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Apprenticeship Programs; Equal Opportunity

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On behalf of the Consortium for Citizens with Disabilities Employment and Training Task Force, we express our strong support for the notice of proposed rulemaking (NPRM) issued on November 6, 2015 to update the equal opportunity regulations that implement the National Apprenticeship Act. CCD is a coalition of national disability rights, advocacy, consumer and provider organizations and self-advocates representing the 57 million Americans with disabilities. This task force concerns itself with issues affecting employment opportunities for those Americans.

This law authorizes the Department of Labor to “formulate and promote the furtherance of labor standards necessary to safeguard the welfare of apprentices.” Among those standards are those protecting participants in apprenticeship programs from discrimination based on race, color, religion, sex and national origin. There have been no changes to these regulations since 1978, even as legal protections have been extended to cover disability, age and genetic information. At its most fundamental, this proposed rule adds disability, age and genetic information to the list of bases upon which an apprenticeship sponsor may not discriminate. The NPRM also would expand the affirmative action requirements imposed on apprentice program sponsors to include affirmative action for individuals with disabilities. We wholeheartedly support these changes.

Registered apprenticeships have, for decades, been a valuable tool in helping individuals learn “the practical and theoretical aspects of a highly skilled occupation.” As noted in the explanatory statement, “today, there are more than 19,000 [apprentice] program sponsors representing over 200,000 employers who are offering registered apprenticeship training to more than 375,000 apprentices.” While apprenticeship

programs are traditionally associated with the construction and manufacturing industries, emerging high-growth industries such as health care, information technology and energy offer additional opportunities for good paying jobs with solid benefits. The Department states that “ensuring individuals with disabilities have fair access to the employment training opportunities offered by registered apprenticeship programs through inclusion in affirmative action efforts can be important in opening doors to good jobs for people with disabilities.” We agree completely.

We applaud the Department’s recognition that apprentice program sponsors may need technical assistance in implementing the new regulations regarding people with disabilities and are pleased to see its plans to work closely with the Office of Disability Employment Policy (ODEP) in providing policy and program guidance to those sponsors.

The proposed changes would “align the Department’s equal employment opportunity (EEO) regulations for registered apprenticeships with the Federal, state and local antidiscrimination laws already applicable to many apprentice program sponsors.” In addition, the NPRM would require sponsors to take “affirmative steps to provide equal opportunity in apprenticeship”, including people with disabilities.

We note that the proposed affirmative action steps that a sponsor must take that are outlined in proposed 30.3(b) include publishing its EEO pledge in “appropriate publications”, “electronic media, accessible to apprentices and applicants for apprenticeship” and conducting “orientation and periodic information sessions for apprentices and all of a program sponsor’s personnel” involved in the apprenticeship process. While we commend the intent of this language to disseminate widely information about EEO policies, it leads us to remind the Department that “accessible” carries an additional meaning for people with disabilities. Thus, we would hope that dissemination of a sponsor’s EEO policies would be “accessible” in the broadest possible terms.

Proposed 30.3(b)(3) requires a sponsor to ensure that its “outreach and recruitment efforts for apprentices extend to all persons available and qualified for apprenticeship within the sponsor’s recruitment area regardless of race, sex, ethnicity, or disability status.” In the explanatory statement, the Department recommends that sponsors contact for this purpose “State Vocational Rehabilitation Agencies, the State Workforce System...Centers for Independent Living, Goodwill and other community rehabilitation and employment service providers, Community College Disability Centers, Community College Career Centers, Alternative Schools, Community Mental Health Programs and the Social Security Administration’s Employment Networks.” Unfortunately, most of the disability specific vocational rehabilitation and employment service organizations noted above are not explicitly mentioned in the proposed regulatory language at 30.3(b)(3)(i). If the Department desires to direct the attention of sponsors to these important resources for recruitment of people with disabilities, they should be specifically listed in the regulations.

We commend the Department for the amendment to the exemptions from the affirmative action plan requirements set out in proposed 30.4(d). Under current rules, program sponsors with an approved EEO program under title VII of the Civil Rights Act or Executive Order 11246 would not need an Affirmative Action Program (AAP). As the Department rightly notes, without a change, this fails to “recognize that qualified individuals with disabilities are now protected from discrimination under Part 30 and will benefit from affirmative action under the proposed rule.” Consequently, sponsors will have to have an approved equal employment opportunity plan under title VII of the Civil Rights Act and agree to extend that program to include individuals with disabilities, or have an AAP under both EO 11246 and section 503 of the Rehabilitation Act.

We are especially pleased to see the Department set aside a new 30.7 – “Utilization goals for individuals with disabilities” – that would establish a “single, national utilization goal of 7 percent for individuals with disabilities that applies to all sponsors subject to” the AAP requirements in 30.4. The purpose of this section “is to establish a benchmark against which the sponsor must measure the representation of individuals with disabilities in the sponsor’s apprentice workforce by industry, in order to assess whether any barriers to EEO remain.” The section states that the Office of Apprenticeships will periodically review and update this goal and sets out steps a sponsor must use to determine whether it has met the utilization goal. Should people with disabilities be represented at a rate less than the goal, the NPRM identifies specific measures to take to address the disparity. We appreciate the Department’s statement that it believes this new utilization goal is “warranted in light of the long-term and intractable nature of the substantial employment disparity between those with and without disabilities.” Taking the overall number of registered apprenticeships today, if this goal were to be achieved, it would mean job training opportunities for over 26,000 people with disabilities.

The Department rightly acknowledges that some program sponsors are “quite small” and explains that the utilization goal is “to encourage sponsors to be more aware of how effective their employment practices are in ensuring equal employment opportunity for individuals with disabilities.” Should a sponsor fail to meet the goal for individuals with disabilities, the rule calls for an examination of impediments to equal opportunity and, if a problem is detected, for the sponsor to undertake targeted outreach, recruitment and retention activities to “ensure that individuals with disabilities are, in fact, learning about registered apprenticeship opportunities.” We believe this type of self education is important to raising sponsors’ attention to the pool of people with disabilities that could contribute to and benefit from their apprentice program.

We applaud the Department’s plans to provide technical assistance and guidance to apprenticeship programs and Registration Agencies to help them implement section 30.7. Specifically, the Department intends to offer information on “how best to analyze a sponsor’s registered apprenticeship program workforce, including through the use of data aggregation from a range of years of program operations, in order to identify a utilization rate that is most meaningful to the sponsor.”

The Department seeks suggestions as to data and/or tools that exist that would enable program sponsors to determine, within their relevant recruitment area, the availability of individuals with disabilities with the present or potential capacity for apprenticeship, recognizing that individuals need not be in the current labor force to be eligible for apprenticeship. The Department also seeks comment “on whether and, if so, how to take into account discouraged workers in assessing the availability of individuals with disabilities for registered apprenticeship.” As noted earlier, the Department expects sponsors to reach out to Employment Networks (ENs) operating under the Social Security Administration’s (SSA) Ticket to Work Program, state vocational rehabilitation agencies, college disability centers and other disability services organizations. So, too, should the Department reach out to SSA, the Department of Education, academic Rehabilitation Research and Training Centers, and associations for state workforce and vocational rehabilitation agencies for aggregated data they may already collect that would help identify potential pools of workers with disabilities. Recent studies prepared by various research entities on behalf of ODEP and other federal agencies have indicated that younger disability beneficiaries or those with recent attachment to the workforce are most likely to return to work. Although many of these individuals might fall into the category of “discouraged” workers, they could also represent a pool of talent well-suited for apprenticeship programs.

Finally, we note that the Department is proposing to adopt the same invitation to self-identify as a person with a disability as that used for federal contractors by the Office of Federal Contract Compliance Programs. In general, CCD supported the self-identification language proposed for the regulations governing Section 503. We appreciate the Department’s efforts to harmonize these requirements.

Thank you for your attention to our comments. Our task force welcomes the opportunity to work with the Department in furthering the proper implementation of the final regulations.

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