regard and would not encourage or enable apprentice selection procedures that are more equitable than the processes already in use by apprenticeship programs. In addition, several commenters expressed concern that proposed § 30.10 would impose a significant burden upon sponsors. An SWA argued that the proposed regulations would require expenditure of financial and human capital resources to determine if their selection procedures meet the compliance requirements of UGESP, Title I of the ADA, and EEOC regulations. Another State agency expressed concern that the requirement to comply with UGESP regulations may drive away potential sponsors who find the administration of the regulation overly burdensome.

As to the burden concern connected with familiarization of the UGESP, we note that the existing regulations required that sponsors follow the procedures set forth in UGESP when they were selecting on the basis of rank from a pool of eligible applicants or any alternative selection methods using qualification standards.⁷⁹ The proposed regulation was therefore in keeping with the existing regulations in that respect, and thus should not add any additional burden.⁸⁰ Relatedly, with regard to

⁷⁹ See existing 29 CFR 30.5(b)(1), 30.5(b)(4)(B).

⁸⁰ A third selection procedure in the existing regulations, selection from a pool of current employees, did not include a requirement for UGESP compliance, but this is largely because such selections are frequently based on seniority, and there is built into UGESP an exemption for bona fide seniority systems. 41 CFR 60–3.2(C). The fourth

some commenters’ preference for previous selection models, the Final Rule does not prevent sponsors from using the same selection devices they’ve used under the previous regulations if they prefer to do so, so long as these selection devices do not discriminate as specified in this part. An industry association recommended language like this in the regulatory text, but given that references to “the previous edition of CFR 29 part 30” will soon become obsolete, we believe the guidance stated here is sufficient.

Numerous commenters recommended that the Department explicitly state that sponsors are permitted and encouraged to implement a different selection procedure(s) or extend or reopen selection periods if the initial selection procedure or period was not effective in complying with EEO requirements and/or making progress towards affirmative action goals. The proposed rule is broadly worded in order to provide flexibility to sponsors so that they may use the selection method or methods that fit their program, including any of the methods included in the formal rule. Thus clarified, there is no need to add this proposed wording to the rule.

Some commenters addressed direct entry programs as a selection procedure. An industry association expressed support for the proposed rule’s mention of direct entry programs as a potential selection processes, commenting that many of its members preferred this method. An advocacy organization also supported the Department’s express allowance of direct entry programs to apprenticeship selection, stating that it was an effective method for improving inclusion of underrepresented groups. In the NPRM and in this preamble, the Department has underscored that the flexible approach in the proposed § 30.10 would permit sponsors to use direct entry as a selection method, but does not believe that this approach must be explicitly mentioned in the language of the rule above other methods.

One national JATC was concerned that the proposed rule’s treatment of direct entry processes as a selection procedure would require them to discontinue using their direct entry program. It argued that direct entry methods should not be treated as selection procedures. The commenter asserted that although the proposed rule recognized direct entry programs as an acceptable selection procedure, the language in the preamble requiring that selection methods apply “to all applicants for apprenticeship and

selection procedure, random selection, also does lend itself to analysis under UGESP.

⁷⁸ Under this selection method, the application process is waived so that qualified applicants can enter directly into an apprenticeship program, where the individual applicant demonstrates specific education and/or skills previously attained.

apprentices' would result in apprenticeship programs not being able to obtain apprentices from any other source. The commenter stressed that its direct entry apprenticeship program was meant to supplement existing pools of applicants, not to be the sole entry into the apprenticeship program. In a similar vein, an industry association asked the Department to clarify that pre-apprenticeship programs are not required to be an exclusive source of apprentice recruitment, and suggested clarifying language to proposed § 30.10(b)(2) to address this. A State JATC stated that with the increasing potential for non-union apprenticeship programs, union apprenticeship programs should be permitted to employ more than one intake method to ensure that union apprenticeship programs would survive.

We have considered the commenters' points, and have clarified the regulatory text in response. The proposed § 30.10(b)(2) stated that "[t]he selection procedure must be uniformly and consistently applied to all applicants and apprentices." One reading of that language is that sponsors must use only one selection procedure; that was not the intent. The intent, as stated in the NPRM preamble, was to allow sponsors flexibility to use one or more selection procedures, and that the selection procedures must be uniformly and consistently applied to those applicants within each procedure. To clarify this point, the Department has revised "method" and "procedure" to include the plural as appropriate throughout this provision. The Department has also revised § 30.10(b)(2) by adding "within each selection procedure utilized."

A few commenters asked the Department to clarify how sponsors should comply with UGESP requirements. An SWA stated that the inclusion of UGESP and ADA regulations leave program sponsors with no clear idea of what is acceptable. An industry association echoed these comments and suggested that the Department should clarify that apprenticeship qualifications derived from the 29 CFR part 29 rules on apprenticeship standards are consistent with the UGESP. A State agency and an industry association stated that the UGESP regulations are complex and requested clarification on how the requirements would be applied to apprenticeship programs. For example, a State agency stated that 41 CFR part 60-3 requires validation of selection procedures but the proposed rule did not state how this provision would be applied. The commenter also raised a further question suggesting that the

implementation of this requirement to follow the UGSEP procedures could be complicated for group sponsors. The commenter stated that 41 CFR part 60-3 applies to individual employers with Federal contracts, whereas apprenticeship programs may or may not be individual employers. In particular, this commenter said that in the construction trade often sponsors are a joint apprenticeship committee or non-joint committee. The commenter stated that the apprenticeship program sponsors develop the selection procedures and the apprenticeship compliance review is conducted on the sponsor not the individual employer. Therefore, the commenter asserted that the Department's reference to UGESP must be clarified.

As noted above, under the current provisions addressing selection procedures, program sponsors, whether individual or group sponsors, are already required to comply with those regulations under the current part 30. In addition, as clarification, the procedures in 41 CFR part 60-3 are not limited to individual employers with Federal contracts; rather they provide a uniform framework to a variety of entities for the proper use of tests and other procedures. Nonetheless, the Department expects to provide guidance to stakeholders in order to facilitate implementation of the new rule.

Other commenters also encouraged the Department to provide guidance. An advocacy organization suggested that the Department should issue guidance on best practices in selection procedures. The commenter stated that this guidance should include references to linkages with pre-apprenticeship programs as an eligible pool of workers, as well as "analysis of selection procedures, such as relying on interviews or base apprenticeship program selection on a homogeneous pool of current candidates that can reinforce underrepresentation the regulations seek to remedy." An individual commenter suggested that the Department provide uniform guidelines on employee selection using the process that created the Advisory Committee on Apprenticeship's guidance on quality pre-apprenticeship programs. Numerous commenters recommended that the Department establish guidelines for standardizing direct entry into apprenticeships for graduates of pre-apprenticeship programs that adhere to the quality framework to be set out in § 30.2. As stated throughout, the Department anticipates issuing technical assistance guidance in advance of the applicable effective and/or compliance dates of this

rule, and will give strong consideration to incorporating these specific requests.

Numerous advocacy organizations suggested that the regulations should explicitly require that skills requirements, including strength and/or physical abilities tests or standards that are used to screen and/or rank apprenticeship candidates, must be related to and necessary for the actual on-the-job performance requirements and must meet the requirements listed in the current regulations at § 30.5(b)(1)(iii). Some of these commenters reasoned that these tests had sometimes been used to exclude certain groups of applicants. In response, the Department notes that the requirements of current § 30.5(b)(1)(iii) are carried forward by the requirement that the use of the selection procedure comply with the UGESP in 41 CFR part 60-3, as well as the standard non-discrimination obligations set forth in § 30.3.

Finally, some advocacy organizations stated that, if a program sponsor wanted to maintain a selection procedure that resulted in an adverse impact to underrepresented groups, it must demonstrate there is no alternate procedure available to meet the business necessity. This comment is already addressed by the rule, as it generally states the obligations for employers under the UGESP whose selection procedure(s) have resulted in an adverse impact. The Department notes that the term "underrepresented groups" is not necessarily synonymous with "protected groups," under the rule, and clarifies that UGESP applies only to race, sex, and ethnic groups.

Invitation To Self-Identify as an Individual With a Disability (§ 30.11)

The Department proposed to move the language in current § 30.11 entitled "Complaint procedure," to § 30.14, and to add a new § 30.11 entitled "Invitation to Self-Identify as an Individual with a Disability." This section of the NPRM proposed to require sponsors required to maintain an AAP 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 required 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. Proposed § 30.11 also clarified that sponsors would not be permitted to coerce individuals to self-identify, required that sponsors maintain self-identification information in a confidential manner, and emphasized sponsors' continuing responsibility to take affirmative action with respect to known disabilities and to refrain from discriminating against individuals with disabilities.

The Department received a number of comments regarding the requirement to invite self-identification. Many commenters opposed to the requirement argued that applicants or apprentices would not choose to self-identify and that this would result in inaccurate data. For example, unions worried that apprentices and trainees would be reluctant to disclose disabilities, particularly those working in the construction industry where the work often requires certain physical capabilities. These commenters also opposed any penalty that would be applied to sponsors for failing to meet their utilization goal for individuals with disabilities when the failure to reach the goal could be due to apprentices and applicants choosing not to self-identify. A number of other commenters, including SWAs, also questioned the accuracy of the data produced by self-identification and requested clarification on the proper disability eligibility determination procedures, including how apprentices would know if they have an eligible disability and how sponsors can determine if the individual has an eligible disability. One commenter suggested that sponsors be permitted to track and report applicants or apprentices who request and document that they need accommodations for a disability, even if they have not voluntarily self-identified.

The Department is retaining the requirement to invite self-identification in the Final Rule. We concede the possibility that there may be underreporting of individuals with disabilities reporting as such, especially at the beginning when the requirement is new. The Department does not think, however, that this is a sufficient reason to remove the requirement to invite self-identification. While not perfect, the data that will result from this requirement will provide, for the first time, some degree of quantitative data regarding the participation of individuals with disabilities in the sponsor's apprenticeship workforce and applicant pools. This, in turn, should allow the sponsor and the Department

to better identify, monitor, and evaluate the sponsor's recruitment and employment practices with respect to individuals with disabilities. We also believe that the response rate to the invitation to self-identify will increase over time, as people become accustomed to the invitation and workplaces become more welcoming to individuals with disabilities. The use of standardized language issued by the Administrator in the invitation will also reassure applicants that the request is routine and executed pursuant to obligations created by OA, and will hopefully also increase the response rate. Sponsors should also work to develop an inclusive and welcoming culture and provide support for its apprentices and applicants with disabilities. OA will provide technical assistance and guidance regarding methods for increasing participation in the self-identification process.

Additionally, the standardized invitation language contains information to help individuals know if they have, or had, a disability. Sponsors should accept the identification provided by the individual without seeking to further verify the nature of the individual's disability. The standardized language proposed in the NPRM, and adopted in the Final Rule, prescribes a narrow inquiry so as to minimize privacy concerns and the possibility of misuse of disability-related information. The required invitation asks 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 as a result of their disability.

Furthermore, the Department reiterates that failure to meet the utilization goal for individuals with disabilities will not, by itself, result in any violations of this part. Therefore, even if apprentices with disabilities choose not to self-identify, the sponsor would not be subject to any enforcement actions as a result of its underutilization. Again, failure to meet the goals would simply require the sponsor to assess whether impediments to equal opportunity exist in its program. If a sponsor discovers that apprentices are refusing to self-identify, the sponsor could note that as a possible reason for its underutilization, and also attempt to take steps that would encourage apprentices to feel more comfortable self-identifying. We note that OFCCP has published on its Web site a video explaining why job applicants and employees are asked to voluntarily self-identify if they have a

disability under Section 503, the important role that self-identifying plays in ensuring equal employment opportunity for individuals with disabilities, and offering employers the option of disseminating the video to their applicants and employees as guidance to increase self-identification.⁸¹

With regard to the question of sponsors identifying individuals with disabilities who do not self-identify, the Department agrees that it is important that the reporting of disability demographic information be as accurate as possible. The Department therefore believes that it is appropriate to allow sponsors to identify an individual as having a disability for the purposes of § 30.7, if the individual does not voluntarily self-identify when: (1) The disability is obvious (*e.g.*, someone is blind or missing a limb) or (2) the disability is known to the sponsor (*e.g.*, an individual says that he or she has a disability or requests reasonable accommodation that is clearly related to a disability). This is consistent with the approach that OFCCP has used for disability identification in its Section 503 program, as well as the approach used to identifying ethnicity for those who have not disclosed under its Executive Order 11246 program.⁸² The Department believes that this approach strikes the appropriate balance between the privacy concerns of those with disabilities and the need for reporting information to be as accurate as possible. Sponsors may not guess or speculate when identifying an individual as having a disability. Nor may they assume that an individual has a disability because he or she "looks sickly" or behaves in an unusual way. As one commenter suggested, a sponsor may also include individuals who request reasonable accommodations as individuals with disabilities, even if those individuals choose not to self-identify.

Some commenters, including JATCs and a local union, asserted that the proposed § 30.11 requirements would place additional human resources, reporting, and cost burdens on apprenticeship programs and would delay the processing of applications. A State agency recommended that the Department should not require program sponsors to request that individuals self-

⁸¹ See Office of Federal Contract Compliance Programs: Disability Inclusion Begins with You, available at <https://www.dol.gov/ofccp/SelfIdVideo.html> (last accessed May 9, 2016).

⁸² See <http://kb.dol.gov/DOLArticlePage?agency=OFCCP&parentCatValue=Employer&article=ka1i0000000WEq1AAG> (last accessed June 21, 2016).

identify for one year and that the Department should take additional time to work through an implementation strategy for the new requirements. The commenter also stated that additional guidance and technical assistance would be necessary prior to sponsors implementing the requirements in § 30.11.

To ease the burden on sponsors in implementing this provision, the Department is giving sponsors more time to come into compliance with this provision, as detailed below in new paragraph 30.11(h). The Department will provide technical assistance to sponsors during the transition time. As discussed above, the Department is also prescribing the language that sponsors must use when inviting apprentices or applicants to self-identify. Sponsors, therefore, will not need to spend time creating their own self-identification language. The Department also notes that application processing need not be significantly slowed as a result of including the self-identification invitation form. As the Final Rule states that the invitation must be detachable from the application for apprenticeship, the applicant's self-identification form can be reviewed for data analysis purposes at a later time and need not be reviewed in conjunction with the application for apprenticeship.

Paragraph 30.11(a): Pre-Offer

Proposed § 30.11(a) required the sponsor to invite each applicant to voluntarily self-identify as an individual with a disability at the time they apply for or are considered for apprenticeship. Proposed § 30.11(a) further explained that the invitation may be included with the application materials, but must be separable or detachable from the application for apprenticeship and that the sponsor was required to use the language prescribed by the Administrator, pursuant to § 30.11(b).

Multiple commenters expressed concern with the pre-offer invitation, claiming that it conflicted with the ADA and its implementing regulations. One commenter requested that the term "voluntarily" be inserted prior to "inform the sponsor," as is currently the case under Section 30.11(1)(c). A Member of Congress asserted that, despite the EEOC's position that invitations to self-identify as part of an AAP would not violate the ADA, individuals could still pursue litigation against employers under the ADA. A number of commenters, including a company and a State agency, remarked that inquiring about an individual's disability status, particularly at the pre-offer stage, could conflict with state law

as well. An industry association asked how a person's status as an individual with a disability can be used for affirmative action purposes if it cannot be used by hiring managers in the decision-making process.

As detailed in the NPRM, 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. 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 or equal protection for the rights of individuals with disabilities" than does the ADA.⁸³ The OA part 30 rule is one such law. In the course of OFCCP's Section 503 rulemaking, counsel for the EEOC provided a letter stating that OFCCP's pre-offer self-identification process, which is functionally identical to that included in this Final Rule, was permissible under the ADA. That interpretation would apply with equal power to this Rule. Accordingly, the Department adopts § 30.11(a) as proposed.

With regard to the concern that, notwithstanding the legality of this provision, sponsors may face increased discrimination complaints as a result, we do not believe this will present a significant obstacle. While knowledge of the existence of a disability, like knowledge of a person's race, ethnicity, or gender, is a component of an intentional discrimination claim, to find intentional discrimination it must be proven not only that the sponsor knew that a person had a disability but that the sponsor treated the person less favorably because of his or her disability.⁸⁴ We note, moreover, that sponsors have long had knowledge of the disabilities of applicants who have visible disabilities, such as blindness, deafness, or paraplegia, but that the Department has had no means of knowing that such individuals were present in the applicant pool or their experience in the application and

selection process. Requiring sponsors to invite pre-offer self-identification will help fill this void.

The Department points out that, generally, self-identification information should not be provided to interviewing, testing, or hiring officials, as it is confidential information that must be kept separate from regular personnel records. This will help ensure that these officials do not, in fact, have knowledge of which applicants have chosen to self-identify as having a disability. In response to the question regarding how self-identification information can be used for affirmative action purposes if hiring managers cannot use it in the decision-making process, this fundamentally misunderstands the purpose of the data collection. The regulations make clear that selection officials should never base their employment decisions on a protected basis, including an individual's disability status. The purpose of the self-identification and utilization goal is to collect data that will enable the sponsor to assess whether barriers to apprenticeship exist for individuals with disabilities, *e.g.*, a decreasing rate of applications from individuals with disabilities over the years may suggest that further or different outreach and recruitment efforts should be conducted; it is not designed to encourage sponsors to select individuals based on their disability status.

As mentioned above, some commenters claimed that the requirement to invite self-identification could conflict with state laws, but did not indicate any specific provisions of state law that would be problematic. The Department notes that OFCCP's regulations implementing Section 503 of the Rehabilitation Act also require contractors to invite employees and applicants to self-identify as individuals with disabilities, and no contractor has yet raised the issue of a conflicting state law provision. Furthermore, to the extent that any provision of state law did conflict with these regulations, the Final Rule would preempt the state law provision, and would not serve as a defense for failing to comply with this Part.

Proposed § 30.11(a)(2) required that the sponsor invite applicants to self-identify "using the language and manner prescribed by the Administrator and published on the OA Web site." The Department sought comments on the specific language OA proposed to prescribe that the sponsor use when inviting applicants to self-identify at the pre-offer stage. That language was as follows:

⁸³ 29 CFR 1630.1(c)(2).

⁸⁴ In cases where there has been a denial of a reasonable accommodation, the knowledge that comes from a self-identification form provides no additional basis for a complaint, as individuals need to disclose their disability in order to request an accommodation.

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 individuals with disabilities. [42] 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)
 NO, I DON'T HAVE A DISABILITY
 I DON'T WISH TO ANSWER

Your name:

Date:

Many advocacy organizations supported the proposed language regarding the invitation to self-identify because it mirrored OFCCP language used for Federal contractors in the regulations implementing Section 503 of the Rehabilitation Act. Some recommended, however, that the instructions for defining a disability should be clearer and broader. A state

agency also expressed concern that the sponsor may be a committee, rather than an individual employer and that, in that case, the committee may not be the entity extending the bona fide job offer.

The Department believes that the invitation language proposed in the NPRM is sufficiently clear to enable individuals to decide whether or not they have a disability. Additionally, the language states that "Disabilities include, but are not limited to . . .," indicating that conditions other than those listed on the invitation may qualify as a disability. Furthermore, this language is consistent with that used in other Department programs. As stated before, the Department thus adopts the proposed language without change and will make this invitation form available to sponsors. With regard to the question of sponsor structure, as addressed in previous sections where the issue has arisen, sponsors have historically entered into apprenticeship agreements with participating employers that have included provisions that the parties will coordinate to satisfy the obligations of part 30, and we expect this practice to continue. Sponsors should be extending the invitation to self-identify at the point at which apprentices are accepted into the apprenticeship program, even if sponsors are not the ones that would extend ultimate offers of employment to apprentices. For sponsors that are not responsible for selecting the apprentices that participate in this program, the sponsor would need to ensure that its participating employers invited apprentices and applicants for apprenticeship to self-identify at the time the employer reviews and selects the applicant. Sponsors would then be under a continuing duty to remind apprentices that they also have the opportunity to submit their self-identification to the sponsor.

Lastly, the reference to inviting self-identification as part of a sponsor's "general duty to engage in affirmative action" is amended to clarify that the requirement to invite apprentices and applicants to self-identify only applies to sponsors that are required to maintain an AAP, and that inviting self-identification is part of their AAP requirements. Inviting self-identification is not required as part of the sponsor's general duty to engage in affirmative action pursuant to 30.3(b), and sponsors that do not maintain an AAP should not invite apprentices to self-identify as individuals with disabilities.

Paragraph 30.11(b): Post Offer

Proposed § 30.11(b)(1) required 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. This post-offer invitation to self-identify is 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) again required that the sponsor invite self-identification using the language and manner prescribed by the Administrator and published on the OA Web site.

The Department did not receive any specific comments on this paragraph that were not already discussed. The Department therefore adopts proposed § 30.11(b) as proposed.

Paragraph 30.11(c): Apprentices

In addition to the pre- and post-offer invitations to self-identify, proposed § 30.11(c) required 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.

While some commenters supported the requirement to remind apprentices that they can update their disability status throughout the apprenticeship program, other sponsors questioned whether apprentices would falsely identify as having a disability because they simply do not possess the required skill for the trade and want to complete the program. These comments appear to misconstrue the proposal and/or the relevant law. At the outset, the Department notes that self-identifying as an individual with a disability does not entitle someone to preferential selection—indeed, that is unlawful under the rule—nor does it automatically entitle someone to an accommodation to stay in the program. It is a well-established principle of disability law that if the individual is unable to perform the essential functions of a position with or without reasonable accommodation, the individual is not entitled to remain in that position.

The Department is revising paragraph (c) to eliminate the requirement that sponsors must extend an invitation to those in its apprenticeship program "each time an apprentice is enrolled into an apprenticeship program." Upon

reflection, we believe this was largely redundant, given that the one-time invitation to the apprenticeship workforce during the first year of compliance, coupled with the invitation to all those that receive an offer to join the program, should ensure that everyone is provided the self-identification form to complete and return. The one-time self-ID solicitation for existing apprentices is set forth in paragraph (c)(1) of the new rule, and the time for compliance with this one-time self-ID invitation is set forth in new paragraph (h).

Paragraph 30.11(d)

Proposed § 30.11(d) emphasized that the sponsor is prohibited from compelling or coercing individuals to self-identify. A commenter had expressed concern that the proposed rule could cause sponsors to “encourage” or pressure applicants and apprentices to self-identify in order to meet the utilization goal. The Department adopts § 30.11(d) as proposed to make clear that all self-identifications should be submitted on a strictly voluntary basis and that sponsors are not permitted to coerce individuals to self-identify.

Paragraph 30.11(e)

Proposed § 30.11(e) emphasized that all information regarding self-identification as an individual with a disability must be kept confidential and maintained in a data analysis file in accordance with proposed § 30.12, and may not be included in an individual’s personnel file. Proposed § 30.11(e) also states that self-identification information must be provided to the Registration Agency upon request and that the information may only be used in accordance with this part.

Many commenters, including various State agencies and JATCs, expressed concerns regarding the interaction between this provision and the privacy protections afforded by the Health Insurance Portability and Accountability Act (HIPAA). Other commenters stated that the requirement to develop systems to maintain confidentiality and segregate information regarding self-identification from the actual hiring process may disproportionately burden small sponsors. This commenter suggested that employers would need technical assistance from Registration Agencies to comply with the proposed requirement to invite applicants to self-identify a disability.

The Department adopts proposed § 30.11(e) without change, and notes that it will provide assistance to

sponsors in complying with this part. The data analysis file need not be complex, but simply provide a method by which the sponsor can retain and track self-identification information in the aggregate, rather than as connected to each apprentice’s personnel file. Maintaining the disability demographic information in a file separate from each apprentice’s personnel file will also make it easier for sponsors to provide the self-identification information to OA when requested to do so.

In response to the concerns over sharing the self-identification information with the Registration Agency, the Department notes that HIPAA privacy requirements generally do not apply to employers in their capacity as employers.⁸⁵ Rather, the privacy standards of HIPAA only apply to covered entities under the statute, which are generally limited to health plans, health care clearinghouses, health care providers who transmit health information in electronic form, and their business associates. The regulations implementing HIPAA also exclude employment records from the definition of “protected health information.”⁸⁶ While HIPAA may not apply to this self-identification information, sponsors are obligated, under this part, to maintain this information in a confidential manner. This requirement does not prevent the sponsor from providing this information to the Registration Agency when requested.

Paragraph 30.11(f)

Proposed § 30.11(f) stated 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.

Regarding proposed § 30.11(f), an industry association requested that 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.” The Department included paragraph (f) to remind sponsors that they are under a continuing obligation to provide a reasonable accommodation to those individuals with a known disability, even if the individual chooses not to self-identify and even if the individual does not specifically request a reasonable accommodation.

⁸⁵ Public Law 104–191, sec. 1172 (a).

⁸⁶ 45 CFR 160.10.

Paragraph 30.11(g)

Proposed § 30.11(g) clarified that nothing in this proposed section may relieve the sponsor from liability for discrimination in violation of this part. The Department did not receive any comments on this specific provision, and so adopts § 30.11(g) as proposed.

Paragraph 30.11(h): Compliance Dates

As discussed above, in response to those comments expressing concern over the burden associated with complying with the self-identification requirements of this section, the Department is extending the time in which both current and new sponsors must come into compliance with this section. Paragraph (h) sets a compliance date two years after the effective date of the Final Rule for current sponsors. This means that the requirement to invite apprentices and applicants to self-identify will not apply until two years after the effective date of the Final Rule. Current sponsors will also have up to two years from the effective date in which to invite each of its current apprentices to voluntarily inform the sponsor whether the apprentice believes that he or she is an individual with a disability. The sponsor would be expected to complete a workforce analysis for individuals with disabilities pursuant to § 30.7(d)(2) as soon as it has completed this invitation to current apprentices, as this will provide some data upon which to base the analysis. Subsequent workforce analyses will be based on the pre-offer and post-offer self-identification data, as well as any changes to self-identification status that have been made as a result of the annual reminder per paragraph (c) of this section.

New sponsors will follow a similar timetable, but the two years will be based on the date their program is registered rather than the effective date of the rule. During the program’s provisional review conducted within one year of registration, the Registration Agency will provide further guidance on the AAP requirements for individuals with disabilities so that when the compliance date arrives the new sponsor is well equipped to take the necessary steps to satisfy its obligations.

Recordkeeping [§ 30.12]

Existing § 30.8 required sponsors to keep records for each applicant, including a summary of the qualifications of each applicant, the basis for evaluation and for selection or rejection of each applicant, the records pertaining to interviews of applicants,

the original application for each applicant, and other data. The rule states that records pertaining to individual applicants, selected or rejected, shall be maintained in such manner as to permit identification of minority and female (minority and nonminority) participants. Sponsors were also required, under the existing regulations, to retain a statement of its AAP required by § 30.4 and review their AAPs annually and update them where necessary, including the goals and timetables. Sponsors were also required to maintain evidence that their qualification standards have been validated in accordance with the requirements set forth in § 30.5(b), and maintain records for 5 years and make them available upon request to the Department or other authorized representative. The NPRM proposed to remove the existing § 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, and reinsert a new section on recordkeeping in its place.

Proposed § 30.12 prescribed the recordkeeping requirements that would apply to registered apprenticeship program sponsors, and concluded that a sponsor's failure to comply with these requirements would constitute noncompliance with the part 30 regulations. Proposed § 30.12 retained, in large part, the recordkeeping requirements currently in § 30.8, subject to basic editing, and updated 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.⁸⁷ Proposed § 30.12, therefore, included 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.

⁸⁷ 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.

In addition, proposed § 30.12 removed the reference to the recordkeeping requirements of State Apprenticeship Councils. The Department proposed 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.

Paragraph 30.12(a): General Obligation

Proposed paragraph (a) of Proposed § 30.12 required sponsors to collect data and maintain records as the Registration Agency finds necessary to determine whether the sponsor has complied or is complying with the requirements of this part. Proposed § 30.12(a)(3), in particular, required the sponsor to collect 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), 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.

A national union and a national JATC commented that proposed § 30.12(a)(3) includes requirements for a sponsor to retain information that is inapplicable to the relationship between a JATC and a registered apprentice, including information related to promotion, demotion, termination, and layoff. The commenters urged the Department to revise this section as it applies to JATCs so that only those records that are applicable to the relationship between a JATC and its registered apprentices must be maintained. These commenters said that some of the terms that are inapplicable to JATCs may be applicable for programs administered solely by one or more employers since employer-sponsors have direct control over both an apprentice's progression through a program and advancement on the job. The commenters suggested that separate recordkeeping requirements for JATCs and employer-sponsors may be necessary to ensure that employer-sponsors retain records that are pertinent to both roles.

The Department recognizes the distinction between group sponsors and their member employers, as well as JATC sponsors' concerns about their responsibilities and how their duties to the apprentice are distinct from those of employers. However, the information required in § 30.12(a)(3) is important to

determining the relative success of a sponsor's AAP. The language in § 30.12(a)(3) provides that sponsors must collect and maintain records relative to the operation of the apprenticeship program, and the Department will not require sponsors to record information that they do not have access to. The Department anticipates that JATCs will be able to collect this information from partner employers. We note that similar recordkeeping obligations were prescribed under the existing regulations and applied to sponsors generally. As has been detailed before, it is common practice currently for sponsors and their participating employers to enter into agreements detailing obligations and seeking the employers' cooperation in the sponsor's compliance with part 30. We expect that this will continue under this Final Rule.

An individual commenter suggested that summary information about gender, ethnicity, and disability status should be available to interested apprentices and journeyworkers in the relevant trade at no cost to them, and sought to add new paragraphs under §§ 30.12(a) and 30.12(f) seeking this data in a format accessible to apprentices and journeyworkers. While the information provided on a chart summarizing demographics of apprenticeship programs may be useful, the Department does not feel that creating an additional requirement for apprenticeship programs is necessary at this time. We note further that publication of this data could raise privacy, confidentiality, and other legal issues.

Paragraph 30.12(b): Sponsor Identification of Record

Proposed 30.12(b) stated that for any record that the sponsor maintains pursuant to the regulation, the sponsor must be able to identify the race, sex, ethnicity, and, when known, the disability status of each apprentice and supply this information upon request to the Registration Agency. When possible, the sponsor should identify the race, sex, ethnicity, and disability status of each applicant and supply this information upon request to the Registration Agency.

A State Department of Labor and an industry association expressed concern that current § 29.7(l) appears to be inconsistent with proposed § 30.12(b) in that § 29.7(l) requires a request for demographic data while proposed § 30.12(b) requires that sponsors be able to identify this data. The industry association requested clarification about how a program should maintain the information about race, sex, ethnicity, and disability status required in

proposed § 30.12(b) in cases where the apprentice refuses to provide the requested information. The industry association said that the § 30.12(b) language should be amended to clarify that the sponsor should be required to make a good faith effort to obtain the described information. A State Department of Labor similarly requested clarification of § 30.12(b) to ensure that sponsors must identify the demographics of their apprentices only when it is available.

At the outset, we note that sponsors address this issue already, because the existing regulations require them to conduct a workforce analysis establishing the race/sex/ethnicity makeup of its apprenticeship program in order to determine whether they are underutilized. To provide greater guidance on how to do so, the NPRM proposed the language in § 30.12(b), which is identical to that used in OFCCP's program at 41 CFR 60–1.12(c). This was purposeful, in order to set forth similar standards across AAPs to the extent possible, which would likely be more familiar to those in the employer community. In interpreting its regulation, OFCCP has stated the following:

[We have] not mandated a particular method of collecting the information. Self-identification is the most reliable method and preferred method for compiling information about a person's gender, race and ethnicity. Contractors are strongly encouraged to rely on employee self-identification to obtain this information. Visual observation is an acceptable method for identifying demographic data, although it may not be reliable in every instance. If self-identification is not feasible, post-employment records or visual observation may be used to obtain this information. Contractors should not guess or assume the gender, race or ethnicity of an applicant or employee. . . . OFCCP would not hold a contractor responsible for applicant data when the applicant declines to self-identify and there are no other acceptable methods of obtaining this information.⁸⁸

OA interprets the NPRM consistent with this interpretation. It does not mandate any particular collection method but notes with favor self-identification, allowing that sponsors may record the data by visual observation if there is a factual basis for doing so. Further, it will not hold sponsors responsible when certain documents cannot be identified by protected category if that information has not been provided or cannot otherwise be easily ascertained.

An advocacy organization urged the Department to amend the language at § 30.12(b) to require programs to identify the age of qualified applicants or apprentices so that patterns of age discrimination can be detected. We decline to require this. Generally speaking, data collection is sought in connection with a sponsor's AAP, and the part 30 AAP is limited to race, sex, ethnicity, and disability.

Paragraph 30.12(c): Affirmative Action Programs

Proposed paragraph 30.12 required that sponsors required to develop and maintain an AAP under § 30.4 must retain that written AAP and documentation of any efforts required by § 30.8. We note that most sections of the regulations comprising the AAP obligations have their own recordkeeping requirements that must be complied with. However, to ensure a broad overarching recordkeeping obligation, the proposed § 30.12(c) is revised to simply state that the AAP recordkeeping obligations applies to each of the component parts of the AAP.

Paragraph 30.12(d): Maintenance of Records

Proposed § 30.12(d) decreased the amount of time that sponsors are required to keep documentation from five to three years. An SWA suggested that the Department retain the current requirement that sponsors maintain records for 5 years, reasoning that under the proposal a sponsor that has a 4-year program would have the ability to discard an apprenticeship agreement before the apprentice leaves the program. Alternatively, this commenter suggested that the Department revise the requirement to retain records to align with the entire length of the apprenticeship program, which the commenter said is usually 4 years. An individual commenter recommended that the Department require records be kept for an additional amount of time after an apprentice's term has ended so that data is available for evaluations and tracking a sponsor's progress. The commenter expressed concern that recordkeeping could be disrupted by personnel changes or economic changes within a 3-year span and said that this could lead to incomplete records. In contrast, an industry association remarked that the amount of time sponsors are required to retain records should be further reduced to 2 years, reasoning that this would align with other labor laws already in place. This commenter also suggested that the rule specify the type of records to be retained.

Upon review of the comments, the Department has decided to revert to the existing requirement that records be maintained for 5 years. While the Department sought to decrease the time period for document retention in an effort to decrease burden, we believe the concerns raised about a document retention period that is shorter than the normal compliance review cycle, which is approximately 5 years, would be problematic, particularly given that under the Final Rule utilization analyses are to be performed concordant with sponsors' compliance review cycle and with significant input from the Registration Agency.

Paragraph 30.12(e): Confidentiality and Use of Medical Information

Proposed § 30.12(e) provided 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, and that such information must not be used for any purpose inconsistent with part 30.

Some commenters expressed concerns with proposed § 30.12(e). An industry association suggested that joint apprenticeship programs will need to develop and implement safeguards to ensure the confidentiality of medical records. An SAA expressed concern that developing systems to maintain confidentiality and segregate information regarding self-identification from the actual hiring process may disproportionately burden small entities or sponsors that do not have highly-developed human resource systems or personnel processes. And several commenters requested further guidance on how to comply with the proposed requirement.

We addressed many similar concerns in the discussion of § 30.11, above. As stated there, OA plans to provide guidance materials to sponsors regarding their recordkeeping responsibilities and ensuring the confidentiality of employee records.

Some commenters said that there is inconsistent terminology used in part 29 and part 30 to describe advancement of an apprentice through a program. The commenters remarked that the term "progression" is used in part 29 whereas "promotion" is used in part 30. These commenters also stated that there are discrepancies between the use of the terms "suspension" and "cancellation" in part 29 and "demotion" and "termination" in part 30. The commenters remarked that the term "transfer" in part 29 means transfer

⁸⁸ <http://kb.dol.gov/DOLArticlePage?agency=OFCCP&parentCatValue=Employer&article=ka1i000000WEq1AAG> (last accessed May 9, 2016).

from one program to another instead of from one job to another.

The Department has reviewed the language and does not believe further clarifying regulatory text is necessary. Each of the terms raised above in part 30 has specific significance in the equal employment opportunity context distinguishing them from how they or similar terms are used in part 29. For instance, “suspension” and “cancellation” in part 29 refer to actions taken against the apprenticeship program; “demotion” and “termination” in part 30 are describing personnel actions taken against an apprentice that could potentially be discriminatory if based on a protected basis.

Paragraph 30.12(f): Access to Records

Proposed § 30.12(f) set forth the obligations of sponsors to provide access to records for the purpose of conducting compliance reviews and investigations of complaints. We received no comments specific to this section not addressed elsewhere, so we adopt the proposed paragraph as § 30.12(f) in the Final Rule.

Equal Employment Opportunity Compliance Reviews [§ 30.13]

The NPRM sought to clarify exactly what is intended by EEO compliance reviews, with more specific accountabilities articulated for the sponsor and for the Registration Agency. Thus, the proposed rule provided a stand-alone § 30.13 devoted to EEO compliance reviews, as opposed to the existing regulation’s § 30.9 which addressed compliance reviews of all types. EEO compliance reviews are to be conducted along with overall program performance reviews. There is intended to be uniformity in EEO compliance reviews across Registered Apprenticeship programs and across Registration Agencies. The proposed rule outlined how compliance reviews would be conducted, how sponsors would be notified of compliance review findings, how sponsors can come into compliance if there is a finding of a violation, and when enforcement actions may occur.

Paragraph 30.13(a): Conduct of Compliance Reviews

In paragraph (a), the proposed rule sets forth that the Registration Agency would regularly conduct EEO compliance reviews to determine if the sponsor was in compliance with part 30, and will also conduct EEO compliance reviews when circumstances so warrant. It further detailed the variety of forms compliance reviews might take, including off-site reviews of records,

desk audits of records submitted to the Registration Agency, and on-site reviews at a sponsor’s establishment involving document review and interviews with relevant personnel.

Commenters expressed concern about what exactly “regularly” means in terms of frequency of conducting reviews and/or audits. There are no pre-set timelines for compliance reviews, and the review cycle will vary by the Registration Agency. Historically in states administered by OA, as a general matter reviews have been conducted approximately every five years during a program’s existence. There is somewhat more variance in states where apprenticeship is administered by an SAA. One commenter urged OA, once the regulation is adopted, to disseminate a circular detailing the minimum requirements for all EEO compliance reviews and “audits.” OA currently has a checklist of questions and protocols that can be sent to the sponsor before a compliance review. OA will continue to provide such technical assistance on EEO compliance reviews, but will take the comment under advisement in considering further guidance in the implementation of this rule.

Paragraph 30.13(b): Notification of Compliance Review Findings

The proposed rule provided that Registration Agencies would provide a Notice of Compliance Review Findings within 45 days of completing the review. If the review uncovered deficiencies in part 30 compliance, this Notice would identify them, how they could be remedied, the timeframe for doing such remedying, and specifying that failure to do so could result in an enforcement action. The overall intent of this proposed text is that increased specificity would again provide for greater consistency and standardization of procedures across the National Registered Apprenticeship System. We did not receive any specific comments for this provision, so we retain the proposed language in the Final Rule.

Paragraph 30.13(c): Compliance

The proposed § 30.13(c) set forth the next step in the compliance review process: When a Notice indicated deficiencies in compliance, the requirement that a sponsor must, within 30 business days, implement a compliance action plan. This plan included four specific provisions: A commitment to correct the deficiency, a listing of the actions that will be taken, how long it will take, and the name of the person responsible. Assuming these steps are undertaken, the sponsor would be considered in compliance.

There were a number of comments regarding this paragraph (c) proposed text. An SAA commented that the 30 business days for sponsors to develop an effective plan to address EEO compliance deficiencies did not provide enough time. This SAA suggested that sponsors should be given 30 business days to submit rebuttal arguments to the Registration Agency, and that the SAA should be given 30 days to respond to the rebuttal argument in writing. If the findings of noncompliance were upheld after the opportunity to contest allegations, this SAA recommended that the sponsor would then have 30 days to submit a remediation plan.

In response to these comments, we have modified the Final Rule in two ways. First, the Final Rule states that within 30 days the sponsor must either implement a compliance action or provide a written response responding to the specific violation(s) cited by the Registration Agency within 30 days. This latter option addresses commenters’ suggestions for an opportunity to respond to allegations. If, after reviewing the response, the Registration Agency upholds the findings of noncompliance, the sponsor then has 30 days to submit a remediation plan. Second, the Final Rule provides that the 30 day period may be extended for another 30 days by the Registration Agency for good cause shown. We note that this only applies to the original 30 day period; if the sponsor submits a rebuttal which the Registration Agency then denies, the Rule does not provide for an extension of the resulting 30 day period to come into compliance.

One advocacy organizational commenter suggested that sponsors in need of a compliance action plan should be provided with technical assistance to help rectify the situation: Specifically, a list of reliable technical assistance providers, as well as resources and materials to include in the design, development, and implementation of the compliance action plan (for example, resources developed via the Women in Apprenticeship and Nontraditional Occupations program). In particular, for sponsors falling short of EEO goals, this commenter recommended that the DOL provide a list of tradeswomen organizations for purposes of technical assistance. This type of technical assistance is already a part of Registration Agencies’ compliance review process; we will continue to provide this assistance, as resources permit, to assist in bringing sponsors into EEO compliance.

Several advocacy organizations commented that sponsors found to have

deficiencies need more attention and resources devoted to rectifying their situations, either through more rigorous EEO obligations or having compliance results published in a national registry for additional visibility. Some commenters went specifically further and suggested that the DOL should require the Registration Agency to evaluate a sponsor's compliance action plan for effectiveness "regularly" until the sponsor attains the plan goals. The Department acknowledges the comment, but declines to add these measures at this time. We believe the enhancements announced in this Final Rule will increase the efficacy of sponsor EEO and affirmative action efforts. Further, the Registration Agency's focus historically has been on a technical assistance model, helping sponsors succeed and come into compliance wherever possible, rather than a more punitive approach. We do note that for programs that will not take corrective action to cure violations, the Registration Agency retains the authority to deregister such programs.

Some commenters suggested that the Department include completion rates as a factor when evaluating whether a sponsor is making a good faith effort to comply with part 30 requirements, reasoning that completion rates are an important benchmark in assessing economic advancement of groups traditionally underrepresented in registered apprenticeship programs. As discussed in § 30.8 above, the Department recognizes the importance of retention activities in building greater diversity within apprenticeship programs, and has included some options for addressing retention issues in § 30.8(b).

Paragraph 30.13(d): Enforcement Actions

Proposed § 30.13(d) specified that any sponsor that fails to implement its compliance action plan within the specified timeframes may be subject to an enforcement action under proposed § 30.15. One commenter suggested that the word "may be subject" be replaced by "must be subject," to help underscore the need to enforce the regulation. The Department has reviewed the comment and declines to adopt the suggestion, as it would be inconsistent with current practice and eliminate certain flexibilities that may be helpful in a given matter.

Complaints [§ 30.14]

The Department proposed moving the existing § 30.14 entitled "Reinstatement of program registration" to § 30.16. In its place, the NPRM proposed a section

devoted to complaint processing and handling, borrowed in part from the existing § 30.11, with additional revisions to improve readability and clarify requirements of program sponsors and Registration Agencies for addressing complaints. For instance, proposed § 30.14 incorporated 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. Proposed § 30.14 deleted the provisions concerning private review bodies in the current part 30, at § 30.11(a) and (b). Through feedback received prior to the publication of the NPRM 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 eliminated the use of private review bodies.

Paragraph 30.14(a): Requirements for Individuals Filing Complaints

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.

Relating to the proposed § 30.14(a) requirements for individuals filing complaints, a number of comments suggested ways to broaden the procedure for filing complaints in order to increase its potential as an avenue of protecting the rights of apprentices. One commenter made the suggestion to allow journeyworkers or higher status workers to file complaints on behalf of apprentices, as it was believed that apprentices are not well positioned in the workplace hierarchy to file a complaint without fear of risking their job or personal safety. Similarly, another urged the ability to file anonymous complaints. Many commenters recommended that the Department establish opportunities for third party complaints from stakeholder organizations (*i.e.*, pre-apprenticeship programs and other referral agencies) challenging policies or practices that result in exclusionary outcomes for apprentices and provide suggested remedial actions. Finally, a commenter suggested a number of suggested changes to complaint procedures, including required onsite diversity and

compliance staff who are able to communicate with apprentices, gather feedback, identify areas of concern, and ultimately refer repeat offenders for training or additional counseling; dual-path complaint options so complaints are forwarded to a neutral party (to address situations in which the Registration Agency may not be perceived as neutral); and expansion of the complaint procedure window to 300 days (in line with EEOC regulations when a State law prohibits the discrimination on the same basis).

The Department recognizes that its primary objective is to safeguard the welfare of apprentices, and wishes to have as robust and effective a complaint procedure in order to effectuate the protections of this part. With regard to third-party complaints, either by higher ranking employees or stakeholder groups, we believe the NPRM already provided such mechanisms. The proposed rule allowed for individual complaints filed "through an authorized representative;" these parties could satisfy that role. Further, the proposed regulations in § 30.13 provide that the Registration Agency "will also conduct EEO compliance review when circumstances so warrant." If the Registration Agency receives specific evidence from a third party that a violation of part 30 has occurred, that could be a circumstance warranting such a compliance review. With regard to the question of anonymous complaints, the regulations are clear that, at least at some juncture prior to perfecting a complaint, the identity of the complainant must be made known to the Registration Agency so that it can furnish relief to the appropriate person(s). We finally note that, assuming the sponsor or employer that has discriminated is covered by EEOC's jurisdiction, apprentices may file complaints directly with the EEOC if they so choose. These entities are required to post "EEO is the Law" posters in their workplace which would provide information on how to file complaints with the EEOC. To clarify this, we have updated the language in the notice poster to indicate that apprentices may also file complaints with Federal, state, and local agencies assuming they have jurisdiction to review the sponsor and/or employer.

As for the filing period, we agree with the comment and extend the filing period to 300 days. As the commenter notes, this matches the statute of limitations for filing with the EEOC in all but the few "non-deferral" states that do not have their own State employment discrimination law.

In order to further effectuate the complaint process, the Department plans to issue guidance that sponsors can use to inform apprentices about their rights and the process for filing complaints in the course of the periodic orientation sessions set forth in § 30.3(b)(2)(iii).

The Final Rule retains § 30.14(a) as proposed with one revision—§ 30.14(a)(1) of the Final rule specifically lists retaliation as a basis on which individuals may file complaints. Retaliation was specifically prohibited in the proposed § 30.17, but it was inadvertently omitted as a basis upon which individuals could file complaints.

Paragraph 30.14(b): Requirements of Sponsors Relating to Complaints

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). The Department received no comments specific to this section not addressed elsewhere, and thus retains the paragraph in the Final Rule as proposed.

Paragraph 30.14(c): Requirements of the Registration Agency Relating to Complaints

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.

Proposed § 30.14(c)(4) would allow an SAA to adopt 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.

An SWA requested clarification as to whether the failure of SAAs to meet deadlines under § 30.14(c)(1) for conducting and reporting an investigation would lead to the sponsor being absolved. The commenter expressed concern that some complaints are impossible to analyze or resolve in the mandated time frame. Regarding the proposed § 30.14(c)(2) directive that, when a complaint investigation indicates a violation of nondiscrimination requirements, a "Registration Agency must resolve the matter quickly and informally whenever possible," this commenter requested clarification as to what it would mean to resolve a complaint informally. The Department agrees with this comment, noting that some complaints, depending on the facts and various other circumstances, may take longer to complete than the time proposed in the NPRM. Accordingly, paragraph 30.14(c) is revised to redact the specific timetables for Registration Agency completion of the various steps, and instead includes language similar to that suggested by the commenter that Registration Agencies will conduct its investigation as expeditiously as possible. Additionally, the Final Rule revises 30.14(c)(2) to state that Registration Agencies "should" attempt to resolve matters "at the Registration Agency level" and quickly whenever "appropriate," rather than "must" resolve them "informally" and when "possible," respectively. This is meant to communicate three things: First, that informal resolution of some matters, such as those raising particularly egregious violations, may not be appropriate; second, that the term "informally" can be interpreted in ways other than intended, which was to signify before referral to a federal or state equal opportunity agency; and third, for those matters where Registration Agency-level resolution may be appropriate, a quick resolution is desirable but not at the expense of arriving at one that effectively addresses the underlying problem. Toward that end, Registration Agencies should pursue resolutions that not only attempt to remedy the individual complainant, but those that include broader

programmatic relief—such as trainings, information sessions, or other modifications to personnel policies and practices—that would prevent the issue from recurring when appropriate.

A State Department of Labor expressed support for allowing Registration Agencies to maintain complaint review procedures that are already in place. This Registration Agency said that it currently requires discrimination complaints be referred for review by the State Division of Human Rights or a private review body established by a sponsor, and requested clarification as to whether or not it could continue to do so by having its complaint review procedure approved by the Administrator if it is not already permitted by the proposed rule at § 30.14(c)(3) without such approval. More broadly, this commenter remarked that the expertise in anti-discrimination laws and regulations necessary for ensuring compliance with the § 30.3 requirements is beyond the scope of a Registration Agency's role. The agency suggested that States should defer to EEO experts and provide assistance as a referral body to the proper regulating agency. In addition, the commenter warned that requiring Registration Agencies to assume responsibility for enforcement of laws and regulations already enforced by other entities would be duplicative and not cost-effective. This commenter recommended that the Department clarify or revise the regulation to permit complaints of discrimination filed with a Registration Agency to be referred to the proper oversight agency with jurisdiction over the complaint area.

To address these issues, the Final Rule builds in flexibility to adopt complaint review procedures for discrimination complaints, provided that they are approved by the Administrator, and the rule also allows the Registration Agency the discretion to refer matters to other agencies, including the EEOC or State Fair Employment Practices Agency, that may be more appropriate for a given case. Accordingly, we believe the rule offers sufficient flexibility as proposed and we retain it as written in the Final Rule.

Finally, an individual commenter recommended that each apprenticeship Registration Agency should have a designated contact person to handle discrimination complaints related to hiring and training, asserting that this is a normal function in other education and employment entities. We note that the NPRM included a requirement that the notice of rights "must include the address, phone number, and other contact information for the Registration

Agency that will receive and investigate complaints filed under this part,” and this is retained in the Final Rule.

Enforcement Actions [§ 30.15]

The Department proposed to revise current § 30.15 entitled “State Apprenticeship Councils” by moving that language to § 30.18 and incorporating provisions similar to those in the existing § 30.13, entitled “Sanctions,” into the proposed § 30.15. The existing § 30.13 stated 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.

In the NPRM, the Department proposed to change the title of § 30.15, to “Enforcement actions,” in order to demonstrate the Department’s emphasis on enforcing regulations governing discrimination in apprenticeship. Second, we proposed to replace “Department,” as used throughout this section, 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) introduced 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. Suspension pursuant to proposed § 30.15(b) was intended as a temporary, remedial measure to spur return to compliance with the proposed part 30 regulations; it was not intended to be punitive. If a sponsor had not taken the necessary corrective action within 30 days of receiving notice of suspension, the Registration Agency would initiate de-registration 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. And 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.

Many commenters were concerned about punitive actions being taken against sponsors without the Registration Agency having explicitly defined criteria about how the judgment would be made or laying out the exact penalty structure. The continuum of technical assistance to punitive action was a source of concern and confusion for at least one commenter.

There were a significant number of comments regarding the Registration Agency’s ability to “suspend the sponsor’s right to register new apprentices” in § 30.15(b). Construction industry related entities (union and non-union) were particularly interested in this text. Although there was some commenter support for the “proposal to allow temporary suspension rather than program cancellations in the event of a violation,” other commenters expressed concern that the language could result in “damage” to Registered Apprenticeship training programs because of the Registration Agency suspension ability. Due process concerns, particularly related to apprentice suspension, were raised by a number of commenters. For example, some national unions noted that this proposed sanction is inconsistent with part 29, which only mentions deregistration as a sanction, not suspension of apprentices. Union commenters wanted to make clear that due process rights, including notice, hearing, and a written decision by the Secretary of Labor, must be afforded to a sponsor. There was also concern that the proposal contained “no durational limit” on the suspensions, with a commenter conclusion that “adoption of administrative hearing procedures such as those used in deregistration would address the issues discussed.”

As stated at the outset, the option of suspending a sponsor’s right to register new apprentices was not intended as a punitive measure, but rather as an intermediate step that Registration Agencies could take in an attempt to persuade sponsors to remedy violations of part 30 before taking the ultimate action to deregister the program. The proposed suspension afforded sponsors notice, in that it required a written notification from the Registration Agency of the specific violation(s) and allowed 30 days for the sponsor to address the violation before any action would be taken. It was also limited in duration; if the sponsor did not address the violation within 30 days of the suspension, the suspension would end with the initiation of formal deregistration proceedings, where a hearing is afforded. In order to further address the comments raised, however,

the Final Rule includes additional steps wherein, upon being notified of a violation, rather than requiring compliance within 30 days, the sponsor may submit a response to the notice of violation within 30 days which the Registration Agency will consider. If the Registration Agency upholds its initial determination, the sponsor has 30 days from notification of this decision to implement a compliance plan, or suspension proceedings may ensue. This opportunity to respond, in conjunction with the notice of violation and the limited duration of the suspension, affords adequate process rights to sponsors. Moreover, if the Registration Agency does not institute proceedings to deregister the suspended program within 45 days of the start of the suspension, the suspension is then lifted. The Department emphasizes, though, that a Registration Agency will work with all program sponsors prior to instituting any deregistration proceedings to offer technical assistance and attempt to bring the sponsor into compliance. This process will involve active communication between the sponsor and the Registration Agency, and a sponsor that disagrees with the Registration Agency’s findings regarding its compliance should bring that to the Registration Agency’s attention. The Department reiterates that enforcement is a last resort for non-complying sponsors.

Finally, several national unions warned about difficulty in enforcement due to a “lack of clarity as to scope and applications of duties of the program sponsor to other entities it owns and controls and to subcontractors,” a particular concern expected in the construction industry. These commenters want to see consistency in enforcement activity with that of the OFCCP in order to ensure a “consistent regulatory scheme,” regardless of whether a sponsor is operating under Federal contracting regulations or under the Registered Apprenticeship affirmative action regulations. This issue has been addressed in previous sections; the sponsor is ultimately responsible for maintaining an apprenticeship program that complies with part 30, which has historically included agreements between the sponsor and participating employers to ensure that all elements of the apprenticeship program are operating in accordance with these regulations.

Reinstatement of Program Registration [§ 30.16]

The NPRM removed the existing § 30.16, entitled “Hearings.” 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. The existing § 30.14 stated that any apprenticeship program that had 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 was 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. Accordingly, the proposal provides that requests for reinstatement must be filed with and decided by the Registration Agency. The Department received no comments associated with this issue.

Intimidation and Retaliation Prohibited [§ 30.17]

The existing § 30.17 stated 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 revised this language to state 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.

An advocacy organization recommended that the Department include measures that would protect from retaliation those who help educate fellow program participants about the regulations and those who bring forward complaints or concerns.

The proposed language in § 30.17 prohibited discrimination and retaliation against “any individual” who files a complaint or opposes a practice prohibited by this regulation, and this language is retained in the Final Rule. This includes program participants and anyone else who brings forward complaints or concerns. As for specific scenarios that raise the question of whether protected activity has been undertaken such as the one proposed, we note that it is often a fact-based

inquiry and we will follow relevant title VII case law and interpretative guidance in analyzing such claims. The Final Rule does revise slightly paragraphs (a) and (b) to clarify the intent that it is unlawful for a participant to be retaliated against by anyone connected with the apprenticeship program.

State Apprenticeship Agencies [§ 30.18]

In the NPRM, the Department proposed to revise the existing § 30.18 entitled “Nondiscrimination,” which stated that the commitments contained in a sponsor's AAP must not be used to discriminate against an apprentice or applicant for apprenticeship on 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 revised current § 30.15, which requires State Apprenticeship Councils to adopt State plans. These proposed revisions were necessary to make proposed part 30 consistent with the part 29 procedures for recognition of SAAs. Proposed § 30.18 differed significantly from the current § 30.15, because proposed § 30.18 did 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.”

A company commented that SAAs are underfunded and understaffed, and asserted that the burden of the proposed § 30.18 requirements would make it difficult to achieve the goal President Obama has set for apprenticeships.

In promulgating this Final Rule, the Department carefully considered balancing the interests of state agencies, sponsors, and apprentices, and the Department's need to implement these regulations in an efficient and effective manner. The Department believes that the standards it is establishing in this rulemaking for SAAs will not limit the growth of apprenticeship programs or create a significant burden for sponsors and state agencies.

Paragraph 30.18(a): State Plan

Proposed § 30.18(a) set 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 specified 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.

A State Department of Labor said that it would be unreasonable to require SAAs to submit a State EEO plan and a copy of the State's statute within one year from the effective date of the final regulation. Asserting that implementation of the regulation would take well over a year to pass through State legislation, the Administrative Process Act, and internal agency review, the State suggested that the Department grant SAAs three years to submit a State EEO plan. Another State Department of Labor echoed the concern that one year would be an insufficient amount of time to complete the review process and requested that SAAs be given two years to submit their plan.

Regarding the proposed § 30.18(a)(1)(i) requirement that the State EEO plan submitted to OA include a copy of the State apprenticeship law that corresponds to the requirements of part 30, an SWA asked the Department to clarify if this means the SAA must submit proposed draft State regulations before rule finalization.

As for the proposed § 30.18(a)(1)(ii) requirement that the State EEO plan must require all registered apprenticeship programs in the State to comply with the requirements of the State's EEO plan within 180 days of OA approval, an industry association and an SWA said this was not enough time, reasoning that the State would need to host a series of town hall meetings to explain the new regulations to stakeholders and provide other technical assistance to sponsors. Instead, the SWA recommended that registered apprenticeship programs have two years to come into compliance with the new State EEO plan, and the

industry association said the timeline should be extended to one year from the date of OA State EEO plan approval.

The Department has carefully considered SAA's needs in accordance with the proposed regulations and has determined to amend this clause to require that, within one year, SAAs provide to OA a State EEO plan that includes, at a minimum, draft State apprenticeship authorizing language—which, depending on the State, could be either legislation, regulation, or executive order—corresponding to the requirements of this part. The Final Rule further 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 State may request an extension from OA to the one-year State's EEO Plan requirement, which the Administrator may grant for good cause shown.

The Department believes that one year, with the opportunity for extension if there is good cause, is a reasonable amount of time to develop an EEO plan. The Department has also determined that 180 days is an adequate amount of time for registered apprenticeship programs to comply with the requirements of the State's EEO plan. The Department's intent is to have SAAs come into compliance with these regulations as quickly as possible. We understand there may be logistical difficulties with this in certain circumstances, which we believe the extension request provision addresses.

Paragraph 30.18(b): Recordkeeping Requirements

Proposed § 30.18(b) carried forward existing recordkeeping requirements from the existing § 30.8(d), using the term "State Apprenticeship Agency" instead of "State Apprenticeship Council." Regarding the proposed § 30.18(b) requirement that SAAs must keep all compliance records for three years from the date of creation, an individual commenter said that maintaining records on compliance reviews and complaints for five to 10 years would place SAAs in a "better position to monitor the impact of technical assistance over the course of an apprenticeship cohort's procession through an apprenticeship cycle as well as identify sponsors that exhibit patterns of stagnation in progress toward goals and/or repeated complaints."

The Department considered this suggestion and determined that it will amend the proposed rule to require

SAAs to keep all compliance records for five years, for consistency across program regulations.

Paragraph 30.18(c): Retention of Authority

Proposed § 30.18(c) also carried 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) clarified 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.

An SAA sought to confirm that the OA authority to conduct compliance reviews and complaint investigations only applies to programs registered for Federal purposes and not to programs that are not Federally registered or do not implicate Federal purposes. In response, we clarify that, in SAA states the Office of Apprenticeship will only conduct compliance reviews and complaint investigations on national programs that are registered with the Federal government, such as federal prisons or military bases.

Paragraph 30.18(d): Deregistration

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

A SWA remarked that the rule seems to prevent the decertification of SAAs for failure to enforce EEO. The commenter stated that although proposed § 30.18(a)(3) and (d) reference § 29.14 deregistration proceedings, § 29.14 attributes that authority to parts 29 and 30, which would no longer provide that authority.

Section 29.14 is entitled "Deregognition of State Apprenticeship Agencies" and states that "The recognition for Federal purposes of a State Apprenticeship Agency may be withdrawn for the failure to fulfill, or operate in conformity with, the requirements of parts 29 and 30." Furthermore, that section provides that "deregognition proceedings for reasonable cause will be instituted in accordance with the following: (a) Deregognition 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." Accordingly, we disagree with the comment, and believe that § 29.14 provides the Department with the authority to undertake deregognition for failure to comply with § 30.18.

Exemptions [§ 30.19]

Section 30.19 of the existing rule addresses exemptions. Under the existing § 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 proposed minor revisions to this section. First, proposed § 30.19 required 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 required 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.

Under proposed § 30.19, a sponsor may submit a written request to the Registration Agency for exemption from part 30, or any part thereof, and such a request may be granted by the Registration Agency for good cause. A company inquired as to why the proposed part 30 did not include an exclusion for organizations that are already in compliance with EEO rules, as exists in the old part 30. The Final Rule does include such an exemption, at § 30.4(d)(2).

Effective Date [§ 30.20]

The proposed rule created a new § 30.20 that established the dates by which sponsors needed to come into compliance with certain provisions in the regulations. The Final Rule removes this section and instead incorporates the compliance dates in the individual sections to which they apply. Discussion of the comments on the compliance dates provided is therefore found in each of these sections, above.

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 proposed technical, non-substantive changes for consistency and conformity with the proposed changes to part 30. We received no comments on these changes that have not been addressed in other sections of this preamble, so we adopt the proposed language changes to part 29 as proposed.

Regulatory Procedures

Executive Orders 12866 and 13563: Regulatory Planning and Review

Executive Order 13563 directs agencies to propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs; tailor the regulation to impose the least burden on society, consistent with achieving the regulatory objectives; and in choosing among alternative regulatory approaches, select those approaches that maximize net benefits. Executive Order 13563 recognizes that some benefits are difficult to quantify and provides that, where appropriate and permitted by law, agencies may consider and discuss qualitatively values that are difficult or impossible to quantify, including equity, human dignity, fairness, and distributive impacts.

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 Office of Management and Budget has determined that the Final Rule is not an economically significant regulatory action under paragraph 3(f)(1) of Executive Order 12866. This rulemaking is not expected to adversely affect the economy or any sector thereof, productivity, competition, jobs, the environment, or public health or safety in a material way. In fact, the Final Rule is expected to increase the effectiveness and efficiency of EEO compliance within apprenticeship programs and to reduce the burden imposed on sponsors in several respects. It has, however, been determined that the Final Rule is a significant regulatory action under paragraph 3(f)(4) of the Executive Order and, accordingly, OMB has reviewed the Final Rule.

1. Need for Regulation

As explained in the preamble, the Department is updating the equal opportunity regulations that implement the National Apprenticeship Act of 1937. The existing regulations set forth at 29 CFR part 30 prohibit discrimination in registered 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. The Final Rule updates 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 making 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 in the Final Rule will 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 Final Rule, and to ensure that apprentices and applicants for apprenticeship receive equal opportunity in apprenticeship programs.

The Department is concerned that many segments of society continue to face substantial barriers to equal opportunity in apprenticeship.

Accordingly, a principal goal for the Final Rule 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 is making several changes to part 30, including:

(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;

(4) Requiring targeted outreach, recruitment, and retention activities when underutilization of certain protected groups have been found and a utilization goal has been established per § 30.6 and/or where a sponsor has determined pursuant to § 30.7(e) that impediments to equal opportunity exist for individuals with disabilities;

(5) Simplifying procedures for selecting apprentices;

(6) Standardizing procedures Registration Agencies⁸⁹ must follow for conducting compliance reviews;

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

(8) Aligning more closely with 29 CFR part 29 procedures for deregistration of SAAs, derecognition of apprenticeship programs and hearings; and

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

These provisions will help 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

⁸⁹ As explained in Section I of the Final Rule, 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.

list of those bases upon which a sponsor must not discriminate will bring the National Registered Apprenticeship System into alignment with the protected bases identified in the various Federal laws applicable to most apprenticeship sponsors. These provisions will also ensure these underrepresented groups have increased access to programs. The 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 discrimination.

2. General Comments Received on the Economic Analysis in the Notice Period of Proposed Rulemaking

The Department received several public comments that addressed the economic analysis in the NPRM. We carefully considered the comments received. The significant comments and summaries of the Department's analyses and determinations are discussed below:

a. Specific Steps To Provide Equal Opportunity—Staff Designation

Comments: In the NPRM, the economic analysis estimated that no additional burden would be incurred by the requirement to designate an individual to be responsible and accountable for overseeing the sponsor's commitment to EEO. Several commenters questioned this assumption by stating that staff already had full time jobs and the assumption that a human resource manager is already on staff may be inaccurate.

Department Response: Because businesses already have EEO provisions that they have to comply with through other federal regulations, it is the Department's interpretation that businesses will not need to provide additional staffing and that these responsibilities will fall under the existing staffing infrastructure. Additionally, the Department is committed to providing adequate technical assistance to sponsors and does not expect to increase the sponsor's need for staffing or other resources. The Final Rule language has been modified to clarify that the EEO designation can be provided to one individual or to multiple individuals so it is not a single person that has to address the requirements of this rule.

b. Specific Steps To Provide Equal Opportunity—Orientation and Periodic Information Sessions

Comments: In the NPRM, the economic analysis estimated that 5 apprentices and 5 journeyworkers would attend orientation and periodic information sessions. Several commenters stated that many programs could have considerably more apprentices, which would require much more of their time and possibly entail additional logistical costs associated with hosting meetings of that size.

Department Response: Based on program data and the growth model for apprentices and sponsors in this analysis, the Department estimated that 24 apprentices and 24 journeyworkers would attend orientation and periodic information sessions for all sponsors in 2017. Over the 10-year analysis period (2017–2026) these numbers would gradually increase to 34 apprentices and 34 journeyworkers in 2026.⁹⁰ Because sponsors already have in place a system to provide training and messaging to apprentices and journeyworkers, the Department believes that sponsors will be able to work in the additional EEO requirements that need to be communicated into their existing outreach structure with minimal additional cost. Additionally, the Department intends to provide guidance to sponsors relating to areas such as relevant recruitment sources and links to materials that sponsors and/or participating employers can use for anti-harassment communications and training.

c. Revised Methodology for Utilization Analysis and Goal Setting

Comments: The NPRM estimated that the revised utilization methodology would have streamlined the process and resulted in a reduced burden of the Final Rule. Several commenters disagreed with that estimation and indicated that the revised guidelines required more statistical expertise than staff typically possess. The inference that the Department would no longer be providing "availability" percentages would also increase staffing requirements and labor.

Department Response: In response to these concerns, the Department has

⁹⁰ Using program data from the Registered Apprenticeship Partners Information Data System (RAPIDS) and the growth model for apprentices and sponsors used in the analysis, the Department estimated that there are on average 24 apprentices per sponsor in 2017; 26 in 2018; 27 in 2019; 28 in 2020; 29 in 2021; 31 in 2022; 32 in 2023; 32 in 2024; 33 in 2025; and 34 in 2026. The Department further assumes a one-to-one ratio between apprentice and journeyworker in estimating the cost of orientations and periodic information sessions.

revised the utilization analysis described in the Final Rule to largely revert to existing practice, in which the Registration Agency provides significant support, and lessened the frequency with which the analysis has to be done—resulting in minimal additional burden for sponsors. Further, the Department intends to build a data tool that will assist in future iterations of the utilization analysis. Although this data tool will reduce burden for sponsors to conduct the utilization analysis in the long-run, the Department's analysis has accounted for additional upfront costs for time associated with familiarization with the tool for sponsors that choose to use it. In total, the Department is providing a data tool that will assist sponsors with conducting their utilization analysis approximately every five years. The Department has calculated costs to sponsors both for familiarization with the data tool and for using the tool to assist in conducting the analysis.

d. Invitation to Self-Identify as an Individual With a Disability

Comments: The NPRM estimated that 10 individuals would apply to each of 5 job postings per year, would choose to self-identify their disability status, and that an administrative assistant would spend 30 minutes reviewing and record-keeping the identification forms. Several commenters pointed out that the proposed rule would require self-identification to happen at 3 different points in the process. Additionally, it was noted that if the Final Rule requires additional outreach, a job posting could receive more than 10 applicants.

Department Response: The Department has updated the economic analysis to reflect that the invitation to self-identify takes place two times. In addition, the Department has increased the assumed number of applicants to a job posting to 15 individuals based on our historical experience and in consultation with program staff. The Department has observed that rural areas tend to receive 10 applications per apprentice opening, high density areas receive 12–15, and statewide programs receive more than 15 applications. In order to avoid under-estimating the costs, the Department assumes 15 applications across all program sponsors. In addition, the Department has updated this provision to allow for a 2-year phase-in of the requirement.

e. Overall Rule Costs and ERISA

Comments: Several commenters indicated that many apprenticeship sponsors are joint labor-management apprenticeship funds covered by ERISA.

These sponsors are not legally allowed to use funds to promote social, environmental, or other public policy causes at the expense of the interests of the plans' participants and beneficiaries. Some indicated that this may reduce the number of apprenticeship sponsors because firms subject to both requirements (the Final Rule and ERISA) may leave the apprenticeship program.

Department Response: The Final Rule specifies that sponsors who are operating under employee benefit plans governed by ERISA may now be eligible to use certain plan assets that support quality pre-apprenticeship programs and other workforce pipeline resources. Where support for such programs is necessary to maintain the plan's registration, or is otherwise advantageous to the plan, assets of the plan may be used to defray the reasonable expenses of such support. Therefore, the Department does not anticipate the number of jointly-sponsored apprenticeship programs to decrease because of the requirements of the Final Rule.

f. Percentage of Firms With Fewer Than Five Apprentices

Comments: The NPRM estimated that 75 percent of sponsors would have fewer than 5 apprentices and thus be exempt from certain Final Rule requirements. One commenter took issue with the assumption that the 25 percent of sponsors with five or more apprentices will be static over time. Due to increased federal funding launching apprenticeship programs into fields not typically represented (e.g., information technology), the commenter predicted that much of the growth of the program would come from new programs with more than five apprentices.

Department Response: While the Department agrees that the percentage of sponsors with 5 or more apprentices may change year-to-year and we expect the number of sponsors to increase over time, we expect the increase to occur across all industries. This includes those with long-time apprenticeship programs and those within new industries. The Department is not aware of information suggesting that this growth would be biased in favor of large or small sponsors, as new programs can be developed by any size of sponsor. Consequently, we assume that the percentage of sponsors with 5 or more apprentices will remain constant as the Apprenticeship program grows.⁹¹

⁹¹ The Department has estimated that the average number of apprentices per sponsor will increase over time in its model of apprentice and sponsor

3. Economic Analysis

The Department derives benefit and cost estimates by comparing the baseline (the program benefits and costs under the 1978 Final Rule⁹²) with the benefits and costs of implementing the provisions in the Final Rule. Only the additional benefits and costs that are expected to be incurred due to the changes in this regulation are included in the analysis.

The Department sought to quantify and monetize the benefits and costs of the Final Rule where feasible. Where we were unable to quantify benefits and costs—for example, due to data limitations—we describe them qualitatively. This analysis covers a 10-year period (2017 through 2026) 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.⁹³

The 10-year monetized costs of the Final Rule range from \$370.27 million to \$458.90 million (with 7 and 3 percent discounting, respectively). The 10-year monetized benefits of the Final Rule range from \$4.56 million to \$5.83 million (with 7 and 3 percent discounting, respectively). The annualized costs of the Final Rule range from \$52.72 million (with 7 percent discounting) to \$53.80 million (with 3 percent discounting). The annualized monetized benefits of the Final Rule are \$0.65 million (with 7 percent discounting) and \$0.68 million (with 3 percent discounting).

In addition, we expect the Final Rule to result in several overarching benefits to apprenticeship programs as well as some specific benefits resulting from a clearer and more systematic rule. As discussed below, equal opportunity policies may result in both efficiency gains and distributional impacts for

growth. This does not, however, directly contradict the assumption that the share of sponsors with 5 or more apprentices will remain constant. The average number of apprentices per sponsor can increase because both small and large sponsors grow their programs, but if small programs continue to keep their programs below 5 apprentices, the shares that have 5 or more apprentices and that have fewer than 5 apprentices can remain constant. Without being aware of any information that suggests that growth will be biased in favor of large or small sponsors or that suggests a large number of small sponsors will choose to increase the size of their programs to 5 apprentices or above, the Department believes that assuming the percentage of sponsors with 5 more apprentices will remain constant is the correct approach.

⁹² 43 FR 20760, May 12, 1978 (requiring the inclusion of female apprentices in AAPs).

⁹³ OMB Circular No. A-4, "Regulatory Analysis," M-03-21 (Sept. 2003).

society. The Final Rule may reduce barriers to entry in apprenticeship programs for women, minorities, persons with disabilities, and LGBT individuals, fostering an equitable distributional effect, and may alleviate the inefficiencies in the job market these barriers create. After considering both the quantitative and qualitative benefits of the Final Rule, the Department has concluded that the benefits would justify the costs of the Final Rule.

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

a. Potential Overall Benefits and Distributional Effects of the Final Rule

This subsection presents the economic benefits and distributional effects of policy interventions related to equal employment opportunity. Information on these impacts is 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 provisions, not necessarily to a single provision. Some additional benefits associated with specific provisions of the Final Rule are presented in the next section.

The Final Rule clarifies and improves the regulations on equal opportunity employment from the 1978 Final Rule by encouraging better recruiting and hiring practices. These improved affirmative action policies may lead to both efficiency effects and distributional effects, as directed by OMB Circular A-4.⁹⁴

Equal opportunity hiring practices increase diversity in the workplace, which has been shown to have positive effects. Several studies have found that well-managed diversity can add value by increasing the variety of perspectives in a team or company, therefore fostering creativity.⁹⁵ Research has also proven that diverse groups can perform better on problem-solving tasks than a

⁹⁴ OMB Circular No. A-4, p. 14.

⁹⁵ Bassett-Jones, N., "The Paradox of Diversity Management, Creativity, and Innovation," *Creativity and Innovation Management*, 14 (2005); Orlando, R., "Racial Diversity, Business Strategy, and Firm Performance: A Resource-Based View," *The Academy of Management Journal*, 43 (2000); Roberge, M., and van Dick, R., "Recognizing the Benefits of Diversity: When and How Does Diversity Increase Group Performance?," *Human Resource Management Review*, 20 (2010).

group of strong individual performers.⁹⁶ Having diverse perspectives and diverse ways of interpreting and acting on new information improves the collective ability to both anticipate challenges and find effective solutions. Increased diversity can also be beneficial to the employer, as evidenced by a 2007 paper by Hernandez and McDonald, which studied the effects of hiring workers with disabilities. They found that compared to those without a disability, disabled workers had longer tenure, reduced absenteeism, identical job performance, and did not require significantly more supervision.⁹⁷ Further, a study by Schotter and Weigelt (1992) showed that equal opportunity policies increase the efforts of all workers, not just the underutilized workers.⁹⁸

Among all diversity-improvement measures, affirmative action programs have been shown to lead to the broadest increases in diversity.⁹⁹ Further, they have not been found to generate losses in efficiency for an organization.¹⁰⁰ Although evidence suggests that minorities who benefit from affirmative action often have weaker *credentials*, there is little evidence suggesting that their labor market performance is weaker.¹⁰¹ Even when job applicants have comparable credentials, employers have still been found to discriminate based on race, and therefore lose out on this skilled workforce.¹⁰² Without policies to combat this discrimination, workers in groups that are subject to discrimination are often left with the belief that certain jobs are unattainable, and lack the incentive to improve their observable skills or invest in education. Personal education and training investments not only help the individual, but may have positive externalities in the long run, as

discussed further below. Additionally, by hiring more workers from underrepresented groups, firms naturally create mentors and expand networking opportunities for these groups.¹⁰³ These two factors can increase employee retention, directly benefiting the apprenticeship sponsors who will see the return on their initial recruitment and training investments.

Anti-discrimination policies provide economic benefits to disadvantaged groups, in the form of both higher wages and increased employment. One study estimated that 15 to 20 percent of aggregate wage growth between 1960 and 2008 was attributable to the increase in workforce participation by women and minorities, including participation increases from the adoption of civil rights laws and changing social norms.¹⁰⁴ The Civil Rights Act of 1964 improved both employment levels and wages for Black workers, as evidenced in cases such as the South Carolina textile industry.¹⁰⁵ The implementation of affirmative action policies has also been shown to increase the odds of women and minorities in management.¹⁰⁶ Not only do these efforts help disadvantaged workers, but effects such as reduced unemployment benefit the economy as a whole.

The Final Rule can also be expected to result in a beneficial distributional effect. The direct beneficiaries of the Final Rule will be underrepresented workers: Women, minorities, and persons with disabilities. According to Holzer and Neumark (2000), “affirmative action offers significant redistribution toward women and minorities.” Evidence indicates that women are more likely than men to be classified as working poor and that Blacks or African Americans and Hispanics or Latinos are more than twice as likely as their white counterparts to be among the working poor.¹⁰⁷ In addition, persons with disabilities have a poverty rate of 28.5 percent, over twice as high as the

poverty rate of persons without disabilities of 12.3 percent.¹⁰⁸ Education and training investments for these underrepresented groups can result in lifetime earnings benefits.

Apprenticeship participants see average lifetime earnings benefits of nearly \$100,000, and for those completing apprenticeships, there are average lifetime earnings benefits of over \$240,000 compared to similar individuals who do not enter an apprenticeship.¹⁰⁹ Construction, the largest represented industry sector in the National Registered Apprenticeship System, offers a higher median wage than many traditionally female-dominated jobs and many other jobs that do not require a college education for advancement, thus providing opportunity to move out of poverty or working poor status.¹¹⁰ Reducing barriers to entry in apprenticeship programs for women, minorities, persons with disabilities, people over age 40, and LGBT individuals can have additional long term impacts to beneficiaries; one study found that individuals that participated in an apprenticeship program are 8.6 percent more likely to be employed both six and nine years after participation.¹¹¹

As apprenticeship expands in the United States, the Department is committed to ensuring that this expansion benefits the entire American workforce, including individuals with disabilities, and that it provides them a path to good jobs and careers with living wages such as those that apprenticeships offer. To illustrate the impacts the Final Rule will have on individuals with disabilities, the

¹⁰⁸ These poverty rates are for individuals ages 18 to 64. U.S. Census Bureau, Current Population Reports, “Income and Poverty in the United States: 2014,” available at <https://www.census.gov/content/dam/Census/library/publications/2015/demo/p60-252.pdf> (last accessed June 10, 2016).

¹⁰⁹ Reed, D., Yung-Hsu Liu, A., Kleinman, R., et al., “An effectiveness assessment and cost-benefit analysis of registered apprenticeship in 10 states,” Mathematica Final Report 06689.090 and 40096, Mathematica Policy Research, (2012).

¹¹⁰ Median weekly earnings of full-time wage and salary workers in Construction and Extraction occupations were \$749 in 2015. This is significantly higher than the earnings of workers in many traditionally female-dominated occupations such as childcare workers; secretaries and administrative assistants; receptionists and information clerks; and nursing, psychiatric, and home health aides. The median weekly earnings of full-time wage and salary workers in these occupations in 2015 were \$437, \$687, \$575, and \$467 respectively. Source: Bureau of Labor Statistics analysis of Current Population Survey data available at <http://www.bls.gov/cps/cpsaat39.htm>.

¹¹¹ Reed, D., Yung-Hsu Liu, A., Kleinman, R., et al., “An effectiveness assessment and cost-benefit analysis of registered apprenticeship in 10 states,” Mathematica Final Report 06689.090 and 40096, Mathematica Policy Research, (2012).

⁹⁶ Page, Scott, E., “The Difference: How the Power of Diversity Created Better Groups, Firms, Schools, and Societies,” Princeton University Press, (2011).

⁹⁷ Hernandez, B., & McDonald, K. (2007). “Exploring the bottom line: A study of the costs and benefits of workers with disabilities.” Chicago, IL: DePaul University.

⁹⁸ Schotter, A., and Weigelt, K. (1992). “Asymmetric Tournaments, Equal Opportunity Laws and Affirmative Action: Some Experimental Results,” *The Quarterly Journal of Economics*.

⁹⁹ Kalev, A., Kelly, E., and Dobbin, F. (2006), “Best Practices or Best Guesses? Assessing the Efficacy for Corporate Affirmative Action and Diversity Policies,” *American Sociological Review*, 71.

¹⁰⁰ Holzer, H. and Neumark, D. (2000). “Assessing Affirmative Action,” *Journal of Economic Literature*, 38.

¹⁰¹ Holzer, H. (2007). “The Economic Impact of Affirmative Action in the US,” *Swedish Economic Policy Review* 53.

¹⁰² Bertrand, M. and Mullainathan, S. (2002) “Are Emily and Brenden More Employable than Lakisha and Jamal? A Field Experiment on Labor Market Discrimination,” *Chicago Booth Review*.

¹⁰³ Blau, F. and Winkler, A. (2005), “Does Affirmative Action Work?” *Countering Stereotypes by Changing the Final Rule, Regional Review* Q1.

¹⁰⁴ Hsieh, C., Hurst, E., Jones, C., and Klenow, P. (2013). “The Allocation of Talent and U.S. Economic Growth,” *NBER Working Paper*.

¹⁰⁵ Heckman, J., and Payner, B. (1989). “Determining the Impact of Federal Anti-Discrimination Policy on the Economic Status of Blacks: A Study of South Carolina,” 79 *American Economic Review*, 138.

¹⁰⁶ Kalev, A., Kelly, E., and Dobbin, F. (2006), “Best Practices or Best Guesses? Assessing the Efficacy for Corporate Affirmative Action and Diversity Policies,” *American Sociological Review*, 71.

¹⁰⁷ “A Profile of the Working Poor, 2014” Report 1060, Bureau of Labor Statistics.

Department estimated the number of individuals with disabilities expected to benefit from its provisions if the Final Rule’s utilization targets are met and apprenticeship increases by the growth rates assumed in this analysis. We first obtained estimates of the prevalence of disabilities among workers in different industries by analyzing American Community Survey (ACS) data on workers ages 18 to 64 from the years 2008 to 2012. These estimates are shown in Exhibit 1. Next, in the absence of data relating to the number of persons with disabilities enrolled in apprenticeship programs by industry, we assumed that in a given industry the share of new apprenticeship enrollees that are persons with disabilities will be

the same as the share of workers in that industry with disabilities. We see, for example that in the Construction industry, 5.4 percent of all workers have a disability. We assume, therefore, that 5.4 percent of apprentices in the Construction industry similarly have disabilities and that in the absence of the Final Rule that percentage would be maintained as employers enrolled new apprentices with disabilities at the same rate as they dismissed apprentices with disabilities. The utilization goal for individuals with disabilities set forth in the Final Rule is 7 percent of enrollees, thus an additional 1.6 percent of enrollees (7 percent goal minus the 5.4 percent assumed to be currently enrolled) will be expected to be persons

with disabilities if the utilization goal of 7 percent is attained. Because the number of new apprentices in a 10-year span (2017–2026) in Construction is projected by the Department to be 276,591 the Final Rule’s goal of a 7 percent enrollment rate would result in $(0.07 - 0.054) \times 276,591 = 4,342$ more persons with disabilities as new apprentices in the Construction industry.

This calculation, when repeated over all industries, gives a total estimate of an additional 9,243 individuals with disabilities who would be enrolled out of the total of 541,061 new apprentices projected over the next 10 years (2017–2026).

EXHIBIT 1—IMPACT ESTIMATES FOR INDIVIDUALS WITH DISABILITIES

Industry	Share of workers in industry with disabilities (%) (A)	Projected new apprentices over a 10-year period (B)	Gap (%) (C) = 7% - A	Projected new apprentices with disabilities (D) = B * C
Administrative-Support	5.5	2,389	1.5	36
Agriculture	6.2	759	0.8	6
Construction	5.4	276,591	1.6	4,342
Education	4.3	64,686	2.7	1,747
Oil, Gas, Mineral Extraction	5.7	266	1.3	3
Finance	3.9	218	3.1	7
Information	4.8	1,017	2.2	22
Medical Services	5.1	8,810	1.9	167
Manufacturing	5.3	61,516	1.7	1,021
Professional	4.8	1,096	2.2	24
Retail	5.9	4,747	1.2	55
Personal Service and Care	8.7	791	- 1.7	- 14
Service	6.0	2,987	1.0	31
Transportation	6.2	64,017	0.8	512
Utilities	4.5	48,134	2.5	1,208
Wholesale	4.9	3,576	2.1	75
Total	541,601	9,243

Source: Department tabulations, November 2014 and ACS 2008–2012.

4. Subject-by-Subject Analysis

The Department’s analysis considers the expected benefits (beyond those discussed above) and costs of the changes to part 30. This analysis considers the impacts of each change to part 30 separately. This analysis measures the costs and benefits as they accrue to sponsors, the Office of Apprenticeship at the Department, and State partnering agencies. It is estimated that the number of sponsors will grow over time and our annual cost calculations reflect this growth. This analysis primarily discusses how the first-year costs were calculated and indicates that the analysis repeats that calculation across the 10-year time frame using the appropriate number of sponsors in any given year. Exhibit 2

presents the number of total and new sponsors in each year.¹¹²

¹¹² The Department determined the growth rates applied to apprenticeships and apprenticeship sponsors in each industry by examining previous program growth in the RAPIDS database and extrapolating based on historical trends and regulatory requirements. The growth model also accounted for the increased budgetary resources the program has received to expand the program. In the growth model, the Department used higher industry-specific growth rates in 2017 than in 2026 to reflect the fact that the Department expects faster initial growth in the first years of the 10-year window followed by somewhat slower steady growth in the final years. Over the course of the 10-year window, the growth rates steadily decrease from the higher 2017 rates to the lower 2026 rates. Were higher sponsor growth rates in each industry to be assumed to approximately account for the President’s ambitious goal to double the number of apprentices by the end of 2019 and should those higher growth rates be continued in subsequent years, the total cost of the Final Rule would increase from \$370.27 million to \$708.65 million

EXHIBIT 2—TOTAL ACTIVE AND NEW SPONSORS (2017–2026)

Year	Total active sponsors	New sponsors ¹¹³
2017	23,811	2,942
2018	25,231	3,005
2019	26,606	3,046
2020	27,915	3,062
2021	29,137	3,052
2022	30,250	3,013
2023	31,233	2,946
2024	32,069	2,850
2025	32,739	2,727

(with 7 percent discounting) and from \$458.90 million to \$909.22 million (with 3 percent discounting) over the 10-year period (2017–2026). The monetized benefit would also increase from \$4.56 million to \$9.14 million (with 7 percent discounting) and from \$5.85 million to \$11.95 million (with 3 percent discounting) over the 10-year period.

EXHIBIT 2—TOTAL ACTIVE AND NEW SPONSORS (2017–2026)—Continued

Year	Total active sponsors	New sponsors ¹¹³
2026	33,230	2,578

a. Familiarization With the Final Rule

To estimate the cost of initial rule familiarization, we multiplied the number of apprenticeship sponsors in 2017 (23,811)—the first full year in which the Final Rule will be in effect—by the amount of time required to read the new rule (4 hours) and by the average hourly compensation of a private-sector human resources manager (\$73.90).¹¹⁴ In the first year of the Final Rule, the cost to sponsors amounts to approximately \$7.04 million in labor costs. We repeated this calculation for each remaining year in the analysis period using the estimated number of new sponsors for each year, resulting in an annualized cost ranging from \$1.69 million to \$1.57 million with 7 percent and 3 percent discounting, respectively.¹¹⁵ In subsequent years, this cost is only applied to new sponsors because existing sponsors will

¹¹³Note that the number of new sponsors in a given fiscal year is larger than the difference between that year's total active sponsors and the previous year's total active sponsors because the Department has accounted for the fact that there will be some turnover among sponsors as some sponsors end their programs and are replaced by new sponsors. To calculate this annual turnover, the Department looked at historical RAPIDS data from FY2010 through FY2015, and determined that, on average, approximately 6.3 percent of total active sponsors in a given year were new sponsors that had simply replaced old sponsors in the total active sponsor count. To calculate total new sponsors in a given year in the analysis's 10-year window, the Department multiplied this 6.3 percent by the number of total active sponsors in a given year and added this to the difference between each year's total active sponsor count and the total active sponsor count of the preceding year.

¹¹⁴We calculated the hourly compensation rate for a human resource manager (Occupation code 11-3121) by multiplying the median hourly wage of \$51.32 (source: Bureau of Labor Statistics (BLS), May 2015 National Occupation Employment and Wage Estimates by Ownership: Cross-industry, Private ownership only, <http://www.bls.gov/oes/current/000001.htm#11-0000>) by 1.44 to account for private-sector employee benefits (source: BLS, June 2016 Employer Costs for Employee Compensation, <http://www.bls.gov/news.release/eccec.nr0.htm> BLS ECI series CMU2010000000000D, CMU2010000000000P, CMU2020000000000D, CMU2020000000000P). The hourly compensation rate for a human resource manager is thus \$73.90 (\$51.32 × 1.44).

¹¹⁵To calculate the labor burden, we multiplied the time to complete the task by the hourly compensation rate for sponsors (\$73.90 × 4 = \$295.60). The total cost for sponsors in 2017 is the labor cost multiplied by the total number of sponsors (23,811), or \$7.04 million (\$295.60 × 23,811). This burden occurs in the first year of the analysis period for all sponsors, and every year thereafter only for new sponsors.

have already familiarized themselves with the Final Rule in previous years.

b. Addition of Age (40 or Older), Genetic Information, Sexual Orientation, and Disability to the List of Protected Bases

The Final Rule updates 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 (§ 30.3(a)). As explained in the preamble, the addition of these bases to the types of discrimination prohibited by part 30 should not result in any significant additional cost to sponsors as most 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 §§ 30.1(a) and 30.3(a) would result in any significant costs to sponsors.

c. Specific Affirmative Steps To Provide Equal Opportunity

The Final Rule requires all sponsors, regardless of size, to take certain affirmative steps to provide equal opportunity in apprenticeship. The Final Rule language in § 30.3(b) will, for the first time, obligate sponsors to take the following basic steps to ensure EEO in apprenticeship.

First, sponsors are required to designate an individual or individuals to be responsible and accountable for overseeing the sponsor's commitment to EEO (§ 30.3(b)(1)). The Department expects the burden of this requirement on sponsors to be minimal. Most, if not all, sponsors have an apprenticeship coordinator who is in charge of the apprenticeship program. The Department anticipates that this requirement will 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 Final Rule requires for the first time that sponsors post their equal opportunity pledge on bulletin boards and through electronic media, such that it is accessible to all apprentices and applicants to apprenticeship programs (§ 30.3(b)(2)). We assume that sponsors choose to put up a physical copy of the pledge and also post it on their Web site.¹¹⁶ The cost of this requirement is minimal. The Department assumes it will take a sponsor 5 minutes (0.08 hour) to post the pledge and that this task will be performed by an administrative assistant at an hourly compensation rate of \$23.10.¹¹⁷ We multiplied the time estimate for this provision by the hourly compensation rate to obtain a total labor cost per sponsor of \$1.85 (\$23.10 × 0.08). 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 \$0.08, resulting in a materials cost of \$0.08 (\$0.08 × 1) per sponsor. The total cost of putting up a physical copy of the pledge per sponsor is therefore \$1.93 (\$1.85 + \$0.08).

The Department also assumes it will take a sponsor 10 minutes (0.17 hours) to post the pledge on its Web site and that this task will be performed by a web developer at an hourly compensation rate of \$45.24.¹¹⁸ The cost of posting the pledge on the sponsor's Web site is \$7.69 (\$45.24 × 0.17). The total per sponsor cost of this provision, including the posting of physical copy of the pledge and the posting of the

¹¹⁶Some sponsors may already be undertaking some actions that would count toward compliance with this obligation and, consequently, the cost calculation for this provision is likely an overestimate.

¹¹⁷We calculated the hourly compensation rate for an administrative assistant (Occupation code: 43-6014) by multiplying the median hourly wage of \$16.04 (source: BLS, May 2015 National Occupation Employment and Wage Estimates by Ownership: Cross-industry, Private ownership only, <http://www.bls.gov/oes/current/000001.htm#11-0000>) by 1.44 to account for private-sector employee benefits. Thus, the hourly compensation rate for an administrative assistant is \$23.10 (\$16.04 × 1.44).

¹¹⁸We calculated the hourly compensation rate for a web developer (Occupation code: 15-1134) by multiplying the median hourly wage of \$31.42 (source: BLS, May 2015 National Occupation Employment and Wage Estimates by Ownership: Cross-industry, Private ownership only, <http://www.bls.gov/oes/current/000001.htm#11-0000>) by 1.44 to account for private-sector employee benefits. Thus, the hourly compensation rate for a web developer is \$45.24 (\$31.42 × 1.44).

pledge on the sponsor's Web site, is therefore \$9.62 (\$1.93 + \$7.69).

Multiplying this sum (\$9.62) by the total number of sponsors (23,811) in the first year (2017) results in a cost of \$229,033 for this provision. The posting of the equal opportunity pledge is a one-time cost; costs after the first year are only incurred by new sponsors. Looking over the full ten-year period, the annualized cost of this provision is \$55,015 (with 7 percent discounting) and \$51,044 (with 3 percent discounting).

The Final Rule § 30.3(b)(2) also requires each sponsor to 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. The orientation and information sessions required by § 30.3(b)(2)(iii) underscore the sponsor's commitment to equal opportunity and its affirmation action obligations. These sessions 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. Under § 30.3(b)(4)(i), sponsors are also required to provide anti-harassment training, which will be incorporated into these periodic orientation and information sessions. This training must include active participation by trainees, such as attending a training session in person or completing an interactive training online and will include at a minimum communications to apprentices and journeyworkers who directly supervise apprentices that harassing conduct will not be tolerated, the definition of harassment and types of conduct that constitute harassment, and the right to file a harassment complaint.

Using 2015 data from the Registered Apprenticeship Partners Information Data System (RAPIDS) and the growth model for apprenticeship and sponsors in this analysis, the Department calculated that there are on average 24 apprentices per sponsor in 2017.¹¹⁹ The Department further assumes a one-to-

¹¹⁹ The Department estimated that there are on average 24 apprentices per sponsor in 2017; 26 in 2018; 27 in 2019; 28 in 2020; 29 in 2021; 31 in 2022; 32 in 2023; 32 in 2024; 33 in 2025; and 34 in 2026.

one ratio between apprentice and journeyworker in estimating the cost of orientations and periodic information sessions. The Department first estimated that the 23,811 sponsors in the first year (2017) will hold one 45-minute regular orientation and information session with an average of 24 apprentices (\$18.72 per hour)¹²⁰ and 21 journeyworkers (\$31.68 per hour)¹²¹ per sponsor. The Department estimated that a human resource manager (\$73.90 per hour) will need to spend 2 hours to develop and prepare written materials for the session in the first year, and the 2 hours also cover maintaining the training materials which were already saved on the computer (\$3.52 million = 23,811 sponsors × 2 hours × \$73.90).

This calculation results in a total cost for this provision of approximately \$26.44 million in the first year (2017).¹²² All sponsors are assumed to hold one 45-minute regular orientation and information session annually. This calculation is repeated in subsequent years (with the requirement that an HR manager develop written materials only applicable for new sponsors). The annualized cost ranges from \$34.18 million (with 7 percent discounting) to \$34.87 million (with 3 percent discounting).

Third, under the existing § 30.4(c) sponsors 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

¹²⁰ We calculated the hourly compensation rate for an apprentice by multiplying the median hourly wage of \$13.00 (as published by PayScale for an apprentice electrician) by 1.44 to account for private-sector employee benefits (source: OES survey). Thus, the hourly compensation rate for an apprentice is \$18.72 (\$13.00 × 1.44). We used the wage rate for an apprentice electrician in this analysis because electrician is one of the most common occupations in the apprenticeship program.

¹²¹ We calculated the hourly compensation rate for a journeyworker by multiplying the median hourly wage of \$22.00 (as published by PayScale for a journeyworker electrician) by 1.44 to account for private-sector employee benefits (source: OES survey). Thus, the hourly compensation rate for a journeyworker electrician is \$31.68 (\$22.00 × 1.44). We used the wage rate for a journeyworker electrician in this analysis because electrician is one of the most common occupations in the apprenticeship program.

¹²² The total cost was derived from the cost for an HR manager to develop materials (2 hours) and attend the training (0.75 hours), as well as 24 apprentices and 24 journeyworkers to attend the training. In 2017, with 23,811 active sponsors, material development cost \$3.52 million (\$73.90 × 2 × 23,811), HR manager attendance cost \$1.32 million (\$73.90 × 0.75 × 23,811), apprentice attendance cost \$8.03 million (\$18.72 × 0.75 × 24 × 23,811), and journeyworker attendance cost \$13.58 million (\$31.68 × 0.75 × 24 × 23,811) the total cost for all 23,811 sponsors is \$23.74 million in 2017.

activities a sponsor is expected to undertake. The exact mix of activities depends on the size and type of the program and its resources; each sponsor, however, is "required to undertake a significant number of appropriate activities" under the existing § 30.4. Under the Final Rule, all sponsors are required to reach out to a variety of recruitment sources, including organizations that serve individuals with disabilities, to ensure universal recruitment (§ 30.3(b)(3)). Including individuals with disabilities among the groups of individuals to be recruited is a new focus for sponsors. Sponsors are required to develop a list of recruitment sources that generate referrals of women, minorities, and persons with disabilities with contact information for each source. Further, sponsors are required to notify these sources in advance of any apprenticeship opportunities; while a firm deadline is not set, the Final Rule suggests 30 days' notice if possible under the circumstances. This may lead employers to incur costs due to the additional delay in the hiring process resulting from this rule. The Department, however, does not have enough information to estimate this potential cost.

The kinds of activities we anticipate the sponsor engaging in to satisfy this requirement include distributing announcements and flyers detailing job prospects, holding seminars, and visiting some of the sources that will likely provide access to individuals with disabilities. The Department assumed that the cost to sponsors to distribute information to persons with disabilities will be the labor cost to comply with this provision. We also assumed that the activity to satisfy this provision will be performed by a human resource manager and an administrative assistant with hourly compensation rates of \$73.90 and \$23.10, respectively. We assumed that this task will take 30 minutes (0.5 hour) of a human resource manager's time and 30 minutes (0.5 hour) of an administrative assistant's time per targeted source. 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 assumed number of outreach sources (5) and by the total number of sponsors.¹²³ All sponsors are assumed

¹²³ 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 (\$73.90 × .5 = \$36.95) and an

to conduct this outreach in all years.¹²⁴ The resulting cost of this provision is \$5.77 million in the first year, with an annualized cost ranging from \$6.94 million (with 7 percent discounting) to \$7.02 million (with 3 percent discounting).

Because universal outreach may involve a range of activities, the Department conducted 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 hour) and a high allocation of time (1 hour and 15 minutes, or 1.25 hour) for both the administrative assistant and the human resource manager. The resulting range of costs for the first year is \$2.89 million to \$14.44 million with an annualized cost ranging from \$3.47 million (with 7 percent discounting) to \$3.51 million (with 3 percent discounting) at the lower bound to \$17.35 million (with 7 percent discounting) to \$17.56 million (with 3 percent discounting) at the higher bound.¹²⁵

Fourth, the Final Rule requires that all sponsors develop and implement procedures to ensure that their 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 (§ 30.3(b)(4)(iv)). As explained in the preamble, this requirement should not result in new burdens on sponsors who are already

administrative assistant ($\$23.10 \times .5 = \11.55). We then multiplied the total per-sponsor labor cost by the total number of sponsors in 2017 (23,811) and by the five sites for which each sponsor is to provide outreach. This results in a total cost of \$5.77 million ($(\$36.95 + \$11.55) \times 23,811 \times 5$) in 2017. We repeated this calculation for each year of the analysis period, using the projected number of sponsors for each year.

¹²⁴ This cost for all sponsors may be an overestimate because some sponsors are already undertaking some outreach activities on their own under the existing regulations.

¹²⁵ 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 ($\$73.90 \times 0.25 = \18.48 for the low cost and $\$73.90 \times 1.25 = \92.38 for the high cost) and an administrative assistant ($\$23.10 \times 0.25 = \5.78 for the low cost and $\$23.10 \times 1.25 = \28.88 for the high cost). We then multiplied the total per-sponsor labor cost by the total number of sponsors in 2017 (23,811) and by the five sites for which each sponsor is to provide outreach. This results in a total cost of \$2.89 million for the low time assumption ($(\$18.48 + \$5.78) \times 23,811 \times 5$) and \$14.44 million for the high time assumption ($(\$92.38 + \$28.88) \times 23,811 \times 5$) in 2017. We repeated this calculation for each year of the analysis period, using the projected number of sponsors for each year. Totals may not add due to rounding.

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. Because time has been calculated for compliance with the periodic orientation/information sessions in 30.3(b)(2)(iii) of which the anti-harassment training is a part, the cost of this requirement has already been accounted for in this analysis. As mentioned in the preamble, the Department will also provide anti-harassment materials that can be used by sponsors.

d. Revised Methodology for Workforce and Utilization Analysis and Goal Setting

The Final Rule streamlines the workforce and utilization analysis required of sponsors with five or more apprentices and clarifies when and how utilization goals are to be established for women and minorities (§§ 30.5 through 30.7). Specifically, the Final Rule requires sponsors to consider two factors when determining the availability of individuals for apprenticeships rather than the five currently listed in the part 30 regulations: The percentage of individuals eligible for enrollment in apprenticeship programs within the sponsors relevant recruitment area and the percentage of the sponsor's employees eligible for enrollment in the apprenticeship program, both to be detailed by race, sex, and ethnicity. The Final Rule further reduces the frequency with which the workforce and utilization analyses must be conducted—from annually under the existing rule to at the time of the compliance review for the utilization analysis (every five years on average) and within three years of the compliance review for the workforce analysis (effectively every two and a half years on average). In addition, the Final Rule explains in clear terms the steps required to determine whether any particular groups of individuals are being underutilized and the Registration Agency will provide direction as to when and how goals are to be established. First, sponsors will conduct a workforce analysis to identify the racial, sex, and ethnic composition of their apprentices. Second, an availability analysis will establish a benchmark against which the existing composition of apprentices will be compared. Sponsors will establish utilization goals and engage in targeted outreach, recruitment, and retention efforts when the sponsor's utilization of

women, Hispanics or Latinos, or individuals in racial minority groups are “significantly less than would be reasonably expected given the availability of such individuals for apprenticeship.” Registration Agencies will work closely with sponsors during compliance reviews to assist in the development of an availability analysis and setting or reassessing utilization goals for race, sex, and ethnicity. The Department will be further developing a data tool to assist in the collection and analysis of relevant demographic data for the purposes of goal setting. The Department has determined that there are three types of costs associated with this provision: Costs associated with the development of and familiarization with the data tool, costs associated with the workforce analysis, and costs associated with the utilization analysis.

Although it is the Department's expectation that this activity will result in long-term efficiencies and burden reductions for both the Department and affected sponsors, it understands that there will be costs associated with both the development of the data tool and the time sponsors will need to familiarize themselves with the tool. To develop the tool, the Department estimates that it will use a GS–13 Department employee at an hourly compensation rate of \$64.71 for 60 hours¹²⁶ to advise a contractor to build the tool. Based on the Department's requirements for similar assignments, the cost of contracting for building the tool is estimated to be \$55,000. The total one-time cost to the Department for building the tool is therefore estimated to be \$58,883.

To quantify the cost associated with sponsor familiarization with the data tool, the Department assumed that the data tool is developed in 2017 and that the following year (2018) all sponsors (25,231) with 5 or more apprentices (25 percent) will incur one hour of HR manager labor (\$73.90 per hour) to familiarize the organization with the

¹²⁶ The GS–13 salary is from the Office of Personnel Management's 2015 Salary Table. This wage is further multiplied by the Federal benefits multiplier of 1.63 for an hourly compensation rate of \$64.71 ($\39.70×1.63). The Federal multiplier of 1.63 is the result of a two-step estimate: The average ratio of total compensation to total wages in the private sector in 2015 (1.44) multiplied by the ratio of loaded wage factors for federal workers compared to private sector workers (1.13). Totals may not add due to rounding. See Bureau of Labor Statistics. (2016). *2015 Employer Costs for Employee Compensation*. Retrieved from: http://www.bls.gov/schedule/archives/ecec_nr.htm; Congressional Budget Office. (2012). *Comparing the compensation of federal and private-sector employees*. Tables 2 and 4. Retrieved from: https://www.cbo.gov/sites/default/files/112th-congress-2011-2012/reports/01-30-FedPay_0.pdf.

tool. This is estimated to have a cost of \$466,143 ($25,231 \times 25$ percent \times \$73.90 \times 1) in 2018. We repeated this calculation for the following years only for new sponsors to the program who will still need to acclimate themselves with the tool. This provision has an annualized cost of \$98,197 (with 7 percent discounting) and \$93,348 (with 3 percent discounting).

To calculate the cost of the new workforce analysis, the Department first determined the baseline (current) cost of the workforce requirements under existing regulations. The existing workforce analysis required 1 hour of HR manager labor (\$73.90 per hour) for all sponsors (23,811 in 2017) with 5 or more apprentices (25 percent) annually.

The Department then determined that the new methodology for conducting workforce analyses under the Final Rule—including the conducting of workforce analyses for individuals with disabilities—would result in 2 hours of HR manager labor (\$73.90 per hour) for all sponsors (25,231 in 2018) with 5 or more apprentices (25 percent). All sponsors with 5 or more apprentices must conduct their first new workforce analysis within two years of the Final Rule's effective date and every 2.5 years after that. The Department calculated that the new workforce analyses in 2018—the first year in which the new workforce analyses would be undertaken per the compliance date set forth in § 30.5(b)(3) for all sponsors with 5 or more apprentices—will cost \$932,285 (2 hours \times \$73.90 \times (25,231 \times 25 percent)). In calculating costs for the year 2019 and afterward, the Department divided the number of applicable sponsors in each year by 2.5 to reflect the assumption that in 2019 and after sponsors will conduct the analysis per the 2.5-year timeline. This means that in any given year 40 percent of these sponsors will conduct the new workforce analysis or that it would take 2.5 years to have these sponsors conduct the new workforce analysis. We repeated this calculation for the following years using the appropriate number of sponsors in any given year, resulting in an annualized cost of \$445,815 (with 7 percent discounting) and \$449,806 (with 3 percent discounting) for sponsors.

To calculate the cost of the new utilization analysis, the Department determined that the utilization analysis will result in 0.5 hour of HR manager time (\$73.90 per hour) for all sponsors (26,606 in 2019) with 5 or more apprentices (25 percent) every 5 years. There is no baseline cost for this portion of the analysis, as previously the Department was providing the analysis

with minimal burden to sponsors. The cost of conducting the first utilization analyses in 2019—the first year that utilization analyses are likely to be conducted—is \$49,155 (0.5 hour \times \$73.90 \times (26,606 \times 25 percent)/5 years). We repeated this calculation for the following years, and conducting utilization analyses has an annualized cost of \$41,235 (with 7 percent discounting) and \$43,348 (with 3 percent discounting) for sponsors.

Benefits

Once the data tool is developed, the Department estimates it will reduce the time required for its GS-13 employee (\$64.71 per hour) to conduct a utilization analysis from the existing 2 hours to 1 hour using the data tool jointly with sponsors. Furthermore, the frequency of conducting the utilization analysis is reduced from annually to once every 5 years. This will result in a cost saving to the Department of \$774,753 in 2019 ((26,606 \times 25 percent \times (2 hour – (1 hour/5 years)) \times \$64.71) and an annualized cost saving ranging from \$649,925 (with 7 percent discounting) to \$683,240 (with 3 percent discounting).

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 § 30.3(b), the Final Rule requires a sponsor of an apprenticeship program, whose utilization analyses revealed underutilization of a particular group or groups of individuals pursuant to § 30.6 and/or who has determined pursuant to § 30.7(e) that there are impediments to EEO for individuals with disabilities, to engage in targeted outreach, recruitment, and retention for all underutilized groups in § 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 is newly required for individuals with disabilities of all sponsors who employ five or more apprentices, who failed to meet the 7 percent utilization goal, and whose existing recruitment efforts are not effective and need to be revised, since the Final Rule now requires that such sponsors engage in affirmative action of individuals with disabilities. The Department recognizes, however, that some sponsors may already be meeting the 7 percent utilization goal for persons with disabilities. Others may be employing them at less than 7 percent, 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 overestimate the number of sponsors that need to engage in targeted outreach and recruitment and consequently overestimate total costs of this provision.¹²⁷

We assume that the cost to sponsors to distribute information about apprenticeship opportunities to organizations serving individuals with disabilities will be the labor cost. We also assume that the labor for this provision will be performed by a human resource manager and an administrative assistant with hourly compensation rates of \$73.90 and \$23.10, respectively. Lastly, we assume that this additional outreach will first occur two years after the Final Rule goes into effect. At the first compliance review—which for the first group of sponsors to conduct compliance reviews will occur approximately two years after the Final Rule's effective date—sponsors need to conduct a utilization analysis and an internal review to identify underutilization for women, minority groups, or individuals with disabilities. Sponsors who need to engage in targeted outreach and recruitment for the first time should continue to do so annually until the next compliance review.

The Department estimated that this dissemination task will take 30 minutes (0.5 hour) of a human resource manager's time and 30 minutes (0.5 hour) of an administrative assistant's time per targeted source. A sensitivity analysis for a range of time spent conducting targeted outreach to organizations that serve individuals with disabilities is presented further 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 \$48.50 (($\73.90×0.5) + ($\$23.10 \times 0.5$)) per source. We then multiplied this total labor cost by the number of outreach sources (5),¹²⁸ the

¹²⁷ 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.

¹²⁸ The Department believes that most sponsors will not have underutilization in all AAP protected bases (race, ethnicity, sex, and disability) requiring outreach under § 30.8; however, this analysis

share of sponsors with five or more apprentices (25 percent), the share of sponsors that will undertake a utilization analysis in any given year (20 percent¹²⁹) and the share of sponsors that will identify underutilization and/or problem areas in one or more of the relevant demographic groups—(95 percent¹³⁰). This calculation ($\$48.50 \times 26,606 \times 5 \times 25 \text{ percent} \times 20 \text{ percent} \times 95 \text{ percent}$) results in a total cost of this provision of approximately \$306,468 in 2019. The number of sponsors who will undertake a utilization analysis and identify underutilization and/or problem areas in 2019 is 1,264 ($26,606 \times 25 \text{ percent} \times 20 \text{ percent} \times 95 \text{ percent}$). Because sponsors who need to engage in targeted outreach and recruitment for the first time must continue to do so annually until the next compliance review, the number of sponsors needing to engage in targeted outreach and recruitment in 2020 will become 2,590, which is the sum of 1,264 and 1,326 ($27,915 \text{ sponsors in } 2020 \times 25 \text{ percent} \times 20 \text{ percent} \times 95 \text{ percent}$). The number of sponsors who we estimate will need to engage in targeted outreach and recruitment will eventually reach 95 percent of the total sponsors with 5 or more apprentices in 2023 and after.¹³¹

We repeated this calculation for the following years using the appropriate number of sponsors in any given year. The annualized cost ranges from \$936,998 (with 7 percent discounting) to \$1.02 million (with 3 percent discounting).

f. Affirmative Action Program Reviews

Affirmative action program reviews in the Final Rule result in three additional activities beyond the baseline: personnel process reviews, written affirmative action plan updates during compliance reviews, and written

assumes that sponsors will, on average, engage in outreach to five different organizations in order to comply with its obligations under 30.8(a). This assumption is, if anything, likely an overestimate, as some sponsors may be able to address the underlying issues with connections to fewer organizations, and some sponsors will not have the underutilization/impediments to EEO that would trigger the § 30.8 outreach obligation in the first place.

¹²⁹ This is the percentage of sponsors who undergo compliance review each year, as determined by the 5-year schedule on which sponsors undergo compliance reviews.

¹³⁰ In the consultation with regional directors, the Department assumed that 95 percent of sponsors that conduct a utilization analysis will discover underutilization of a particular group or groups of individuals pursuant to § 30.6 and/or problems with respect to its outreach, recruitment, and retention activities pursuant to § 30.7(f).

¹³¹ Should the 95 percent (share of sponsors that will identify underutilization and/or problem areas) fall over time, the cost estimate of this provision will likely be an overestimate.

affirmative action plan updates within three years of compliance reviews (estimated to occur 2.5 years later in this analysis). The Final Rule requires sponsors with five or more apprentices to review personnel processes annually (§ 30.9). Requiring this scheduled review of personnel processes emphasizes 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 revision to address barriers to EEO and to ensure that discrimination does not occur.

As required by the 1978 Final Rule (the analysis baseline), sponsors with 5 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 existing 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).

To calculate the cost of these three activities, the Department first determined the cost of the baseline that is being replaced by the Final Rule (annual affirmative action program reviews). The Department calculated that all sponsors (25,231 in 2018) with 5 or more apprentices (25 percent) currently incur 8 hours of HR manager labor (\$73.90 per hour) to conduct the existing annual reviews. The cost of the baseline in 2017 is \$3.73 million ($25,231 \times 25 \text{ percent} \times 8 \text{ hours} \times \73.90). This baseline is being replaced by less frequent affirmative action program reviews and an annual personnel process review for all sponsors (all of these provisions do not begin until the second year (2018) due to the two-year phase-in).

To determine the cost of the new annual personnel process review, the Department calculated the cost for all sponsors in 2018 (25,231) with 5 or more apprentices (25 percent) to spend

8 hours of HR manager labor conducting the review. This provision will result in an undiscounted cost of \$3.73 million in 2018 ($25,231 \times 25 \text{ percent} \times 8 \text{ hours} \times \73.90).

To determine the cost of the written affirmative action plan update at the time of the compliance review, the Department calculated the cost for all sponsors in 2018 (25,231) with 5 or more apprentices (25 percent) to spend 12 hours¹³² of HR manager labor every 5 years at the time of the compliance review. With the existing compliance review rate at 20 percent, this means that approximately one in five of these sponsors will undergo a compliance review every year. This provision will result in an undiscounted cost of \$1.12 million in 2018 ($25,231 \times 25 \text{ percent} \times 12 \text{ hours} \times (\frac{1}{5}) \times \73.90).

To determine the cost of the written affirmative action plan update within three years of the compliance review, the Department calculated the cost for all sponsors in 2018 (25,231) with 5 or more apprentices (25 percent) to spend 6 hours¹³³ (estimated to be less because of the lesser workload from not overlapping with the compliance review) of HR manager time every 5 years. This provision results in an undiscounted cost of \$559,371 in 2018 ($25,231 \times 25 \text{ percent} \times 6 \text{ hours} \times (\frac{1}{5}) \times \73.90). We repeated this calculation for the following years using the appropriate number of sponsors in any given year.

The total cost of this provision is \$1.68 million in 2018 ($\$559,371 + \$1.12 \text{ million} + \$3.73 \text{ million} - \3.73 million). The annualized cost ranges from \$1.69 million to \$1.75 million at 7 percent and 3 percent, respectively.

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 the Final Rule (§ 30.10), sponsors are required to adopt any method for the selection of apprentices provided that

¹³² A workforce analysis (1); a utilization analysis (2); goal-setting (if necessary) (3); and a full update of the written affirmative action plan (4) need to be undertaken at the compliance review. Because we have already costed out (1), (2), and (3), the sponsor would need additional 12 hours to fully update the written affirmative action plan.

¹³³ A written affirmative action program review within three years of compliance reviews contains (1) workforce analysis and (2) updating the written affirmative action plan to include the updated workforce analysis and a description of the review of personnel practices and any changes made as a result of that review (see 30.9(b)). Because we have already costed out (1), the 6 hours are for including updated the workforce analysis and a description of the review of personnel practices and any changes made as a result of that review (see 30.9(b)).

the method (1) complies with Uniform Guidelines on Employee Selection Procedures (USGEP); (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 greater flexibility in fashioning a selection procedure; it also aligns this provision of part 30 with how other equal opportunity laws regulate employers' use of selection procedures.

Benefits

This provision, aimed at simplifying selection procedures, is expected to reduce sponsors' 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 currently select applicants or employees under other EEO laws. Although this analysis did not quantify any benefits under this provision, it is expected that this will result in efficiencies for sponsors.

h. Standardizing Compliance Review Procedures for Registration Agencies

The Final Rule standardizes procedures Registration Agencies must follow for conducting compliance reviews (§ 30.13). The provision on compliance reviews carries forward the existing provision at § 30.9 addressing compliance reviews and includes several modifications to improve readability. First, the Final Rule revises 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" is used throughout § 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 Final Rule provides more specificity for the procedures Registration Agencies must follow in conducting compliance reviews. This increased specificity provides for greater consistency and standardization of procedures across the National Registered Apprenticeship System. For instance, § 30.13(b) requires the Registration Agency to notify a sponsor of any 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 add clarity to the procedures but do not fundamentally change the process and, therefore, do not represent a significant additional burden to sponsors or SAAs. The Department believes the additional specificity will ease some of the burden on States.

Sponsors are subject to 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, the Final Rule makes the practice standard and common among all entities. Under the Final Rule, the notice of review findings is required to be sent via registered or certified mail, with return receipt requested within 45 days of the completed equal opportunity compliance review.

The costs associated with this provision are limited to the use of registered mail, the materials, and the labor 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 hour) multiplied by the hourly compensation rate (\$29.55 for SAAs and \$30.68 for OA).¹³⁴ The total materials cost is the cost to send a letter via registered mail (\$12.20) plus the cost of the envelope (\$0.07) plus the cost to photocopy the one-page document (\$0.08), or \$12.35 (\$12.20 + \$0.07 + \$0.08).

To estimate the total cost of this provision in the first year, we summed labor and material costs and then

¹³⁴ We calculated the hourly compensation rate for an administrative assistant by multiplying the hourly wage of \$18.82 (GS-7 step 5) by 1.57 for the State agency and 1.63 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 \$29.55 (\$18.82 × 1.57) and \$30.68 (\$18.82 × 1.63) at a Federal agency.

multiplied by the total number of reviewed sponsors resulting in \$46,997 for SAAs and \$47,670 for OA.¹³⁵ We then repeated this calculation for each year of the analysis period using the projected number of sponsors for each year. The annualized cost to SAAs ranges from \$56,499 (with 7 percent discounting) to \$57,163 (with 3 percent discounting) and the annualized cost to OA ranges from \$57,308 (with 7 percent discounting) to \$57,981 (with 3 percent discounting).

i. Clarifying Complaint Procedures

In an effort to ensure consistency with how Registration Agencies process complaints and conduct investigations, § 30.14(c) adds uniform procedures that Registration Agencies must follow. These uniform procedures 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 the Registration Agency attempts to quickly resolve violations. Since the complaint process is not a new process, the Department does not expect that these provisions will add significantly to the burden on Registration Agencies; they simply standardize the procedures and define a timeline. Therefore, while the Department does not expect significant changes in burden, there may still be negligible 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.

j. Adopting Uniform Procedures Under 29 CFR Parts 29 and 30 for Deregistration, Derecognition, and Hearings

The Final Rule generally aligns part 30 with part 29 procedures for deregistration of apprenticeship programs, derecognition of SAAs, and hearings (§§ 30.15 through 30.16). For consistency and simplicity, § 30.15(c) adopts the deregistration procedures of § 29.8(b)(5) through (8) of this title, including the hearing procedures in § 29.10. This revision a more closely aligned set of procedures for matters arising from management of the

¹³⁵ To calculate the labor cost, we multiplied the time required by the hourly compensation rate, resulting in a cost of \$7.38 (0.25 × \$29.55) for State Apprenticeship Agencies and \$7.67 (0.25 × \$30.68) for OA. We then multiplied each labor cost by the percentage of sponsors subject to compliance reviews (20 percent) and by 50 percent (we assumed that half of the sponsors respond to SAAs and the rest respond to OA).

National Registered Apprenticeship System. These provisions are not expected to impose a burden because SAAs are already following these procedures in part 29.

k. Invitation To Self-Identify as an Individual With a Disability

The Final Rule under § 30.11 requires sponsors with 5 or more apprentices to invite applicants for apprenticeship to voluntarily self-identify as an individual with a disability protected by this part at two stages: (1) At the time they apply or are considered for apprenticeship; and (2) after they are accepted into the apprenticeship program but before they begin their apprenticeship. Within the first two years of the program, existing sponsors will be required to survey their current apprentices.

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 the Department to better identify and monitor the sponsor's enrollment and selection practices with respect to individuals with disabilities and also enable the Department 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 improve the effectiveness of retention strategies or help sponsors evaluate whether such strategies are necessary.

Within the first two years of this program, sponsors with 5 or more apprentices will need to survey their current workforce with the invitation to self-identify. The Department assumed that sponsors would survey their current workforce for the first time in 2018 and calculated that sponsors (33,939 in 2018) with 5 or more apprentices (25 percent) will survey an average of 41 apprentices with an invitation to self-identify provided by the Department.¹³⁶ The Department estimated that it would take an

¹³⁶ The average number of apprentices at sponsors with 5 or more apprentices using 2015 RAPIDS data was 33 in 2015. Over the 10-year analysis period, the Department assumed that the average number of apprentices for sponsors with 5 or more apprentices would grow at the same rates that were estimated for all sponsors. The Department estimated that there are on average 38 apprentices per sponsor with 5 or more apprentices in 2017; 41 in 2018; 42 in 2019; 44 in 2020; 46 in 2021; 49 in 2022; 50 in 2023; 50 in 2024; 52 in 2025; and 53 in 2026.

apprentice (\$18.72 per hour) 5 minutes (0.08 hours) to complete the form. Furthermore, an administrative assistant (\$23.10 per hour) would need to spend 0.5 hour annually to record and keep the forms. This provision has a cost in 2018 of \$458,811 $((25,231 \times 25 \text{ percent} \times 41 \times 0.08 \text{ hour} \times \$18.72) + (25,231 \times 25 \text{ percent} \times 0.5 \text{ hour} \times \$23.10))$.

In subsequent years, all sponsors with 5 or more apprentices will be required to administer the invitation to self-identify twice: Once to all applicants prior to the offer of apprenticeship, and once after the offer of apprenticeship to those who have been extended offers. The Department estimates that sponsors post 42 positions in 2019 and receive 15 applicants per posting.¹³⁷ Of those positions, the Department estimated that 42 offers of enrollment are made and 42 apprentices choose to enroll in 2019. This requirement has an undiscounted cost in 2019 of \$6.84 million $(26,606 \times 25 \text{ percent} \times ((15 \text{ applications} \times 42 \text{ job listings} \times .08) + (42 \text{ offers of apprenticeship} \times .08)) \times \$18.72 + 26,606 \times 25 \text{ percent} \times 0.5 \times \$23.10)$. For the 10-year analysis period, this provision has an annualized cost of \$6.54 million and \$6.91 million (at 7 percent and 3 percent discounting, respectively).¹³⁸ In addition, sponsors with 5 or more apprentices are required to remind apprentices yearly that they can update their invitation to self-identify. The Department assumed that these sponsors would send out an annual reminder email beginning in 2018 at the cost of \$12,292 $(25,231 \times 0.25 \text{ percent} \times 0.08 \text{ hour} \times \$23.10)$. We repeated this calculation for each remaining year in the analysis period using the estimated number of sponsors for each year. This provision in total has an annualized cost of \$4.53 million and \$4.76 million (at 7 percent and 3 percent discounting, respectively).

l. Other

The Final Rule will result in three additional costs. First, SAAs will be required to revise their State equal opportunity plan to conform to the new requirements. Second, the Final Rule will create an intermediary step between a registered sponsor and a deregistered sponsor (registration suspension). Third, sponsors will likely hire or retain more qualified apprentices

¹³⁷ The Department determined the number of positions posted from conversations with programs of various sizes. We determined that the largest, statewide programs post more than 15 jobs, but the Department used this as an average for all apprentices to avoid under-estimating the costs.

¹³⁸ It is assumed that there will be 100 percent participation in the invitation to self-identify and therefore, the cost of this provision is likely overestimated.

with disabilities under the Final Rule and this may result in additional costs of providing appropriate job accommodations.

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 include changing language and existing requirements such that they align with the regulatory changes herein. To calculate the costs, the Department assumed that the process to revise the State equal opportunity plan will take a full year of effort (2,080 hours) to complete.¹³⁹ This is the Department's best estimate for updating the existing State equal opportunity plan. For simplicity, we assumed that an SAA human resource manager will complete the task at an hourly compensation rate of \$62.33.¹⁴⁰ This amounts to a one-time cost of \$3.24 million in the first year $(2,080 \text{ hours} \times \$62.33 \times 25)$.¹⁴¹

Intermediate Step Between a Registered Sponsor and a Deregistered Sponsor

The Final Rule creates an intermediary step regarding suspending new apprentices before deregistration proceedings are instituted (§ 30.15(b)). Currently, deregistration of an

¹³⁹ 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 Federal regulations, these costs should be accounted for and addressed elsewhere in the analysis under discussions of costs.

¹⁴⁰ We calculated the hourly compensation rate for a human resource manager at a State agency by multiplying the hourly wage of \$39.70 (GS-13 step 5) by 1.57 for the State agency. The hourly compensation rate for a human resource manager at a State agency is thus \$62.33 $(\$39.70 \times 1.57)$.

¹⁴¹ The estimated time to complete the revisions is 12 months (2,080 hours). The 2017 calculation used the hourly compensation rate for a state human resource manager (\$62.33) 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 \$3.24 million $(2,080 \times \$62.33 \times 25)$. This cost only accrues in the first year of the ten-year analysis period.

apprenticeship program occurs when the sponsor fails to demonstrate compliance with the 1978 Final Rule. The new suspension step allows 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 procedure, a Registration Agency may 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 deregistration proceedings are initiated by the Registration Agency.

The intermediary step represents a benefit because it allows sponsors to comply without having to be deregistered and then reregister or abandon their program. The benefits of this provision are difficult to quantify because some programs eligible for deregistration may seek deregistration voluntarily.

Workplace Accommodations for Apprentices With Disabilities

The Final 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 Federal law. For any sponsor that may not already be required under the law to provide such accommodations (*e.g.*, any sponsor with fewer than 15 employees would not be covered by the ADA), we expect the resulting burden to be 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 percent) reported no additional accommodation costs and the rest (43 percent) reported one-time costs of \$500 on average.¹⁴² 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 3 presents a summary of the first-year costs of the Final Rule, as described above. As shown in the exhibit, the total first-year cost of the Final Rule is \$42.88 million. The Department was able to only quantify benefits (*i.e.*, cost-savings) of the Final Rule resulting from the benefit from more efficient utilization analysis and goal setting by the Department. The Department estimated that this time saving yield \$4.56 or \$5.83 million in benefits over the 10-year period (with 7 percent and 3 percent discounting, respectively).

¹⁴² Beth Loy, "Accommodation and Compliance Series Workplace Accommodations: Low Cost, High Impact," Job Accommodation Network (2014), <http://askjan.org/media/lowcosthighimpact.html>.

Exhibit 3: Summary of First-Year Cost			
	Provision	Entity Affected	Monetized Costs (\$ Million)
1	Post equal opportunity pledge	Sponsor	\$0.23
3	Universal outreach	Sponsor	\$5.77
4	Notice of compliance review	SSA	\$0.05
5	Notice of compliance review	OA	\$0.05
6	Revision of state EEO plan	SSA	\$3.24
7	Time required to read and review NPRM	Sponsor	\$7.04
8	Orientation and periodic information sessions	Sponsor/Apprentice	\$26.44
11	Data tool development	Sponsor	\$0.06
	<i>Total First-Year Cost</i>		\$42.88

Exhibit 4 presents a summary of the monetized costs and benefits associated with the Final Rule over the 10-year analysis period. The monetized costs

and benefits displayed are the yearly summations of the calculations described above. Costs and benefits are presented as undiscounted 10-year

totals, and as present values with 7 and 3 percent discount rates.

Exhibit 4: Summary of Monetized Benefits and Costs		
Year	Monetized Benefits	Monetized Costs
	\$ Million/year	\$ Million/year
2017	\$0.00	\$42.88
2018	\$0.00	\$36.84
2019	\$0.77	\$45.50
2020	\$0.81	\$49.32
2021	\$0.85	\$53.12
2022	\$0.88	\$58.28
2023	\$0.91	\$61.93
2024	\$0.93	\$63.50
2025	\$0.95	\$66.29
2026	\$0.97	\$68.76
<i>Undiscounted</i>	\$7.08	\$546.42
<i>7% Discounted</i>	\$4.56	\$370.27
<i>3% Discounted</i>	\$5.83	\$458.90
<i>Annualized 7%</i>	\$0.65	\$52.72
<i>Annualized 3%</i>	\$0.68	\$53.80

Primary estimates of the 10-year monetized costs of the Final Rule are \$370.27 million and \$458.90 million (with 7 and 3 percent discounting, respectively). The 10-year monetized benefits of the Final Rule are estimated at \$4.56 million or \$5.83 million (with 7 and 3 percent discounting, respectively).¹⁴³

Due to data limitations, the Department did not quantify several important benefits to society provided by the Final Rule. The Final Rule is expected to result in several overarching benefits to apprenticeship programs and specific benefits resulting from a clearer, more systematic rule. As discussed above, equal opportunity policies may lead to both efficiency gains and distributional impacts for society. The Final Rule may reduce barriers to entry in apprenticeship programs for women, minorities, and individuals with disabilities, fostering a distributional effect, and may alleviate the inefficiencies in the job market these barriers create. It may also benefit businesses, as discussed above.

The Final Rule focuses on making the existing 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. The Final Rule 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 provides consistency with existing equal opportunity laws and part 29 already applicable to these affected entities. Finally, the Final Rule streamlines procedures already in place under the 1978 Final Rule.

5. Regulatory Alternatives

In addition to the Final Rule, the Department has considered four

regulatory alternatives: (a) Take no action, that is, to leave the 1978 Final Rule intact; (b) increase the Department's enforcement efforts of the 1978 Final Rule; (c) apply the same affirmative action requirements set forth in this rule to all sponsors, regardless of size; and (d) rely 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 the four 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 Final 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 alternative.

a. 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, LGBT individuals, and those ages 40 or older.

b. 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 the Department to enforce the equal opportunity standards. To determine the cost of this alternative, we assumed that the frequency of compliance reviews will increase by 50 percent, implying that sponsors would be evaluated by the Registration Agency (the Department or SAAs) on a more frequent basis. With the existing

compliance review rate at 20 percent—meaning that approximately one in five sponsors undergoes a compliance review every year—a 50 percent increase would constitute an extra 10 percent of sponsors (20 percent \times 0.5) undergoing compliance reviews each year for a total of 30 percent of sponsors (20 percent + 10 percent) undergoing annual compliance reviews.

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 (2,381 = 23,811 \times 10 percent in 2017) by the hourly compensation rate of an SAA human resource manager (\$62.33) and by the hourly compensation rate of an OA human resource manager (\$64.71).¹⁴⁴ We also multiplied this number by 50 percent, assuming that half of the sponsors report to a SAA and half report to OA. The cost of increased compliance reviews in the first year is \$2.97 million for SAAs (23,811 \times 50 percent \times \$62.33 \times 40 \times 10 percent) and \$3.08 million for OA (23,811 \times 50 percent \times \$64.71 \times 40 \times 10 percent). The annualized costs range from \$3.57 million to \$3.61 million for SAAs (with 7 and 3 percent discounting, respectively) and from \$3.70 million to \$3.75 million for OA (with 7 and 3 percent discounting, respectively). The 10-year costs for this alternative range from \$51.08 million to \$62.77 million (with 7 and 3 percent discounting, respectively).

Exhibit 5 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 percent and 3 percent discount rates.

¹⁴³ The Department believes that the overhead costs associated with the Final Rule are small because the additional activities required by the Final Rule will be performed by existing employees whose overhead costs are already covered. The Department acknowledges that it is possible that additional overhead costs might be incurred, however, and has conducted a sensitivity analysis by calculating the impact of more significant overhead costs (an overhead rate of 17 percent). This rate, used by the U.S. Environmental Protection Agency (EPA) in its final rules (see, for example, EPA Electronic Reporting under the Toxic

Substances Control Act Final Rule, Supporting and Related Material), is based on a Chemical Manufacturers Association study. An overhead rate from chemical manufacturing might not be appropriate for all industries, so there may be substantial uncertainty concerning the estimates based on this illustrative example. Over the 10-year period, using an overhead rate of 17 percent would increase the total cost of the Final Rule from \$370.27 million to \$433.11 million and from \$458.90 million to \$536.79 million (with 7 and 3 percent discounting, respectively). For the reasons stated above, the Department believes this estimate

overestimates the additional costs arising from overhead costs while recognizing that there is not one uniform approach to estimating the marginal cost of labor.

¹⁴⁴ We calculated the hourly compensation rate for a human resource manager at OA by multiplying the hourly wage of \$39.70 (GS-13 step 5) by 1.63 to account for public-sector employee benefits. The hourly compensation rate for a human resource manager at a Federal agency is thus \$64.71 (\$39.70 \times 1.63).

Exhibit 5: Costs of Increasing Enforcement				
Year	Costs	Sponsors	SAA	OA
	\$ Million/year	\$ Million/year	\$ Million/year	\$ Million/year
2017	\$6.05	\$0.00	\$2.97	\$3.08
2018	\$6.41	\$0.00	\$3.15	\$3.27
2019	\$6.76	\$0.00	\$3.32	\$3.44
2020	\$7.09	\$0.00	\$3.48	\$3.61
2021	\$7.40	\$0.00	\$3.63	\$3.77
2022	\$7.69	\$0.00	\$3.77	\$3.91
2023	\$7.94	\$0.00	\$3.89	\$4.04
2024	\$8.15	\$0.00	\$4.00	\$4.15
2025	\$8.32	\$0.00	\$4.08	\$4.24
2026	\$8.44	\$0.00	\$4.14	\$4.30
<i>Undiscounted</i>	\$74.25	\$0.00	\$36.43	\$37.82
<i>7% Discounted</i>	\$51.08	\$0.00	\$25.06	\$26.02
<i>3% Discounted</i>	\$62.77	\$0.00	\$30.80	\$31.97
<i>Annualized 7%</i>	\$7.27	\$0.00	\$3.57	\$3.70
<i>Annualized 3%</i>	\$7.36	\$0.00	\$3.61	\$3.75

Increasing monitoring and evaluation of current efforts will increase administrative costs to the Department and may improve compliance to the existing requirements, but it would not modernize the rule to be consistent with current law affecting workers with disabilities and older workers. Therefore this would not be a preferred option, as it excludes a major area of focus for the Department: Improving access to good jobs for individuals with disabilities, such as those offered by Registered Apprenticeship opportunities.

c. Apply the Same Affirmative Action Policy to All Sponsors Regardless of Size

The 1978 Final Rule and the Final Rule require that all sponsors with five or more apprentices 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. Sponsors of small apprenticeship programs often have very few employees. Such sponsors would likely be overly burdened by the targeted outreach, recruitment, and retention requirements in § 30.8. For example, they might not have the staff and resource capacity to adequately conduct outreach to multiple organizations.

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 Final 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 underutilization and participate in targeted outreach and recruitment.

To calculate the costs associated with this alternative, we first calculated the cost for all sponsors to complete the utilization analysis. As discussed above, we assumed this process takes 0.5 hour of a human resource manager's time at an hourly compensation rate of \$73.39. We then divided the number of sponsors by 5 years to reflect that new utilization analyses occur approximately every five years. The resulting cost in 2019 is \$196,618 $((0.5 \times \$73.90 \times 26,606)/5)$. We repeated this calculation for each remaining year in the analysis period using the estimated number of sponsors for each year, resulting in an annualized cost ranging from \$164,939 (with 7 percent discounting) to \$173,394 (with 3 percent discounting).

To quantify the cost associated with sponsor familiarization with the data tool for the utilization analysis, the Department assumed that all sponsors (25,231 in 2018) will incur one hour of HR manager labor (\$73.90 per hour) to familiarize the organization with the tool. This is estimated to have a cost of \$1.86 million in 2018 $(25,231 \times \$73.90$

$\times 1)$. We repeated this calculation for the following years only for new sponsors to the program who will still need to acclimate themselves with the tool. This provision has an annualized cost of \$392,786 (with 7 percent discounting) and \$373,391 (with 3 percent discounting).

Once the data tool is developed, the Department estimates it will take one hour for a GS-13 employee (\$64.71 per hour) to conduct a utilization analysis for sponsors with fewer than 5 apprentices. This will result in a cost to the Department of \$258,251 in 2019 $(26,606 \times 75 \text{ percent} \times 1 \text{ hour} \times \$64.71/5)$ and an annualized cost ranging from \$216,642 (with 7 percent discounting) to \$178,378 (with 3 percent discounting).

The Department next calculated the costs for all sponsors to conduct a workforce analysis. All sponsors with five or more apprentices must conduct the first new workforce analysis within two years of the Final Rule's effective date and every 2.5 years after that. For these sponsors, this process is expected to take 2 hours of an HR manager's time (\$73.90 per hour) in 2018 compared to a baseline of 1 hour of an HR manager's time. We multiplied this 1 hour by an HR manager's wage and by 25 percent of active sponsors, resulting in a cost of \$466,143 $((25,231 \times 25 \text{ percent} \times 1 \text{ hour} \times \$73.90)$. For sponsors with fewer than five apprentices, this process is expected take 2 hours of an HR manager's time (\$73.90 per hour) and they are currently not required to conduct a workforce analysis. We multiplied \$73.90 by 75 percent of active sponsors and 2 hours for sponsors with fewer than 5 apprentices. The

resulting cost in 2018 is \$2.80 million ($(25,231 \times 75 \text{ percent} \times 2 \text{ hours} \times \$73.90)$) and the total cost for all sponsors in 2018 is \$3.26 million ($\$466,143 + \2.80 million).

In subsequent years after 2018, for sponsors with five or more apprentices, this process is expected to take 2 hours of an HR manager's time ($\$73.90 \text{ per hour}$) every 2.5 years compared to a baseline of 1 hour of an HR manager's time annually, for a net saving of 0.2 hour per year. We multiplied this 0.2 hour by an HR manager's wage and by 25 percent of active sponsors, resulting in cost savings in 2019—the first year in which new workforce analyses will be conducted—of $\$98,309$ ($(26,606 \times 25 \text{ percent} \times 0.2 \text{ hour} \times \$73.90)$). For sponsors with fewer than five apprentices, this process is expected to take 2 hours of an HR manager's time ($\$73.90 \text{ per hour}$) every 2.5 years and they are currently not required to conduct a workforce analysis. We multiplied $\$73.90$ by 75 percent of active sponsors and 2 hours, dividing by 2.5 years to reflect that the new workforce analyses occur approximately every two and a half years. The resulting cost in 2019 is $\$1.18 \text{ million}$ ($(26,606 \times 75 \text{ percent} \times 2 \text{ hours} \times \$73.90) / 2.5$).

The cost for all sponsors to conduct a workforce analysis in 2019 is $\$1.08 \text{ million}$ ($\$1.18 \text{ million less } \$98,309$). This calculation was repeated in subsequent years, resulting in an annualized cost ranging from $\$1.31 \text{ million}$ to $\$1.32 \text{ million}$ with 7 percent and 3 percent discounting, respectively.

We next calculated the costs of expanding the requirements for all apprenticeship sponsors to conduct 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. We again assumed that each sponsor contacts five organizations; that a human resource manager would take 30 minutes (0.5 hour) to complete this task at an hourly compensation rate of $\$73.90$; and that an administrative assistant would spend 30 minutes (0.5 hours) at an hourly compensation rate of $\$23.10$.

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 $\$48.50$ ($(\$73.90 \times 0.5) + (\$23.10 \times 0.5)$) per source. We then multiplied this labor cost by the number of outreach sources (5); the number of sponsors (26,606 in 2019); 95 percent for sponsors whose utilization analyses revealed underutilization; and 20 percent for sponsors who undergo

compliance review each year. This calculation results in a total cost of $\$1.23 \text{ million}$ in 2019 ($\$48.50 \times 5 \times 26,606 \times 95 \text{ percent} \times 20 \text{ percent}$). We repeated this calculation for each remaining year in the analysis period using the estimated number of sponsors for each year, resulting in an annualized cost ranging from $\$3.75 \text{ million}$ to $\$4.07 \text{ million}$ with 7 percent and 3 percent discounting, respectively.

Within the first two years of this program, all sponsors will need to survey their current workforce with the invitation to self-identify. The Department calculated that sponsors (25,231 in 2018) will survey an average of 26 apprentices with an invitation to self-identify provided by the Department. The Department estimated that it would take an apprentice ($\$18.72 \text{ per hour}$) 5 minutes (0.08 hours) to complete the form. Furthermore, an administrative assistant ($\$23.10 \text{ per hour}$) would need to spend 0.5 hour annually to record and keep the forms. This provision has a cost of $\$1.27 \text{ million}$ in 2018 ($(25,231 \times 26 \times 0.08 \text{ hour} \times \$18.72) + (25,231 \times 0.5 \text{ hour} \times \$23.10)$).

In subsequent years, all sponsors will be required to administer the invitation to self-identify twice: once to all applicants prior to the offer of apprenticeship, and once after the offer of apprenticeship to those who have been extended offers. The Department estimates that sponsors post 27 positions per year and receive 15 applicants per posting in 2019. Of those positions, the Department estimated that 27 offers of enrollment are made and 27 apprentices choose to enroll. This requirement has an undiscounted second year (2019) cost of $\$17.47 \text{ million}$ ($26,606 \times ((15 \text{ applications} \times 27 \text{ job listings} \times .08) + (27 \text{ offers of apprenticeship} \times .08)) \times \$18.72 + 26,606 \times 0.5 \times \23.10). For the 10-year analysis period, this provision has an annualized cost of $\$16.76 \text{ million}$ and $\$17.71 \text{ million}$ (at 7 percent and 3 percent discounting, respectively).¹⁴⁵ In addition, all sponsors are required to remind apprentices yearly that they can update their invitation to self-identify. The Department assumed that sponsors would send out an annual reminder email beginning in 2018 at the cost of $\$49,168$ ($25,231 \times 0.08 \text{ hour} \times \23.10). We repeated this calculation for each remaining year in the analysis period using the estimated number of sponsors for each year. This provision in total has

¹⁴⁵ It is assumed that there will be 100 percent participation in the invitation to self-identify and therefore, the cost of this provision is likely overestimated.

an annualized cost of $\$16.80 \text{ million}$ and $\$17.75 \text{ million}$ (at 7 percent and 3 percent discounting, respectively).

Lastly, we calculated the cost of affirmative action plan reviews for all sponsors. Assuming a two-year phase-in and the same time requirements for each element of the review, we estimate that, in 2018, the personnel process review will cost $\$14.92 \text{ million}$ ($25,231 \times 8 \text{ hours} \times \73.90), the written affirmative action program review at the time of the compliance review will cost $\$4.47 \text{ million}$ ($(25,231 \times 12 \text{ hours} \times \$73.90) / 5 \text{ years between reviews}$), and the written affirmative action program review conducted within three years of the compliance review will cost $\$2.24 \text{ million}$ ($(25,231 \times 6 \text{ hours} \times \$73.90) / 5 \text{ years between reviews}$) for a total cost of $\$21.63 \text{ million}$. We repeated this calculation for each remaining year in the analysis period using the estimated number of sponsors for each year, resulting in an annualized cost ranging from $\$21.82 \text{ million}$ to $\$22.50 \text{ million}$ with 7 percent and 3 percent discounting, respectively.

The remaining costs for this alternative are the same as for the Final Rule. The total 10-year costs of this alternative range from $\$589.29 \text{ million}$ to $\$736.27 \text{ million}$ (with 7 percent and 3 percent discounting, respectively).

d. 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 potential cases of discrimination to Registration Agencies, in contrast to both the existing and the Final Rule's 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 § 30.11 and existing § 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 § 30.12 and existing § 30.11 and self-evaluations from sponsors, and (2) a process where sponsors conduct a self-evaluation and report back to the Registration Agency. 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.

Registration Agencies under this alternative 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.

The Department assumes that the SAA and OA would reduce the number of compliance reviews by 20 percent. To calculate this cost savings, we multiplied the total number of sponsors (23,811 in 2017) by the percentage decrease in reviews. This results in 952 fewer reviews in the first year ($23,811 \times 20 \text{ percent} \times 20 \text{ percent}$). 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 for each agency ($476 = 0.5 \times 952$) by the hours needed to complete each review (40 hours) and by the

human resource managers' wages (\$62.33 and \$64.71 per hour for the SAAs and OA respectively). The resulting cost savings in the first year is \$1.19 million ($476 \times \62.33×40) for SAAs and \$1.23 million ($476 \times \64.71×40) for OA. We repeated this calculation for each year using the projected number of sponsors in each year. This results in an annualized savings for the SAAs of \$1.42 million (with 7 percent discounting) to \$1.44 million (with 3 percent discounting) and \$1.48 million (with 7 percent discounting) to \$1.50 million (with 3 percent discounting) 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 (\$73.90) and by the total number of sponsors (23,811). The cost to the sponsors is thus \$14.08 million ($23,811 \times 1 \times 8 \times \73.90) in 2017. This calculation was repeated according to the projected number of sponsors each year, with an annualized cost ranging from \$16.92 million (with 7 percent discounting) to \$17.12 million (with 3 percent discounting).

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 11,906 ($23,811 \times 50 \text{ percent}$) evaluations in the first 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 (\$62.33 and \$64.71 for the SAAs and OA, respectively). The cost in 2017 is \$3.71 million for the SAAs and \$3.88 million for OA. This calculation was repeated according to the projected number of sponsors each year, with an annualized cost of \$4.49 million (with 7 percent discounting) to \$4.54 million (with 3 percent

discounting) for SAAs and \$4.66 million (with 7 percent discounting) to \$4.71 million (with 3 percent discounting) 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 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 hourly compensation rate for an apprentice (\$18.72) to estimate a labor cost of \$4.68 and a total cost of \$468 ($\4.68×100) each year of the analysis period.¹⁴⁶

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 2017 is \$24,932 ($50 \times 8 \times \62.33) for the SAAs and \$25,884 ($50 \times 8 \times \64.71) for OA. This calculation was repeated for the nine remaining years in the analysis period. The total 10-year costs of this alternative range from \$183.08 million to \$224.95 million (with 7 percent and 3 percent discounting, respectively).

e. Summary of Alternatives

Exhibit 6 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.

¹⁴⁶ We calculated the hourly compensation rate for an apprentice by multiplying the median hourly wage of \$13.00 (as published by PayScale for an 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 ($\13.00×1.43).

Exhibit 6: Summary of Alternatives					
Totals (in Million \$)					
7-percent discount		Benefits	Annualized benefits	Costs	Annualized costs
	No action	\$0.00	\$0.00	\$0.00	\$0.00
	Final Rule	\$4.56	\$0.65	\$370.27	\$52.72
	Increased enforcement	\$0.00	\$0.00	\$51.08	\$7.27
	Same policies regardless of size	\$16.74	\$2.38	\$589.29	\$83.90
	Complaint-based	\$20.43	\$2.91	\$183.08	\$26.07
3-percent discount		Benefits	Annualized benefits	Costs	Annualized costs
	No action	\$0.00	\$0.00	\$0.00	\$0.00
	Final Rule	\$5.83	\$0.68	\$458.90	\$53.80
	Increased enforcement	\$0.00	\$0.00	\$62.77	\$7.36
	Same policies regardless of size	\$21.37	\$2.51	\$736.27	\$86.31
	Complaint-based	\$25.11	\$2.94	\$224.95	\$26.37

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121 (March 29, 1996), requires federal agencies engaged in rulemaking to consider the impact of their proposals on small entities, consider alternatives to minimize that impact, and solicit public comment on their analyses.¹⁴⁷ The RFA requires the assessment of the impact of a regulation on a wide range of small entities, including small businesses, not-for-

profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule would have a significant economic impact on a substantial number of small entities. 5 U.S.C. 603 and 604. As part of a regulatory proposal, the RFA requires a federal agency to prepare, and make available for public comment, an initial regulatory flexibility analysis that describes the impact of the proposed rule on small entities. *Id.* at 603(a). When an agency expects that a proposed rule will not have a significant economic impact on small entities, or the number of small entities impacted would be less than substantial, the agency may certify those results to the

Chief Counsel for Advocacy of the Small Business Administration (SBA). *Id.* at 605(b). The certification must include a statement providing the factual basis for the agency's determination. *Id.*

Based on the analysis below, the Department has notified the Chief Counsel for Advocacy, SBA, under the RFA at 5 U.S.C. 605(b), and certifies that this rule will not have a significant economic impact on a substantial number of small entities.

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

¹⁴⁷ Public Law 96–354 (Sept. 19, 1980), Public Law 104–121 (March 29, 1996).

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.¹⁴⁸ These top five industry categories account for 86 percent of the total number of apprenticeship sponsors who had active apprenticeships in FY 2015.¹⁴⁹

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).

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 the Final Rule, however, fall on the sponsor, and therefore we used sponsor data to create the industry breakdowns.

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. In broader NAICS categories, such as Manufacturing (NAICS 31–33), the SBA has designated different standards for each six-digit NAICS code within the larger category. The Department recorded these narrower standards in its

¹⁴⁸ According to RAPIDS, the percent of programs (of all sizes) in the selected sectors in 2015 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.

¹⁴⁹ 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.

analysis; in this document, we offer the lowest and most restrictive standard where multiple standards exist. We follow the SBA standards, which are based on annual revenue for some industries and on number of employees for other industries.

The “Construction” industry category follows NAICS exactly (NAICS 23) and, thus, we used the SBA definitions of revenue less than or equal to \$36.5 million for NAICS 236 and 237 and \$15 million for NAICS 238. All sponsors included in the data fell into one of these three NAICS codes.

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—500 employees or less; Sand, Gravel, Clay, and Ceramic—500 employees or less; and Refractory Minerals Mining and Quarrying—500 employees or less.¹⁵⁰

The “Service” industry category covers the largest number of NAICS sectors, subsectors, and industries.¹⁵¹ The majority of these industries use the SBA small business size standard of revenue of less than or equal to \$7.5 million, with the exception of Motion Picture and Video Production, which uses \$32.5 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

¹⁵⁰ 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.

¹⁵¹ 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).

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 \$7.5 million or 500 employees or less for Transportation and Warehousing and Marinas; \$32.5 million or 1,500 employees or less for Telecommunication; \$38.5 million for Other Nonhazardous Waste Treatment and Disposal; and \$32.5 million for Radio and TV Broadcasting.¹⁵²

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 equal to \$7.5 million, Retail Bakeries—less than or equal to 1,000 employees and Food Services and Drinking Places—revenue less than or equal to \$7.5 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.¹⁵³ 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, the Department retrieved data on number of employees and annual revenue from ReferenceUSA, a business information provider, for approximately 1,600 randomly selected companies. Using the SBA small business definitions and through this categorization process, we determined that approximately 91 percent (or 1,459) of the sample are small entities.¹⁵⁴

2. Impact on Small Entities

The Department has estimated the incremental costs for small entities from

¹⁵² 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.

¹⁵³ 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.

¹⁵⁴ 91% represents an average of the five sectors. For construction, 91.6% of the sample is classified as small. For manufacturing, 87.1% of the sample is classified as small. For trade, 88.1% of the sample is classified as small. For services, 91.0% is classified as small. For transportation, 96.2% of the sample is classified as small.

the baseline of the 1978 Final Rule.¹⁵⁵ This analysis reflects the incremental cost of the Final Rule, 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, the time required to read and review the new regulatory requirements, offering periodic orientation and information sessions, developing a form for individuals to self-identify a disability, conducting utilization and workforce analyses, and reviewing affirmative action plans.

To examine the impact of this rule on small entities, we evaluated the impact of the incremental costs on a hypothetical small entity of average size. The total number of workers for the average small entity in the different sectors is as follows, based on ReferenceUSA sample data: Construction, 15.0; Manufacturing, 132.7; Service, 31.4; Transportation and Communication, 49.6; and Trade, 31.0.¹⁵⁶

Using 2015 data from ReferenceUSA we received revenue estimates for the sample of firms within each sector. The data showed that small entities within each sector had the following average revenue: Construction, \$3.10 million; Manufacturing, \$92.74 million; Service, \$1.58 million; Transportation and Communication, \$39.14 million; and Trade, \$11.48 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 3 percent.¹⁵⁷ Because the estimated annual burden of the Final Rule is less than 1 percent of the average annual revenue of each industry category, the Final Rule is not expected to cause a significant economic impact to small entities. These entities include individual employers, groups of

employers, labor management organizations, or industry associations that sponsor apprenticeships.

A provision-by-provision analysis of the estimated small entity impacts of the Final Rule is provided below.

3. Impacts of Final Rule Provisions

The following sections present the impacts that the Final Rule is estimated to have on small entities that sponsor apprentices.¹⁵⁸ 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, reading and reviewing the new regulatory requirements, offering periodic orientation and information sessions, providing a form for individuals to self-identify a disability, conducting utilization and workforce analyses, and reviewing affirmative action plans.

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 Final Rule provisions will have a similar impact on entities across economic sectors, we calculated impacts to a representative single entity.¹⁵⁹ As explained in detail below, the total impact amounts to approximately \$1,658.15 per affected small entity in the first year. Average annual cost per affected small entity in years 2 through 10 is \$2,098.23.¹⁶⁰ The analysis covers a 10-year period (2017 through 2026) to ensure it captures costs that accrue over time.

¹⁵⁸ The Department used ReferenceUSA data on number of employees per entity and annual revenue per entity to determine whether each entity in the sample was classified as small based on SBA definitions. The Department's previous treatment of sponsors with at least 5 apprentices or fewer than 5 apprentices is not directly relevant to this RFA analysis. Some sponsors with at least 5 apprentices may have been classified as small entities based on SBA standards if the number of employees or revenue did not exceed SBA standards for the corresponding NAICS code; similarly, some sponsors with fewer than 5 apprentices may have been classified as large if revenue exceeded SBA standards for the corresponding NAICS code.

¹⁵⁹ A large entity could have a single apprentice or a small entity could have multiple apprentices.

¹⁶⁰ Because the number of apprentices does not directly correlate with the size of the sponsor, we are unable to account for this difference. To avoid under-estimating the 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.

a. Posting of the Equal Opportunity Pledge

The Final Rule requires sponsors to post their equal opportunity pledge at each individual sponsor location, including on bulletin boards and through electronic media (§ 30.3(b)(2)). The 1978 Final Rule did not contain a requirement for posting the pledge. This provision represents a cost to sponsors, and reflects the time needed to put up a physical copy of the pledge and post it on their Web site 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 (0.08 hours) to put up a physical copy of the pledge, and that this task would be performed by an administrative assistant at an average hourly compensation rate of \$23.10. 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 ($\23.10×0.08).

To estimate the materials cost, we assumed that the pledge is one page, and that the cost per page for photocopying is \$0.08, resulting in a materials cost of \$0.08 ($\0.08×1) per sponsor.

The Department also assumes it will take a sponsor 10 minutes (0.17 hours) to post the pledge on its Web site and that this task will be performed by a web developer at an hourly compensation rate of \$45.24. The cost of posting the pledge on the sponsor's Web site is \$7.69 ($\45.24×0.17). Summing the labor and materials costs results in an annual per-entity cost of \$9.62 ($\$1.85 + \$0.08 + \7.69) 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 with five or more apprentices are required to develop and maintain an affirmative action program, which requires, among other things, outreach and recruitment of women and minorities. The Final Rule requires that sponsors, in addition to contacting organizations that reach women and minorities, also contact organizations that serve individuals with disabilities. Sponsors are required to develop a list of recruitment sources that generate referrals from all demographic groups, women, minorities, and individuals with disabilities, with contact information for each source. Further, sponsors are required to notify these sources of any apprenticeship

¹⁵⁵ 43 FR 20760 (May 12, 1978) (requiring the inclusion of female apprentices in AAPs).

¹⁵⁶ Source: ReferenceUSA sample data, 2015. 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.

¹⁵⁷ See Small Business Association, *A Guide for Government Agencies: How to Comply with the Regulatory Flexibility Act*, 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 3 percent threshold in previous regulations.

opportunities, preferably with 30 days advance notice.

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 \$73.90 and \$23.10, 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 source. 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 \$48.50 $((\$73.90 \times 0.5) + (\$23.10 \times 0.5))$ per source. This total labor cost is then multiplied by the number of outreach sources (5). The annual per-entity cost for this provision is \$242.50 $(\$48.50 \times 5)$ for each entity.

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 § 30.3(b), the Final Rule requires sponsors of apprenticeship programs, whose utilization analyses revealed underutilization of Hispanics or Latinos, women, or a particular racial minority group(s) and/or who have determined pursuant to § 30.7(f) that there are problem areas with respect to its outreach, recruitment, and retention activities of individuals with disabilities, to engage in targeted outreach, as discussed in § 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 will be required for 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 employ five or more apprentices, and are thus required to develop and maintain an

affirmative action program.¹⁶¹ However, the Department recognizes that some sponsors may already be employing persons with disabilities as registered apprentices and, therefore, this analysis overestimates 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.

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 \$73.90 and \$23.10, respectively.

The Department estimated that this dissemination task will take 0.5 hour of a human resource manager's time and 0.5 hour of an administrative assistant's time per targeted source. A sensitivity analysis for a range of time spent conducting targeted outreach to organizations that serve individuals with disabilities is presented below. The cost of this provision per affected sponsor is, therefore, the time each staff member devotes to this task (0.5 hour for a human resource manager and 0.5 hour for an administrative assistant) multiplied by their associated average hourly compensation rates. This calculation results in a total labor cost of \$48.50 $((\$73.90 \times 0.5) + (\$23.10 \times 0.5))$ per source. This total labor cost is then multiplied by the number of outreach sources (5), yielding a cost per small entity of \$242.50 $(\$48.50 \times 5)$ beginning in 2019. The total number of estimated sponsors is 26,606 in 2019. We assume that this additional outreach will occur 2 years after the Final Rule goes into effect.

¹⁶¹ The 25 percent of sponsors who employ five or more apprenticeships was estimated from the RAPIDS database maintained by the Department.

d. Reading and Reviewing the New Regulatory Requirements

During the first year after implementation of the Final Rule, sponsors will 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 (\$73.90, as calculated above). Thus, the resulting cost per small entity is \$295.60 $(\$73.90 \times 4)$. This cost occurs only in the year after the Final Rule is published.

e. Orientation and Periodic Information Sessions

Section § 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 and anti-harassment.

The Department estimated that in the first year a sponsor will hold one 45 minute regular orientation and information session with on average 24 apprentices (\$18.72 per hour) and 24 journeyworkers (\$31.68 per hour) in 2017.¹⁶² The Department estimated that a human resource manager (\$73.90 per hour) would need to spend 2 hours to develop and prepare written materials for the session in the first year. The first-year cost per small entity is \$1,110.43 $((24 \times 0.75 \times \$18.72) + (24 \times 0.75 \times \$31.68) + (1 \times (2.75) \times \$73.90))$. The average annual cost in year 2 through 10 per a small entity for this provision is \$1197.83¹⁶³

f. Invitation to Self-Identify as an Individual With a Disability

Section § 30.11 requires sponsors to invite applicants for apprenticeship to voluntarily self-identify as an individual with a disability protected by this part

¹⁶² Using 2015 data from the Registered Apprenticeship Partners Information Data System (RAPIDS) and the apprentice and sponsor growth model in the analysis, the Department calculated that there are on average 24 apprentices per sponsor in the program in 2017. While many small entity sponsors may employ fewer than 24 apprentices, the Department conservatively assumed that 24 apprentices and 24 journeyworkers would attend orientation and periodic information sessions for small entities.

¹⁶³ The Department estimated that there are on average 24 apprentices per sponsor in 2017; 26 in 2018; 27 in 2019; 28 in 2020; 29 in 2021; 31 in 2022; 32 in 2023; 32 in 2023; 32 in 2024; 33 in 2025; and 34 in 2026.

at two stages: (1) At the time they apply or are considered for apprenticeship and (2) after they are accepted into the apprenticeship program but before they begin their apprenticeship

Within the first two years of this program, sponsors with 5 or more apprentices will need to survey their current workforce with the invitation to self-identify. The Department calculated that in 2018 the sponsor will survey an average of 26 apprentices (\$18.72) with an invitation to self-identify provided by the Department. Each apprentice will spend 5 minutes (0.08 hour) filling out the form. The Department estimated an administrative assistant (\$23.10 per hour) would need to spend 0.5 hour annually to record and keep the forms. The cost to the sponsor for this requirement in 2018 is $50.49 (26 \text{ apprentices} \times \$18.72 \times 0.08 \text{ hour}) + (0.5 \text{ hour} \times \$23.10)$. In addition, the sponsor is required to remind apprentices yearly beginning in 2019 that they can update their invitation to self-identify. The Department assumed that the sponsor would send out a reminder email yearly at the cost of \$1.85 (0.08 hour \times \$23.10). The total cost of this provision to the sponsor in 2019 is \$53.83 ($\$43.00 + \1.85). The average annual cost in year 2 through 10 per a small entity for this provision is \$58.45.¹⁶⁴

g. Utilization Analysis and Goal Setting and Workforce Analysis

The Final Rule requires the Department to develop a tool for utilization analyses and provides one hour for sponsors to train a human resource manager (\$73.90 per hour) on how to use the tool. This results in a one-time cost of \$73.90 per small entity sponsor in 2018.

The Final Rule also requires sponsors with five or more apprentices to conduct the utilization analysis every

five years and the workforce analysis every two and a half years. The resulting cost per small entity is \$7.39 for the utilization analysis (0.5 hour \times \$73.90/5) in 2019. There will be a slight cost-saving for sponsors for conducting the workforce analysis. For sponsors with five or more apprentices, this process is expected to take 2 hours of an HR manager's time (\$73.90 per hour) every 2.5 years compared to a baseline of 1 hour of an HR manager's time annually, for a net saving of 0.2 hours or \$14.78 ($\$73.90 \times 0.2 \text{ hours}$) per small entity per year. However, this cost saving accruing only to sponsors with 5 or more apprentices was not accounted for in this analysis to conservatively estimate the costs to small entities.

h. Affirmative Action Plan Reviews

All sponsors are currently required to review their affirmative action plans annually. The Department estimates this process to take 8 hours of a human resource manager's (\$73.90 per hour) time for a baseline cost of \$591.20. Under the Final Rule, with a two-year phase-in, an HR manager would spend 8 hours annually conducting a personnel review, canceling out the baseline cost from 2018 forward. The Department also added the costs of conducting a written affirmative action plan update at the time of the compliance review every 5 years at 12 hours of an HR manager's time ($12 \times \$73.90/5$) and conducting a written affirmative action plan update within three years of the compliance review every 5 years at 6 hours of an HR manager's time ($6 \times \$73.90/5$) for a net cost of \$266.04 ($\$177.36 + \88.68).

4. Total Cost Burden for Small Entities

For a hypothetical small entity in the top five industry categories, the first year cost of this rule is \$1658.15 (\$9.62

+ \$242.50 + \$295.60 + \$1110.43).

Average annual cost in years 2 through 10 is \$2,098.23 ($\$9.62 + \$242.50 + \$242.50 + \$1197.83 + \$58.45 + \$7.39 + \$73.90 + \266.04).

The total cost impacts, as a percent of revenue, are all well below the 3 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, 0.053 percent; Manufacturing, 0.002 percent; Trade, 0.014 percent; Service, 0.105 percent; and Transportation and Communication, 0.004 percent. None of these impacts for the first year are close to 3 percent of revenues, even if considering only the high cost estimates. The estimated annual cost impacts to apprenticeship sponsors are as follows: Construction, 0.068 percent; Manufacturing, 0.002 percent; Trade, 0.018 percent; Service, 0.133 percent; and Transportation and Communication, 0.005 percent. None of these impacts are close to 3 percent of revenues. Exhibit 7 shows the estimated first year and annual cost impacts to apprenticeship sponsors by industry.

The Department estimates the Final Rule would have a significant economic impact on ten out of the 1,459 small entities in the sample from the top five industries. However, this accounts for 0.7 percent of the total number of small entities in the sample, which is less than the 15 percent threshold set to be considered as substantial number of small entities. As a result of this analysis, the Final Rule is not expected to have a significant impact on a substantial number of small entities.

Exhibit 7: Summary of the Impacts on Small Entities

Category	Average revenue per small entity	First year cost as a percentage of revenue	Annualized annual cost as a percentage of revenue	Affected small entities in the Sample
Construction	\$3,100,572	0.053%	0.068%	283
Manufacturing	\$92,740,319	0.002%	0.002%	270
Trade	\$11,478,805	0.014%	0.018%	325
Services	\$1,575,143	0.105%	0.133%	252
Transportation and communication	\$39,138,842	0.004%	0.005%	329
Total				1,459

¹⁶⁴ The cost estimates for this provision excludes the costs incurred by applicants given that they are not borne by the small businesses themselves.

Paperwork Reduction Act (PRA)

The purpose of the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.*, includes minimizing the paperwork burden on affected entities. The PRA requires certain actions before an agency can adopt or revise a collection of information, including publishing for public comment a summary of the collection of information and a brief description of the need for and proposed use of the information.

As part of its continuing effort to reduce paperwork and respondent burden, the Department conducts a preclearance consultation program to provide the public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the PRA. See 44 U.S.C. 3506(c)(2)(A). This activity helps to ensure that the public understands the Department's collection instructions, respondents can provide the requested data in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the Department can properly assess the impact of collection requirements on respondents.

A Federal agency may not conduct or sponsor a collection of information unless it is approved by OMB under the PRA and displays a currently valid OMB control number. The public is also not required to respond to a collection of information unless it displays a currently valid OMB control number. In addition, notwithstanding any other provisions of law, no person will be subject to penalty for failing to comply with a collection of information if the collection of information does not display a currently valid OMB control number (44 U.S.C. 3512).

In accordance with the PRA, the Department submitted the identified information collections associated with the NPRM to OMB when the NPRM was published. The NPRM provided an opportunity for the public to comment on the information collections directly to the Department; commenters also were advised that comments under the PRA could be submitted directly to OMB. OMB issued a notice of action for each request asking the Department to resubmit the ICRs at the final rule stage and after considering public comments. The Department has submitted the related ICRs to OMB for approval; the reviews remain pending, and the Department will publish notices in the **Federal Register** to announce the results of those reviews once they are complete. The Department discusses the public

comments in this section of the preamble.

The Department received three comments concerning the paperwork requirements of this Final Rule. One commenter questioned the overall need for the rule, claiming that organization was already required to comply with other equal employment opportunity rules and adding recordkeeping requirements would increase paperwork and result in fewer potential sponsors of registered apprenticeship programs. The other two commenters also associated an increase in paperwork associated with the rule. No commenter, however, quantified the claims.

One of the commenters offered suggestions for the substantive provisions. These are addressed in the analysis for sections 30.3, 30.5, 30.7, 30.10, 30.11, and 30.12 in this preamble.

The Department acknowledges the final rule adds recordkeeping and paperwork requirements that may slightly increase paperwork burden. However, this final rule reduces paperwork burden in other ways. More specifically the final rule, streamlines the workforce and utilization analysis required of sponsors with five or more apprentices and clarifies when and how utilization goals are to be established for women and minorities (§§ 30.5 through 30.7); reduces the frequency with which the workforce and utilization analyses must be conducted—from annually under the existing rule to at the time of the compliance review for the utilization analysis (every five years on average) and within three years of the compliance review for the workforce analysis (§ 30.12). The Department has reconsidered the paperwork burden estimates and determined the increased recordkeeping burdens are substantially offset by the reductions.

The information collections in this Final Rule are summarized as follows.

Agency: DOL–ETA.

Title of Collection: Labor Standards for the Registration of Apprenticeship Programs.

Type of Review: Revision.

OMB Control Number: 1205–0223.

Affected Public: State, Local, and Tribal Governments, Individuals or Households and Private Sector.

Obligation to Respond: Required to obtain or retain a benefit.

Total Estimated Number of Respondents Annually: 138,229.

Total Estimated Number of Annual Responses: 138,229.

Frequency of Responses: Annually.

Total Estimated Annual Time Burden: 14,724.

Total Estimated Annual Other Costs Burden: \$0.

Regulations sections: § 29.3, § 29.7, § 29.5, § 29.13, § 29.14, § 29.6.

Overview and Response to Comments Received

Overview: Title 29 CFR 29.5 requires sponsors to meet apprenticeship standards to have a registered apprenticeship program. This information collection package contains the ETA Form 671, Apprenticeship Agreement Form. The form has been modified to provide voluntary self-identification of an individual with a disability. Such information is collected on a separate tear-off sheet that is maintained separately from the Apprenticeship Agreement Form and treated as confidential.

The Department received no comments on this information collection.

Agency: DOL–ETA.

Title of Collection: Equal Employment Opportunity in Apprenticeship.

Type of Review: Revision.

OMB Control Number: 1205–0224.

Affected Public: State, Local, and Tribal Governments; Individuals or Households.

Obligation to Respond: Required to Obtain or Retain Benefits.

Total Estimated Number of Respondents Annually: 19,277.

Total Estimated Number of Annual Responses: 34,490.

Total Estimated Annual Time Burden: 3,219 hours.

Total Estimated Annual Other Costs Burden: \$0.

Regulations sections: § 30.3, § 30.4, § 30.5, § 30.6, § 30.8, § 30.11, § 30.16, § 30.19.

Overview and Response to Comments Received

Overview: This information collection contains the requirements for SAAs to prepare State EEO plans conforming to the regulations, to maintain adequate records pertinent to compliance with the regulations, and to notify the Department of exemptions from the regulations granted to program sponsors.

The Department received no comments concerning this information collection.

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 Final Rule 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.

Executive Order 13132: Federalism

As with the NPRM, the Department reviewed the Final Rule in accordance with Executive Order 13132. The revisions to part 30 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, the Final Rule requires an SAA that seeks to obtain or maintain recognition as the Registration Agency for Federal purposes, submit, at a minimum, draft State apprenticeship legislation corresponding to the requirements of 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 paragraph 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 Rule, 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). 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 Department considered all of the issues raised in these fora, and incorporated many of them into the

NPRM and this Final Rule. Finally, the Department specifically solicited comments from State and local government officials on the NPRM.

In response, the Department received several comments raising questions as to whether the provisions of the proposed rule, hereby adopted into the Final Rule, were in conflict with other State or Federal laws, including principally ERISA and state disability laws regarding self-identification inquiries. This Final Rule has addressed these comments in the Section-by-Section analysis, specifying that no such conflict exists as to ERISA and no ascertainable conflict exists as to State law. To the extent any such conflict exists, preemption shall be restricted to the minimum level necessary to achieve the objectives of the National Apprenticeship Act.

Assessment of Federal Regulations and Policies on Families

The Department certifies that this Final Rule has been assessed according to § 654 of Pub. L. 105-277, 112 Stat. 2681, for its effect on family well-being. The Department concludes that this Final Rule 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.

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 Final Rule 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 Final Rule has been drafted and reviewed in accordance with Executive Order 12988, Civil Justice Reform, and will not unduly burden the Federal court system. This Final Rule 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

29 CFR Part 29

Apprentice agreement and complaints, Apprenticeship criteria, Program standards, registration and

deregistration, Sponsor eligibility, State Apprenticeship Agency recognition and derecognition.

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 Administration.

For the reasons stated in the preamble, the Employment and Training Administration amends 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. In § 29.7, revise paragraph (j) and add 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 Reinstatement of program registration.

* * * * *

(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.

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■ 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.

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 chapter under standards of apprenticeship fulfilling the requirements of § 29.5 of this chapter.

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*¹ means, with respect to an individual:

¹ 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

(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, 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, 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.²

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 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 of this chapter and which maintains at least one documented partnership with a Registered Apprenticeship program. 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.

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, 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

amended, and from the Equal Employment Opportunity Commission's regulations implementing the ADA at 29 CFR part 1630, to the extent that the ADA, as amended, did not provide a definition.

² 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).

(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 (b) 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)(1) *Discrimination prohibited.* 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 and/or placement, upgrading, periodic advancement,

promotion, 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 look to the legal standards and defenses applied under title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e *et seq.* and Executive Order 11246, as applicable, in determining whether a sponsor has engaged in a practice unlawful under paragraph (a)(1) of this section.

(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, as amended, 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.

(iv) *Genetic information.* The Registration Agency 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 or individuals 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. The individual(s) must have the resources, support of, and access to the sponsor leadership to ensure effective implementation. The individual(s) 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 connected with the administration or operation 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—set forth in paragraph (c) of this section—in the apprenticeship standards required under § 29.5(c) of this title, and in appropriate publications, such as apprentice and employee handbooks, policy manuals, newsletters, or other documents disseminated by the sponsor or that otherwise describe the nature of the sponsorship;

(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 individuals connected with the administration or operation of the apprenticeship program, including all apprentices and journeyworkers who regularly work with apprentices, to inform and remind such individuals of the sponsor's equal employment opportunity policy with regard to apprenticeship, and to provide the training required by paragraph (b)(4)(i) of this section; 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 email 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) *Maintaining apprenticeship programs 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 apprenticeship program is free from intimidation and retaliation as prohibited by § 30.17. To promote an environment in which all apprentices feel safe, welcomed, and treated fairly,

the sponsor must ensure the following steps are taken:

(i) Providing anti-harassment training to all individuals connected with the administration or operation of the apprenticeship program, including all apprentices and journeyworkers who regularly work with apprentices. This training must not be a mere transmittal of information, but must include participation by trainees, such as attending a training session in person or completing an interactive training online. The training content must include, at a minimum, communication of the following:

(A) That harassing conduct will not be tolerated;

(B) The definition of harassment and the types of conduct that constitute unlawful harassment on the basis of race, color, religion, national origin, sex, sexual orientation, age (40 or older), genetic information, and disability; and

(C) The right to file a harassment complaint under § 30.14 of this part.

(ii) Making 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;

(iii) Establishing and implementing 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, as well as complaints about retaliation for engaging in protected activity described in § 30.17 of this part.

(5) *Compliance with Federal and State equal employment opportunity laws.* The sponsor must comply with all other applicable Federal and State laws and regulations that require equal employment opportunity without regard to race, color, religion, national origin, sex (including pregnancy and gender identity, as applicable), sexual orientation, age (40 or older), genetic information, or disability. Failure to comply with such laws if such noncompliance is related to the equal employment opportunity of apprentices and/or graduates of such an apprenticeship programs under this part is grounds for deregistration or the imposition of other enforcement actions in accordance with § 30.15.

(c) *Equal opportunity pledge.* (1) 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.

(2) 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.

(d) *Compliance.*

(1) Current sponsors: A sponsor that has a registered apprenticeship program as of the effective date of this regulation must comply with all obligations of this section within 180 days of the effective date of this rule.

(2) New sponsors: A sponsor registering with a Registration Agency after the effective date of this regulation shall comply with all obligations of this section upon registration or 180 days after the effective date of this regulation, whichever is later.

§ 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. The components of the written plan, as detailed in §§ 30.5 through 30.9, must be developed in accordance with the respective compliance dates and 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;

(5) Review of personnel processes, as described in § 30.9; and

(6) Invitations to self-identify, as described in § 30.11

(d) *Exemptions—(1) Programs with fewer than five apprentices.* A sponsor is exempt from the requirements of paragraphs (b) and (c) 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 paragraphs (b) and (c) 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 likely to be

equal to or greater than the goals required under this part.

(e) *Written affirmative action plans.* Sponsors required to undertake an affirmative action program must create and update a written document memorializing and discussing the contents of the program set forth in paragraph (c) of this section.

(1) *Compliance*—(i) *Apprenticeship programs existing as of January 18, 2017.* The initial written affirmative action plan for such programs must be completed within two years of January 18, 2017. The written affirmative action plan for such programs must be updated every time the sponsor completes workforce analyses required by §§ 30.5(b) and 30.7(d)(2).

(ii) *Apprenticeship programs registered after January 18, 2017.* The initial written affirmative action plan for such programs must be completed within two years of registration. The written affirmative action plan for such programs must be updated every time the sponsor completes workforce analyses required by §§ 30.5(b) and 30.7(d)(2).

§ 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 of 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, the sponsor will be required to establish a utilization goal pursuant to § 30.6.

(b) *Analysis of apprenticeship program workforce*—(1) *Process.* Sponsors must analyze the race, sex, and ethnic composition of their apprentice workforce. This is a two-step process. First, each sponsor must group all apprentices in its registered apprenticeship program by occupational title. Next, for each occupation represented, the sponsor must identify the race, sex, and ethnicity of its apprentices within that occupation.

(2) *Schedule of analyses.* Each sponsor is required to conduct an apprenticeship program workforce analysis at each compliance review, and again if and when three years have passed without a compliance review. This updated workforce analysis should be compared to the utilization goal established at the sponsor's most recent

compliance review to determine if the sponsor is underutilized, according to the process in paragraph (d) of this section.

(3) *Compliance date.* (i) Sponsors registered with a Registration Agency as of January 18, 2017: A sponsor must conduct its first workforce analysis, pursuant to this section, no later than two years after January 18, 2017.

(ii) *New sponsors:* A sponsor registering with a Registration Agency after the effective date of the Final Rule must conduct its initial workforce analysis pursuant to this section no later than two years after the date of registration.

(c) *Availability analysis*—(1) 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 following factors must be considered for each major occupation group represented in the sponsor's registered apprenticeship program standards:

(i) The percentage of individuals who are eligible for enrollment in the apprenticeship program, within the sponsor's relevant recruitment area broken down by race, sex, and ethnicity; and

(ii) The percentage of the sponsor's employees who are eligible for enrollment in the apprenticeship program 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. 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) *Availability* will be derived from the most current and discrete statistical information available. Examples of such information include census data, data from local job service offices, and data

from colleges or other training institutions.

(6) Sponsors, working with the Registration Agency, will conduct availability analyses at each compliance review.

(d) *Rate of utilization.* To determine the rate of utilization, the sponsor, working with the Registration Agency, must group each occupational title in its apprenticeship workforce by major occupation group and compare the racial, sex, and ethnic representation within each major occupation group to the racial, sex, and ethnic representation available in the relevant recruitment area, as determined in paragraph (c) of this section. When the sponsor's utilization of women, Hispanics or Latinos, or a particular racial minority group is significantly 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 significant 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 racial, sex, or ethnic group in a major occupation group in its apprenticeship program, the sponsor, working with the Registration Agency, must establish a percentage goal at least equal to the availability figure derived under § 30.5(c) for that major occupation group.

(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.

(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 major occupation group 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 major occupation group. 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 major occupation group. If individuals with disabilities are represented in the sponsor's apprentice workforce in any given major occupation group at a rate less than the utilization goal, the sponsor must take specific measures outlined in paragraphs (e) and (f) of this section.

(2) *Apprentice workforce analysis*—(i) *Process.* Sponsors are required to analyze the representation of individuals with disabilities within their apprentice workforce by occupation. This is a two-step process. First, as required in § 30.5, each sponsor must group all apprentices in its registered apprenticeship program according to the occupational titles represented in its registered apprenticeship program. Next, for each

occupation represented, the sponsor must identify the number of apprentices with disabilities.

(ii) *Schedule of evaluation.* The sponsor must conduct its apprentice workforce analysis at each compliance review, and again if and when three years have passed without a compliance review. This updated workforce analysis, grouped according to major occupation group, should then be compared to the utilization goal established under paragraph (a) of this section.

(iii) *Compliance date.* (A) Sponsors currently registered with a Registration Agency: A sponsor must conduct its first workforce analysis, pursuant to this section, no later than two years after January 18, 2017.

(B) New sponsors: A sponsor registering with a Registration Agency after January 18, 2017 must conduct its initial workforce analysis pursuant to this section no later than two years after the date of registration.

(e) *Identification of problem areas.* When the sponsor, working with the Registration Agency, determines that the percentage of individuals with disabilities in one or more major occupation groups 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/or where impediments to equal opportunity exist. When making this determination, the sponsor must look at the results of its assessment of personnel processes required by § 30.9 and the effectiveness of its outreach and recruitment efforts required by § 30.8 of this part, if applicable.

(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) *Utilization goal relation to discrimination.* A determination that the sponsor has not attained the utilization goal established in paragraph (a) of this section in one or more major occupation groups does not constitute either a finding or admission of discrimination in violation of this part.

(h) *Utilization goal not a quota or ceiling.* 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 resulting in impediments to equal employment opportunity, 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. In furtherance of this requirement, the sponsor must:

(1) Set forth in its written affirmative action plan 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 organizations 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. These organizations may include: Community-based organizations; local high schools; local community colleges; local vocational, career and technical schools; and local workforce system partners including One Stop Career Centers;

(ii) Advertising openings for apprenticeship opportunities by publishing advertisements in appropriate media 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 or partnerships enlisting the assistance and support of pre-apprenticeship programs, community-based organizations, advocacy organizations, or other appropriate organizations, in recruiting qualified individuals for apprenticeship;

(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. This annual review is required regardless of whether the sponsor is underutilized as described in § 30.5(d). The review must be a careful, thorough, and systematic one and include review of all aspects of the apprenticeship program at the program, industry and occupation level, 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.

(1) *Compliance date.* (i) Current sponsors: A sponsor that has a registered apprenticeship program as of the effective date of this regulation must comply with the obligations of paragraph (a) of this section within two years of the effective date of this rule.

(ii) New sponsors: A sponsor registering with a Registration Agency after the effective date of this regulation shall comply with the obligations of paragraph (a) of this section within two years after the date of registration.

(2) *[Reserved]*

(b) The sponsor must include a description of its review in its written affirmative action plan 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 or combination of methods for selection of apprentices, provided that the selection method(s) used meets the following requirements:

(1) The use of the selection procedure(s) 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(s) must be uniformly and consistently applied to all applicants and apprentices within each selection procedure utilized.

(3) The selection procedure(s) must comply with title I of the ADA and EEOC's implementing regulations at part 1630. This procedure(s) 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(s) 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) A sponsor adopting an affirmative action program pursuant to § 30.4 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.

(2) 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.* (1) Within the timeframe specified in paragraph (h) below, the sponsor must make a one-time invitation to each current apprentice to inform the sponsor whether he or she is an individual with a disability as defined in § 30.2. The sponsor must make this invitation using the language and manner prescribed by the Administrator and published on the OA Web site.

(2) Thereafter, the sponsor must remind apprentices yearly that they may voluntarily update their disability status.

(d) *Voluntary self-identification for apprentices.* The sponsor may not compel or coerce an individual to self-identify as an individual with a disability.

(e) *Confidentiality.* 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) as required under § 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) *Affirmative action obligations.* 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) *Nondiscrimination obligations.* Nothing in this section may relieve the sponsor from liability for discrimination in violation of this part.

(h) *Compliance dates.* (1) Sponsors currently registered with a Registration Agency: A sponsor must begin inviting applicants and apprentices to identify as individuals with disabilities, pursuant to this section, no later than two years after the January 18, 2017. A sponsor must also invite each of its current 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, no later than two years after January 18, 2017.

(2) New sponsors: A sponsor registering with a Registration Agency after the effective date of this Final Rule must begin inviting applicants and apprentices to identify as individuals with disabilities, pursuant to this section, no later than two years after the date of registration. A sponsor covered by this subparagraph must also invite each of its current 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, no later than two years after the date of registration.

§ 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 affirmative action plan and documentation of its component elements set forth in §§ 30.5, 30.6, 30.7, 30.8, 30.9, and 30.11.

(d) *Maintenance of records.* The records required by this part and any other information relevant to compliance with these regulations must be maintained for 5 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, journeyworkers, 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.* (1) 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, either implement a compliance action plan and notify the Registration Agency of that plan or submit a written rebuttal to the Findings. Sponsors may also seek to extend this deadline one time by up to 30 days for good cause shown. If the Registration Agency upholds the Notice after receiving a written response, the sponsor must implement a compliance action plan within 30 days of receiving the notice from the Registration Agency upholding its Findings. The compliance action plan must include, but is not limited to, the following provisions:

- (i) A specific commitment, in writing, to correct or remediate identified deficiency(ies) and area(s) of noncompliance;
- (ii) The precise actions to be taken for each deficiency identified;
- (iii) The time period within which the cited deficiency(ies) will be remedied and any corrective program changes implemented; and
- (iv) The name of the individual(s) responsible for correcting each deficiency identified.

(2) 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, or who believes he or she has been retaliated against as

described in § 30.17, 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 300 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 300 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, EMAIL ADDRESS, AND CONTACT NAME OF INDIVIDUAL AT THE REGISTRATION AGENCY WHO IS RESPONSIBLE FOR RECEIVING COMPLAINTS]. You may also be able to file complaints directly with the EEOC, or State fair employment practices agency. If those offices have jurisdiction over the sponsor/ employer, their contact information is listed below. [INSERT CONTACT INFORMATION FOR EEOC AS PROVIDED ON "EEO IS THE LAW POSTER," AND CONTACT INFORMATION FOR STATE FEPA AS PROVIDED ON STATE FEPA POSTER, AS APPLICABLE]

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 undertaken by the Registration Agency, and will proceed as expeditiously as possible. In conducting complaint investigations, the Registration Agency must:

- (i) Provide written notice to the complainant acknowledging receipt of the complaint;
- (ii) Contact the complainant, if the complaint form is incomplete, to obtain full information necessary to initiate an investigation;
- (iii) Initiate an investigation upon receiving a complete complaint;
- (iv) Complete a thorough investigation of the allegations of the complaint 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) 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 should attempt to resolve the matter quickly at the Registration Agency level whenever appropriate. Where a complaint of discrimination cannot be resolved at the Registration Agency level to the satisfaction of the complainant, 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) *Alternative complaint procedures.* 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), or, if the sponsor submits a written response to the findings of noncompliance, fails to implement a compliance action plan within 30 days of receiving the Registration Agency's notice upholding its initial noncompliance findings. If the sponsor has not implemented a compliance action plan within 30 business days of notification of suspension, the Registration Agency may institute proceedings to deregister the program in accordance with the deregistration proceedings set forth in part 29 of this chapter, or if the Registration Agency

does not institute such proceedings within 45 days of the start of the suspension, the suspension is lifted.

(c) 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 participant in an apprenticeship program may not be intimidated, threatened, coerced, retaliated against, or discriminated against 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 permits such intimidation or retaliation in its apprenticeship program, including by participating employers, and 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 January 18, 2017, unless an extension for good cause is sought and granted by the Administrator, 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, at a minimum, draft State apprenticeship authorizing language corresponding 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 this paragraph (a)(1).

(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 the 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 five years from the date of their creation.

(c) *Retention of authority.* As provided in § 29.13 of this chapter, 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 chapter; and
- (4) Refer any matter pertaining to paragraph (c)(1) or (2) of this section 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 chapter.

§ 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.

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