• Registered apprenticeship programs have long been subject to the rules and obligations associated with equal employment opportunity and affirmative action.

• Although these standards and initiatives have remained in place for some time, the DOL recently conducted research and found that diversity statistics within apprenticeship programs are below anticipated levels.
Revised 29 CFR § 30
DOL Findings

- Women comprise only 7.1% of all new enrollments in registered apprenticeships, despite comprising 46.8% of the national workforce. This statistic has remained virtually constant over the course of the last decade.
- In the construction industry specifically, only 2.8% of people enrolled in apprenticeship programs were women in 2015.
- Women’s share of apprenticeship enrollments is only greater than their percentage of the national workforce without a college degree in four industries: (1) Healthcare and Social Assistance, (2) Retail Trade, (3) Finance and Insurance, and (4) Warehousing.
Revised 29 CFR § 30
DOL Findings

• Although African Americans comprise 12.3% of the national labor force, they comprise only 8.8% of apprentice enrollments in the construction industry.
• Similarly, Hispanics comprise 22.7% of the national labor force without a college degree, but make up only 20.2% of apprenticeship enrollments.
• Moreover, African American apprentices have only a 30.6% completion rate in the construction industry, whereas White apprentices have a 44.6% completion rate in the same industry.
The New Regulations Set Forth Equal Employment Opportunity, Non-Discrimination and Written Affirmative Action Plan (AAPs) Requirements for Registered Apprenticeship Programs—Both DOL Office of Apprenticeship, and State Apprenticeship Agencies as registering entity

Apprenticeship Program; Equal Employment Opportunity Final Regulations Issued Monday December 19, 2016, 81 Federal Register 92, 026 et seq.

Goal—“to modernize the equal employment opportunity regulations that implement the National Apprenticeship Act of 1937”—The new regulations are the first changes to 29 CFR 30 since 1978
Revised 29 CFR § 30

• Adds protected bases to non discrimination requirements:
  – Age (40 and over);
  – Genetic information;
  – Sexual orientation;
  – Gender identity (falls under the umbrella of “sex” discrimination);
  – And qualified individuals with disabilities.

• Additional Note: The DOL has clarified that discrimination based on “sex” includes pregnancy discrimination and discrimination based on gender stereotyping.
• All apprenticeship programs—Regardless of size—Must take general steps toward affirmative action (i.e., those found in § 30.3), including: (1) designating an individual to oversee EEO commitments, (2) internally disseminating EEO policy, (3) developing general outreach and recruitment measures, and (4) maintaining an apprenticeship program free from harassment.
  – This includes providing anti-harassment training that involves participation by trainees and communicates at least: (1) that harassing conduct will not be tolerated, (2) the definition of harassment, and (3) the right to file a complaint for harassment.
  – Additionally, if an apprenticeship program sponsor discovers that a participating employer is discriminating, it has an obligation to take steps to address the discrimination.

• These general requirements are effective for current sponsors 180 days after January 18, 2017 (i.e., the rule’s effective date) and 180 days after Registration for new sponsors.
• Apprenticeship programs with more than five apprentices must maintain written AAPs.
• Written AAPs must be completed within two years of the Final Rule’s effective date for existing programs. New programs registered after the Rule’s effective date will have two years from the date of their registration.
• Existing written AAPs will be reviewed at the sponsor’s next compliance review.
• Written AAPs must include specific utilization analyses, practices, and goals. These aspects will be discussed in the following slides.
• AAP requirements do not apply to sexual orientation.
Revised 29 CFR § 30

• Sponsors with more than five apprentices must conduct a “utilization” analysis in order to determine if “there is a significant disparity between the sponsor’s utilization of particular group” and “that group’s availability in the relevant recruitment area.”

• Two methods for doing this: (1) 80% rule, or (2) two standard deviation rule.
  – E.g. of 80% rule: If minimally-qualified women make up 50% of the recruitment area, a given apprenticeship program must have a makeup of at least 40% (i.e., 80% of 50%) women to meet the rule’s requirement (i.e., whether actual employment of apprentices, broken down by race, sex, and ethnicity, is less than 80% of their availability).

• In short:
  – First, you must identify the racial, sex, or ethnic composition of your apprenticeship program.
  – Second, you must gather information on all available individuals who meet program’s minimum eligibility criteria in a given sex, race, ethnicity, etc. in your recruitment area.
If your apprenticeship program employs a given category of individuals (e.g., race or sex) at a rate less than 80% of the percentage of individuals with minimum qualifications available in your area, the Department will consider you to be “underutilizing” that population.

Apprenticeship programs considered to be underutilizing a certain group must: (1) set a utilization goal for that group, and (2) “engage in targeted outreach, recruitment, and retention efforts” related to removing “barriers” for that group.

- The DOL operates under the assumption 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.”
- “Barriers” are “any practices that prevent individuals from realizing an equal opportunity to apply for and participate in apprenticeship programs.” (e.g., lack of effective outreach, hostile or unwelcome attitudes toward certain groups, selection mechanisms disfavoring certain groups unrelated to the job)

The utilization goal must be at least equal to the figure provided by the utilization analysis.
Revised 29 CFR § 30

- For individuals with disabilities, all sponsors must have at least a 7% utilization rate within their apprentice programs.
- Sponsors should not attempt to identify individuals with disabilities, but instead encourage “self-identification” during application process and throughout the program.
  - Sponsors should keep confidential records of any self-identifications.
- This requirement will also become effective after two years, but sponsors will not be punished merely for an underutilization percentage in this area if they have complied with all other requirements and no impediments exist.
- The rules use the ADA’s definition of disability (i.e., physical or mental impairment that substantially limits at least one major life activity). Person must still be qualified to perform job with or without accommodation to be protected.
Sponsors required to maintain an AAP must invite applicants to self-identify as individuals with disabilities at three stages:

- At the time they apply or are considered for apprenticeship
- After they are accepted into the apprenticeship program
- Once they are enrolled in the program (annually, after the initial two-year grace period of the rules)

Sponsors should accept an individual’s self-identification at face value and not try to verify.

Sponsors should not try to “guess” either, but sponsors can identify the individual if the disability is obvious (e.g., missing limb or blind) or the disability is known to the sponsor (e.g., an individual has an obvious reasonable accommodation).

Sponsors must discuss reasonable accommodations with apprentices with known disabilities, even if they do not self-identify or ask for the accommodation.
Revised 29 CFR § 30

• Mandatory Targeted Outreach, Recruitment, and Retention Measures
  – Disseminating information to community-based organizations
  – Advertising openings for apprenticeship opportunities
  – Cooperating with local school boards, vocational programs, and/or pre-apprenticeship programs
  – Establishing linkage agreements with pre-apprenticeship programs and community-based organizations
  – Evaluating and documenting after every selection cycle for registering apprentices the overall effectiveness of such activities
  – Refining its targeted outreach, recruitment, and retention activities as needed
  – Maintaining records of its targeted outreach, recruitment, and retention activities and records related to its evaluation of these activities
Revised 29 CFR § 30

• Additional Permissive Measures
  – Enlisting the use of journeyworkers from underutilized groups for implementation of the AAP
  – Enlisting the use of journeyworkers from underutilized groups for a mentor program
  – Conducting exit interviews

• Sponsors must review their personnel processes at least annually to ensure that it is meeting its utilization obligations
  – Keep records of this
Revised 29 CFR § 30

• Can use any method for selecting apprentices so long as:
  – The method is in compliance with UGESP and the ADA
  – The method is applied equally and in a non-discriminatory manner
  – The policy is facially neutral with regard to sex, sexual orientation, race, color, national origin, age (40+), genetic information, disability, and religion

• Remember, sponsors with 5 or more apprentices must evaluate and document after every selection cycle for registering apprentices the overall effectiveness of its outreach activities, which includes reviewing the demographics of the applicant pool as well as the demographics of the individuals selected for entry into the apprenticeship program.
Revised 29 CFR § 30

• All sponsors are required to keep the following records for five years:
  – Selection for apprenticeship, including test results, interview notes, etc.
  – Invitations to self identify
  – Information regarding operation of apprenticeship program, such as job assignments
  – Compliance with general affirmative action and equal opportunity employment measures (§ 30.3)
  – Requests for reasonable accommodations
  – All other records of compliance with new regulations
  – Documents related to written AAPs for those sponsors required to have them

• All medical information must be kept confidential!
Registration Agencies will conduct regular EEO compliance reviews to determine if the sponsor is in compliance with the new rules.

The Agency must present findings within 45 days of the review.

If a sponsor receives notice that it has failed the review, it must either implement a compliance action plan or challenge the findings within 30 days.

If you challenge the findings and lose, you must implement a compliance action plan within 30 days of the Agency’s findings.

- Can ask for a thirty day extension of this time frame for good cause shown UNLESS you challenge and lose.

Compliance action plans include: specific written commitments, a set remedial time period, and the names of individuals charged with remedying the deficiencies—Agency must approve.
Revised 29 CFR § 30

- Complaints may be filed against sponsors by: any individuals who believe they have been discriminated or retaliated against, or their authorized representative (e.g., community-based organization or pre-apprenticeship program).

- Complaints must be filed within 300 days of alleged discrimination.

- Sponsors must provide all applicants for apprenticeship and apprentices with notification of their rights to file such complaints.

- The Registration Agency conducts investigations and seeks compliance where violations are found. It may also refer the matter to federal agencies such as the EEOC.
Revised 29 CFR § 30

- If a sponsor fails to comply with compliance requirements after violations are found within 30 days, it will be subject to a suspension.
- If the sponsor does not comply within 30 days of the suspension, the program is subject to deregistration.
  - Deregistered programs may be reinstated upon sufficient showing that program is now in compliance
- Intimidation or retaliation against individuals who file complaints, or participate in compliance reviews in any manner is prohibited.
Revised 29 CFR § 30

• DOL predicts that the 10-year costs of the final rule range between $370.27 million and $458.90 million. The 10-year projected benefits are between $4.56 million and $5.83 million.
  – In other words, this is a ratio of approximately $9-$12 worth of benefits for every $740-$918 spent.

• According to the DOL, sponsors covered by ERISA will not violate ERISA in conforming with the new regulations because “support for such programs is necessary to maintain the plan’s registration, or is otherwise advantageous to the plan[,]” so plan assets “may be used to defray the reasonable expenses of such support.”
  – However, expenditures must still be “prudent” and “reasonable”

• State Apprenticeship Agencies have one year from January 18, 2017 to submit state law conforming authority to OA to permit the SAA to continue registration under the current requirements.
EBSA Audits and Other Enforcement Activities
DOL Investigations of Plan and Trustee Expense Issues

- DOL is very focused on plan and trustee expenses.
- ERISA 406(b)(3) prohibits a fiduciary from receiving anything of value that is a personal benefit—In contrast to an expense that the plan could pay or reimburse—From any party dealing with the plan in connection with a transaction involving plan assets.
- Examples: Entertainment paid by service providers (golf, sporting events, bar bills); amount for meals in excess of the “reasonable” amount that the plan could pay.
EBSA Audits and Other Enforcement Activities

- EBSA says abuses may be prevalent because often plans lack written expense policies and internal controls. Some common abuses noted by EBSA include
  - Lack of oversight of use of plan vehicles, equipment or other inventory;
  - Unreasonable instructor salaries and bonuses;
  - Excessive meal stipends not reasonably related to the training purposes;
  - Payments for staff holiday parties, flowers, donations to charities, non-profits, scholarships or memorial funds.
EBSA Audits and Other Enforcement Activities

- ERISA standards apply to apprenticeship plans:
  - Must have a written plan administration document—Declaration of trust or bylaws;
  - Must be jointly trusteeed and plan assets must be held in trust;
  - Trustees must act solely in the interest of plan participant, for the express purpose of the trust in providing benefits to participants, allowing only reasonable expenses in the exclusive use of plan assets for participant;
  - Trustees held to the prudent person standard;
  - Plan assets must be invested prudently and diversified to avoid large losses;
  - Trustees may not approve non-exempt prohibited transaction with plan parties in interest.
EBSA Audits and Other Enforcement Activities
DOL Investigations of Plan and Trustee Expense Issues

• Adopt good written policies and follow them. Violation of a plan policy (document) is a fiduciary breach.
• Document expenses. DOL scrutinizes poorly documented expenses more closely.
• NO PERSONAL OR EXCESSIVE EXPENSES CHARGE TO THE PLAN—spouse expenses, entertainment, meals, first class airfare.
• Expenses ONLY for plan administration and benefits.
• Shared expenses of related plans or organizations must be allocated based on usage.
EBSA Audits and Other Enforcement Activities
Department of Labor Audits

- Recent Audit Findings have Included:
  - Graduation ceremonies
  - Travel expenses
  - Meals and entertainment
  - Holiday parties and dinners
  - Sporting events
  - Charitable donations
  - Golf outings and sponsorship
  - Improper allocation of expenses
  - Union personnel on JATC payroll
  - Lack of written expense policy
  - Personal meal expenses
EBSA Audits and
Other Enforcement Activities
Dept. of Labor Field Assistance Bulletin 2012-01

- See DOL Field Assistance Bulletin (4/2/12):
  http://www.dol.gov/ebsa/regs/fab2012-1.html
- DOL views as “unreasonable” (and thus impermissible) expenses that are for other than a “modest” celebration
  - DOL will approve “light refreshments,” limited alcoholic beverages, modest valedictorian gifts (i.e., watch), tokens of ceremony (i.e., photos) for graduates
  - DOL will not approve dinners, open bars, entertainment, overnight hotel stays
  - DOL will approve Fund’s payment of tickets for graduates and family (but how many?) Trustees, Fund staff, speakers, local apprenticeship council representatives
  - DOL will not approve Fund’s payment of tickets for other guests (Union, contractors, UA)
  - Amount of expense must be “modest” in relation to Plan’s assets
EBSA Audits and Other Enforcement Activities

• Program Marketing—Outreach Expenses—Guidance on uses of apprenticeship plan assets for plan marketing and industry outreach expenses consistent with ERISA exclusive use and fiduciary standard limitations.
  – Conclusion—Expenses must be incurred in marketing or promotion of the apprenticeship plan itself—Not for promoting the industry, signatory employers or labor organizations—And the expenditures must be consistent with standards on prudent and economical use of plan assets.
  – Example, t-shirts given to apprentices with the apprenticeship program logo, may be ok, if the expense is modest, and the shirts weren’t purchased from a party in interest to the plan. However, tickets to entertainment or sporting events for apprentices, plan officials, trustees or contributing employers “would generally be unreasonable plan expenses.”
EBSA Audits and Other Enforcement Activities
Apprentice Skills Contests

• December 8, 2014 Department of Labor issued new guidance
• Apprentice Fund may pay for organizing or attending skills contests
• Guidance discusses travel, prizes, gifts, marketing/promotional items and awards dinners
• All expenses must further educational purpose of the Fund
• Trust Agreement must permit these expenditures
EBSA Audits and Other Enforcement Activities
Apprentice Skills Contests

Permissible Expenses
- Registration fees
- Transportation to and from
- Accommodations
- Meals
- Fees related to travel (ground transportation, parking, shipping of tools or supplies)
- Lost wages for participants
- Reasonable prizes
  - Consistent with educational purpose
- Modest gifts and promotional items

Impermissible Expenses
- Hotels or meals for days other than contest days
  - Unless necessary for travel to and from contest
- Upgraded hotel rooms or travel tickets
EBSA Audits and Other Enforcement Activities
Apprentice Skills Contests

Who Can Fund Pay For?
- Apprentices participating in the contest
- Others who play necessary role in the competition
- Trustees or Plan Officials to evaluate the Plan’s training

Who Can’t Fund Pay For?
- Families of Apprentices
- Individuals who wish to attend solely for the purpose of spectating
EBSA Audits and Other Enforcement Activities
Apprentice Skills Contests

- Fund may pay for apprentices and other necessary individuals to attend awards dinner
  - Cost of attendance must be deducted from meal amount otherwise payable (no additional per diem)
- Funds organizing the contest must treat awards dinners the same as graduation ceremonies
  - May pay for dinner for apprentices and other necessary individuals
  - Cost must be reasonable
  - May NOT pay for spectators or extra expenses
EBSA Audits and Other Enforcement Activities
Department of Labor Audits

• Purpose of Audit
  – Review records of JATC for compliance with Title I of ERISA
    • Fiduciary responsibilities
    • Reporting and Disclosure Requirements

• Dept. of Labor Audit Process
  – Plan is selected
  – Letter is sent requesting documents
  – Appointment is set for review
  – On-site review of the Plan’s documents
  – Request for additional information
  – Corrections
  – Final disposition
What Documents May Auditors Request?

- Disclosure notice
- Plan receipt/disbursement journals
- Trust agreement
- Plan documents
- Collective bargaining agreements
- Policies and procedures
- Trustee and Committee meeting minutes
- Shared service agreements
- Other expense allocation agreements
- Fiduciary policy
- Fidelity bond policy
- General liability insurance policies
- List of Trustees
- List of employees
- List of plan service provider contracts
- All fund correspondence
EBSA Audits and Other Enforcement Activities
Department of Labor Audits

- Immediate Response to Audit Request
  - Notify Plan attorney and accountant
  - Gather documents
  - Review documents for questionable items
  - Provide an orderly and professional presentation
EBSA Audits and Other Enforcement Activities
Department of Labor Audits

• Designate room for auditor
• Provide reasonable assistance
  – But do not provide more information than necessary
• Never volunteer anything
• Audit interviews should be conducted in presence of Plan attorney
• Keep answers short and on point
• After auditors have conducted on-site audit, they may request additional information
  – Provide this information only upon request
  – Include cover letter documenting what is being sent
Government Resources
Health and Safety Initiatives
Proposed Legislation
Job Training: Republican FY2017 Budget Proposal

• The nation’s workforce-development programs are too often unable to successfully match workers’ skills with employers’ needs. Federal job training programs are notorious for producing a labyrinth of bureaucracy that consistently fails to result in a substantial number of job placements.

• This is particularly detrimental to the 15.6 million Americans who are either unemployed or underemployed, according to the Bureau of Labor Statistics (BLS), while at the same time BLS reports 5.6 million job openings.

• There are at least 35 job training programs across 8 different departments and agencies.

• This budget calls for reducing this unnecessary duplication and producing better results for those seeking assistance. This will save taxpayer dollars, equip our workers to compete in the 21st century, and make our economy even stronger.
Proposed Legislation
Repeal Davis-Bacon: Republican Party Platform 2016

• **H.R. 987**: To repeal the wage rate requirements commonly known as the Davis-Bacon Act.
  
  – “We renew our call for repeal of the Davis-Bacon law, which limits employment and drives up construction and maintenance costs for the benefit of unions.”
  
  – The 1931 Davis-Bacon Act requires that federal construction projects pay “prevailing” (typically union-scale) wage.
Proposed Legislation

- **H.R. 286**: Expressing the sense of the House of Representatives that investing in the Nation’s skilled workforce is investing in the Nation’s economy, and that in accordance with existing law, the House of Representatives should promote public and private partnerships to increase training programs, tax incentives, industry and State apprenticeships, and for other purposes.
  - The resolution note that only 2% of registered apprentices in 2014 were in manufacturing industries.
• **H.R. 3435 and H.R. 3993**: *Leveraging and Energizing America’s Apprenticeship Program (LEAP) Act*
  
  – Allows business owners a $1500 business-related tax credit of $1500 for hiring an apprentice under the age of 25 in a registered program for up to a maximum of two years; credit is reduced to $1000 for apprentices age 25 and over, both for programs that meet the apprenticeship level criteria of completions rates and participation rates below.

  – Qualifying apprenticeship programs must achieve a 50% completion rate for the two years immediately preceding the tax advantaged hiring. Credits are only available for apprentices hired above the level of 80% the average apprentice participation in the program over the last 3 taxable years before the credit claimed.
Proposed Legislation

• **H.R. 5761:** *Train the Future Act*
  - The proposal would allow employees age 55 or older to work part time as mentor and train employees or students in the workers area of expertise and allow penalty free in-service retirement distributions for the employee’s pension—Permitting qualified pension plans to provide distributions during working retirement to employee age 62 and over who are working part-time as mentors to younger employees.
  - **S.2020** also contains sections that reflect parts of **H.R 5761**—The measure would amend the Internal Revenue Code allow a premature distribution, without penalty, form a tax-qualified retirement plan to an employee who is serving as a mentor.
  - A mentor is defined as a working individual who: (1) has attained age 55; (2) works reduced hours and engages in mentoring activities for at least 20% of such hours, and (3) is responsible for training and education or employees or students in an area of expertise for which such individual has a professional credential, certificate or degree.
• **H.R. 2551: Veterans’ Entry to Apprenticeship Act**
  
  Would require the Department of Veterans Affairs to provide educational assistance for veterans in a pre-apprenticeship program that meets state criteria for postsecondary apprenticeship educational programs, or where there are no state standards if the sponsoring apprenticeship program certifies to the VA that the program provides skills and competencies needed to enroll in a registered apprenticeship program.

  Housing benefits are payable too, if the pre-apprentices are not paid during participation in the pre-apprentice program.
Proposed Legislation

- **H.R. 6021**: Jobs, On-the-Job “Earn While You Learn” Training and Apprenticeship for African-American Young Men Act
  
  - The proposal would require the Secretary of Labor to “urgently request” labor unions, general contractors and business involved in National infrastructure rebuilding markets to actively recruit, hire and provide on-the-job training to African-American young men ages 18 to 39.
  
  - The proposal singles out apprenticeship training programs sponsored by Building Trades unions and cites a broad scope of African American organizations from which the active recruitment shall be targeted.
Proposed Legislation

• **S. 2020: Apprenticeship and Jobs Training Act of 2015**
  – Would provide up to $5000 in tax credits that hire apprentices in registered apprenticeship programs.
  – The credit is only available for employers whose apprenticeship employment that is above the annual average apprentices employment for the preceding three years.
  – The credit is only available for three years and the apprentice must work a minimum of seven months in the year to qualify.
Proposed Legislation

- **S. 3341: *American Apprenticeship Act***
  - The proposal would direct the Labor Department to make competitive grants to assist states, and subsidize the cost of instruction of between 20% and 50%, in pre-apprenticeship and apprenticeship program.
  - DOL would work with the Department of Education in approving grant applications. Grants could be used for tuition, fees, textbooks, equipment, curriculum development, and other educational materials. DOL would establish criteria for grant acceptance.
  - The proposal calls for an annual $15,000,000 appropriation for the grant program for FYs 2017 through 2022.
Proposed Legislation

• **S. 2945/ H.R. 5635: Leveraging Effective Apprenticeships to Rebuild National Skills Act—LEARNS Act**
  
  – Proposals would reorganize the Labor Department’s Office of Apprenticeship to integrate and provide grant funding for expansion pre-apprenticeship programs into DOL administration.
  
  – The measure calls for collaboration and grants with state workforce boards, and for establishment of a Registered Apprenticeship-College Collaborative between registered programs and two- or four-year post-secondary educational programs.
  
  – The Senate measure calls for $20,000,000 annual appropriation in FY2017 and after; the House bill calls for an initial $75,000,000 appropriation for the programs.
Recently Passed Laws and Implementation Challenges
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Thank you!

We appreciate your feedback.