

January 20, 2016

Ms. Adele Gagliardi, Administrator  
Office of Policy Development and Research  
Employment and Training Administration  
U.S. Department of Labor Room N-5641  
200 Constitution Avenue, NW  
Washington, DC 20210

**Re: RIN 1205-AB59—Proposed Rulemaking on Apprenticeship Programs; Equal Employment Opportunity**

Dear Ms. Gagliardi:

The National Taskforce on Tradeswomen Issues (TWTF), a national coalition made up of women’s organizations and tradeswomen whose mission is to create access, opportunity and equity in nontraditional employment and training for women, writes to express our strong support for the U.S. Department of Labor’s (DOL) proposal to update the Apprenticeship Program’s Equal Employment Opportunity regulations after nearly forty years. This rulemaking has the ability to significantly increase the participation of women and other underrepresented groups in apprenticeships and the trades.

In the almost four decades since the EEO regulations were last updated, the representation of women in apprenticeships has remained stagnant. While women make up 47 percent of the workforce,<sup>i</sup> they account for only 6.3 percent of apprentices.<sup>ii</sup> Persistent barriers to entry and advancement of women in these higher-paid, traditionally male-dominated programs, lead to this underrepresentation. Increasing women’s participation in these high-wage, high-skill fields will boost women’s overall earnings and help to close the wage gap, providing a pathway to economic security and opportunities for career advancement.<sup>iii</sup> Through strengthening and effectively implementing the proposed regulations, DOL can help to ensure that women have equal access to apprenticeships—and the trades—and that their participation is reflective of their share of the broader workforce. Strengthening these regulations will also help increase the participation of members of racial and ethnic groups who are underrepresented in certain apprenticeship industries and concentrated in apprenticeship programs in lower paying occupations.

The NPRM is especially important to the Taskforce whose member organizations from across the country represent thousands of tradeswomen, from apprentices to leaders in their jobs, unions, and apprenticeship programs. The Taskforce includes partners from unions, industry and national women’s organizations. Many of our member organizations offer programs that increase women’s access to the trades and are responsible for innovative programs and policies on the local, state level, and national levels. Taskforce members have been key providers of technical assistance to industry partners to help develop policies and practices that ensure effective recruitment and retention of tradeswomen. Historically, tradeswomen themselves have been at the forefront of changing conditions that prevent women from being fully integrated into well-paid, blue-collar jobs. Isolated tradeswomen sought connections with other women working in

nontraditional careers and formed local support organizations. They developed and partnered with job-training programs to increase the preparation of women to enter these careers. When federal polices foundered from lack of consistent enforcement, local groups began organizing to preserve women’s gains in this arena, substituting their own activities and initiatives to influence public policy.

The TWTF is proud to represent that history and expertise and strongly urges DOL to strengthen the regulations in the following ways:

**I. Include Equal Employment Opportunity and Affirmative Action Standards for Pre-Apprenticeship Training Programs.**

The TWTF commends DOL for acknowledging that “pre-apprenticeship” training is a key tool for addressing continued disparities in apprenticeship for women, people of color, and individuals with disabilities. Pre-apprenticeship training is a significant and critical component in the industry’s workforce pipeline.<sup>iv</sup> Without greater efforts in recruiting women, minorities and other historically disadvantaged individuals at the pre-apprenticeship level it will remain difficult to correct the underutilization of this portion of our nation’s workforce. However, to open career pathways to women and members of other underrepresented groups, pre-apprenticeship programs themselves must be attuned to and address a range of barriers women face when entering these fields, such as a lack of information about trade career opportunities, misperceptions regarding nontraditional careers, unequal training, sex-based stereotypes, sex discrimination and harassment isolation, and exclusion.<sup>v</sup>

There are currently no minimum industry standards for technical competency requirements for program staff, EEO/AA protocol, or selection procedures in pre-apprenticeship programs. Accordingly, we recommend that DOL’s definition in proposed § 30.2 of a quality framework for pre-apprenticeship training incorporate best practices for addressing barriers unique to women, people of color, and individuals with disabilities and include standards for Equal Employment Opportunity/Affirmative Action (EEO/AA) in technical instruction, selection procedures, and direct entry into apprenticeship programs.

Examples of such best practices and standards can be found on the Chicago Women in Trades DOL-funded technical assistance website<sup>vi</sup> and in the Pink to Green Toolkit at another DOL funded website.<sup>vii</sup> Such best practices and standards include:

- Designing outreach and recruitment plans that will attract and engage women applicants;
- Setting goals for the number of women applicants, participants, graduates and placements;
- Establishing policies and professional development practices to build staff capacity to support and serve traditionally underrepresented groups;
- Training staff on the impact of gender stereotypes and hidden biases and the need for gender and culturally sensitive teaching practices;

- Providing examples of underrepresented groups in training materials and throughout the training facility;
- Engaging a diverse teaching and support staff reflective of women and people of color;
- Adding a gender lens to core competencies for work readiness;
- Employing gender-targeted lesson plans on topics related to sexual harassment prevention, cultural competency, and health and safety;
- Facilitating informal support groups, mentoring, peer counseling, and networking activities;
- Avoiding isolating individuals from underrepresented groups: safety and support in numbers has demonstrated evidence-based positive outcomes;
- Promoting and enforcing civil rights and sexual harassment policies and practices.

**II. Clarify that Sex Discrimination Includes Discrimination Based on Sexual Orientation and Sex Stereotyping and that Gender Identity and Pregnancy Discrimination are Prohibited.**

The TWTF commends DOL for revising the apprenticeship equal opportunity regulations to reflect important developments in the landscape of anti-discrimination law. We strongly support the proposed regulations’ explicit inclusion of sexual orientation in the list of bases upon which discrimination is prohibited. Individuals who identify as lesbian, gay, or bisexual face high levels of discrimination and harassment at work based on their sexual orientation.<sup>viii</sup> The Equal Employment Opportunity Commission (EEOC) has recognized discrimination on the basis of sexual orientation to be a violation of Title VII<sup>ix</sup> and Executive Order 11246, as amended, prohibits discrimination by federal government contractors on the basis of, *inter alia*, sexual orientation and gender identity, which is reflected in Office of Federal Contract Compliance Programs (OFCCP) implementing regulations.<sup>x</sup> Several federal courts have also found that discrimination or harassment based on an individual’s romantic relationship with a person of the same gender constitutes discrimination on the basis of sex, based on the stereotype that “real men” should only be attracted to and form romantic relationships with women, and that women should only be attracted to and form romantic relationships with men.<sup>xi</sup> Accordingly, this revision is in line with current law and also well within DOL’s rulemaking authority under 29 U.S.C. § 50, which requires the formulation of “labor standards necessary to safeguard the welfare of apprentices.”

While the explicit protection against discrimination based on sexual orientation is essential, the TWTF urges DOL to make clear that sexual orientation discrimination and sex stereotyping discrimination are also prohibited forms of sex discrimination. In the preamble of the proposed regulations, DOL explicitly cites both the landmark case *Price Waterhouse v. Hopkins*,<sup>xii</sup> which held that discrimination on the basis of sex stereotyping is unlawful sex discrimination under Title VII, as well as the recent EEOC decision *Baldwin v. Dep’t of Transportation*,<sup>xiii</sup> which explicitly states that sexual orientation discrimination is a form of sex discrimination under Title VII. *Baldwin* also clarifies that discrimination against an individual on the basis of sexual orientation is inherently intertwined with the understanding of sex-based

characteristics. Explicitly articulating within the text of the regulations that sex discrimination includes sexual orientation discrimination will reflect this legal standard and provide the fullest protection for program participants in the coming years. Accordingly, we urge DOL to include a definition of “sex” in § 30.2 that makes clear that sex discrimination per se includes discrimination on the basis of sexual orientation and sex stereotyping.

The TWTF also strongly supports the proposed regulations’ important recognition that sex discrimination includes gender identity discrimination. In a survey conducted by the National Center for Transgender Equality, 47 percent of respondents reported that they “had experienced an adverse job action—they did not get a job, were denied a promotion or were fired—because they are transgender or non-conforming.”<sup>xxiv</sup> Moreover, 22 percent of employees reported that they were denied access to appropriate bathrooms, and 21 percent reported that they were not able to work out a suitable bathroom situation while at work.<sup>xv</sup> In addition to high rates of job loss due directly to discrimination, workplace abuse is “a near-universal experience” for transgender and gender nonconforming workers, 78 percent of whom report having experienced some kind of direct mistreatment or discrimination at work.<sup>xvi</sup> The EEOC,<sup>xvii</sup> the OFCCP,<sup>xviii</sup> the Department of Justice,<sup>xix</sup> and several federal courts have found that discrimination based on a person’s transgender status constitutes sex discrimination.<sup>xx</sup> Accordingly, revising the apprenticeship regulations to recognize gender identity discrimination as a form of sex discrimination reflects current law and is well within DOL’s rulemaking authority under 29 U.S.C. § 50.

In addition, we also strongly support the proposed regulations’ important recognition that sex discrimination includes pregnancy discrimination. Too often pregnant workers are pushed out of their jobs. Women’s paychecks are more critical to their families than ever. Women today are the primary breadwinners in 40.9 percent of families with children, and they are co-breadwinners—bringing in between 25 percent and 49 percent of family earnings—in another 22.4 percent of families.<sup>xxi</sup> The proposed regulations’ clarification that sex discrimination includes pregnancy and gender identity discrimination is in line with current law, which has long been clear that pregnancy discrimination is a form of sex-based discrimination.<sup>xxii</sup> This revision is also well within DOL’s rulemaking authority under 29 U.S.C. § 50.

We urge DOL, however, to make clearer throughout the text of the regulations that discrimination on the bases of pregnancy and gender identity is prohibited. Although the preamble states that pregnancy and gender identity discrimination are forms of sex discrimination, in the text of the regulations themselves, pregnancy and gender identity are only referenced once—in proposed § 30.3(c)—halfway through the section describing the equal opportunity standards applicable to all sponsors. Given the potential severity of discrimination on these bases, clarity is essential to both program participants and sponsors. Accordingly, the TWTF urges DOL to make clear in the definition of “sex,” which we recommend be included in § 30.2, that sex discrimination includes discrimination on the basis of gender identity and pregnancy, childbirth and medical conditions related to pregnancy or childbirth, in addition to discrimination on the basis of sexual orientation and sex stereotyping. The TWTF further urges DOL to explicitly enumerate gender identity and pregnancy throughout the regulations in the list of classes protected from discrimination.

### **III. Ensure that Applicants and Apprentices Affected by Pregnancy and Related Conditions are Not Discriminated Against, Pushed Out of Their**

**Apprenticeships, or Forced to Choose between the Health of Their Pregnancies and Their Apprenticeships.**

Many women are able to work throughout their pregnancies without any need for changes at work, but some pregnant women require temporary accommodations to protect their health and safety on the job, particularly pregnant workers in physically demanding, inflexible, or hazardous jobs where apprentices often work. Employers have traditionally used pregnancy as an occasion to push women out of work, including by refusing to make accommodation for medical needs arising out of pregnancy and related conditions, and this treatment continues. Indeed, pregnancy push-out has been an especially large barrier women have faced in nontraditional occupations where apprenticeship programs are common. For example, women who work in jobs traditionally held by men often face harassment, discrimination based on gender stereotypes, hostility, and suspicion.<sup>xxiii</sup> When a woman worker is already seen as an outsider, her pregnancy and any requests for changes in her job related to the pregnancy can be taken as further evidence that the job is inappropriate for a woman, leading her employer to refuse to make accommodations and to the woman losing her job. Refusal to accommodate pregnancy can thus enhance and perpetuate occupational segregation. Moreover, with women's income more critical to their families than ever before, women cannot afford to choose between the health of their pregnancies and their paychecks or careers in the trades.

As DOL recognizes, sex discrimination includes discrimination on the basis of pregnancy, childbirth, or related medical conditions. The Supreme Court's recent holding in *Young v. United Parcel Serv., Inc.*<sup>xxiv</sup> requires workplace accommodations for pregnancy, childbirth, or related medical conditions in many instances. Accordingly, in the final regulations, we urge DOL to address the need for sponsors to provide reasonable accommodations for pregnancy and related conditions, both as required to avoid discrimination on the basis of pregnancy under *Young v. UPS*, and also as an affirmative measure aimed at breaking down barriers to women's acceptance and advancement in apprenticeship programs. Requiring such steps by sponsors would fall within the DOL's rulemaking authority under 29 U.S.C. § 50 to formulate "labor standards necessary to safeguard the welfare of apprentices" and would complement and reinforce the Supreme Court's recent statements in *Young* to the effect that employers may not place significant burdens on pregnant workers by excluding them from accommodations offered to most other workers who need them.

In addition, we urge DOL to specifically clarify in proposed § 30.3(a)(2), as it did with other protected categories, 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), 42 U.S.C. 2000(k), and the implementing regulations and enforcement guidance promulgated by the Equal Employment Opportunity Commission (EEOC),<sup>xxv</sup> as well as the Americans with Disabilities Amendments Act (ADAAA), 42 U.S.C. 12101 *et seq.*, and EEOC implementing regulations and enforcement guidance.<sup>xxvi</sup> We further urge DOL to note that these legal standards include, among other things, the standards governing reasonable accommodations under the ADAAA when workers experiencing pregnancy-related disabilities, as well as employers' obligation, under the PDA, to make accommodations for workers with limitations arising out of pregnancy when employers make or are obligated to make accommodations for a substantial percentage of others similar in ability to work. Given the severity of discrimination against pregnant workers in nontraditional jobs, clarity as to the legal standards a sponsor must follow is essential.

#### **IV. Prohibit Discrimination on the Basis of Caregiving Status.**

The TWTF recommends that the regulations explicitly prohibit discrimination on the basis of caregiving status. The Equal Employment Opportunity Commission (EEOC), the agency tasked with enforcing federal anti-discrimination law, has issued enforcement guidance on unlawful discrimination against workers with caregiving responsibilities because it violates Title VII of the Civil Rights Act of 1964.<sup>xxvii</sup> The EEOC has also issued guidance on employer best practices for workers with caregiving responsibilities.<sup>xxviii</sup> Executive Order 13152 prohibits discrimination against federal employees based on that employee’s status as a parent.<sup>xxix</sup> Five states and over 65 localities prohibit discrimination based on family responsibilities to some degree. As the EEOC has recognized, “[s]ex-based stereotyping about caregiving responsibilities is not limited to childcare and includes other forms of caregiving, such as care of a sick parent or spouse. Thus, women with caregiving responsibilities may be perceived as more committed to caregiving than to their jobs and as less competent than other workers, regardless of how their caregiving responsibilities actually impact their work.”<sup>xxx</sup> Women apprentices may find themselves facing comments about the reliability of working mothers less favorable scheduling or assignments based on assumptions of caregiving responsibilities outside of work Apprentices with parental responsibilities may not be able to adjust their schedules at the end of a regular shift to fulfill an overtime assignment, without notice, and thus be judged less favorably or denied future opportunities for a similar assignment. Apprentices with parental responsibilities may be “docked” pay for taking time to fulfill caregiving duties while other apprentices are not similarly penalized for taking time off for activities that are not related to caregiving responsibilities, such as attending a court date. The following examples, cited by the EEOC, are reflective of experience of many female apprentices<sup>xxxi</sup>:

- a. Whether female applicants were asked whether they were married or had young children, or about their childcare and other caregiving responsibilities;
- b. Whether decision-makers or other officials made stereotypical or derogatory comments about working mothers or other female caregivers;
- c. Whether female apprentices were subject to less favorable treatment or were steered or assigned to less prestigious or lower-paid positions
- d. Whether male workers with caregiving responsibilities received more favorable treatment than female workers;

We urge DOL to prohibit discrimination based on caregiving status, in line with similar protections afforded in other contexts.

#### **V. Strengthen the Anti-Discrimination and Anti-Harassment Protections Required of all Sponsors.**

The TWTF applauds DOL for requiring all sponsors, regardless of size, to take affirmative steps to provide equal opportunity in apprenticeship in § 30.3. Outreach and recruitment efforts that are intended to “generate referrals from *all* demographic groups” are particularly vital to increasing the number of women in apprenticeship programs. Given historical outreach and hiring practices focused primarily on men, and the resulting disproportionate number of male apprentices, many women are not aware of apprenticeship programs and targeted outreach is

necessary to increase awareness of these opportunities. Likewise, anti-discrimination and anti-harassment protections are crucial to prevent and confront the discrimination that is often pervasive at worksites, including isolation in the classroom and on the job, unequal assignments, mentoring that excludes women and people of color, and sexual harassment.<sup>xxxii</sup> We urge DOL to strengthen these requirements in several key ways:

**a. Strengthen Sponsors' Outreach and Recruitment Requirements.**

We first urge DOL to strengthen the outreach and recruitment efforts that all sponsors must undertake by requiring sponsors to ensure that these efforts extend to all persons available for apprenticeship without discrimination. Proposed § 30.3(b)(3) currently requires sponsors to ensure that their outreach and recruitment efforts extend to all persons but only without regard to race, sex, ethnicity, or disability. In order to ensure inclusive outreach and recruitment and to avoid prohibited discrimination, § 30.3(b)(3) should include all of the protected bases—sex, pregnancy, caregiver status, gender identity, sexual orientation, race, color, national origin, religion, age (40 or older), genetic information, and disability.

In addition, the TWTF strongly urges DOL to add to the list of examples of relevant recruitment sources to generate referrals from all demographic groups in §30.3(b)(3)(i), organizations that represent and serve women, people of color, and other underrepresented populations. DOL should also provide links to such resources on DOL's website.

The TWTF further recommends that DOL strengthen the requirement in § 30(b)(3)(iii) that sponsors provide recruitment sources advance notice of apprenticeship openings, by requiring sponsors to give notice of apprenticeship opportunities no less than 30 days in advance. Thirty days advance notice is necessary to allow sufficient time for the notice of an opening to be processed, acted upon, and disseminated by the recruitment source and reach prospective applicants. Moreover, potential applicants need to have sufficient time to assess if they are interested and ensure that they have all of the documents necessary for a complete application. 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.

Finally, the TWTF recommends including language in §30.3(b)(3) to underscore that outreach in and of itself is not sufficient to recruit women in particular and therefore should be paired with career education that includes formal and informal apprenticeship information and orientation sessions describing what is entailed in the apprenticeship, the work to be performed, the requirements and processes for applying, what constitutes a competitive candidate, and explanations of the selection process. These sessions can be particularly useful if they are held at the apprenticeship site (although not exclusively) and include opportunities for potential applicants to meet with women, people of color, and individuals with disabilities who are in, or have completed, the apprenticeship. In conjunction with these regulations, we recommend that the Office of Apprenticeship (OA) post on its website a list of resources for technical assistance and examples of career education materials, including links to Women in Apprenticeship and Nontraditional Occupations (WANTO)-developed resources.<sup>xxxiii</sup>

**b. Strengthen the Anti-Harassment and Anti-Discrimination Protections Required of all Sponsors.**

The TWTF commends DOL for making anti-harassment protections a central part of all sponsors' equal opportunity requirements. Robust anti-harassment protections are essential to creating an environment in which all apprentices feel welcomed, safe, and treated fairly. Strong anti-harassment measures will also help to ensure that more women complete their apprenticeship programs. Accordingly, the TWTF urges DOL to strengthen the proposed anti-harassment protections by adding to § 30.3(b)(4)(i)-(iv) that sponsors must "make all work assignments and training opportunities available without regard to race, color, religion, national origin, sex, pregnancy, gender identity, sexual orientation, caregiver status, age (40 or older), genetic information, or disability." To ensure these opportunities are afforded to all apprentices equally, DOL should also add to the antidiscrimination protections in § 30.3(a)(1)(i)-(x) "work assignments and training opportunities" as a basis with regard to which a sponsor cannot discriminate.

Finally, the TWTF urges DOL to strengthen the anti-harassment provisions as they pertain to restrooms and changing facilities. Specifically, we urge DOL to adopt in the final regulations the recommendations of the Advisory Committee on Occupational Safety and Health in its report "Women in the Construction Workplace: Providing Equitable Safety and Health Protection."<sup>xxxiv</sup> This report, known as the HASWIC Report, found that temporary facilities on worksites are usually unisex, often without privacy, and are generally not well maintained. Sometimes there are no sanitary facilities available for women to use. Due to the lack of facilities, women report that they avoid drinking water on the job, risking heat stress and other health problems. Courts have found that the lack of appropriate sanitary facilities is discriminatory and violates OSHA standards.<sup>xxxv</sup> Unclean facilities can result in disease as well as urinary tract infection (for those who delay urinating rather than using such facilities). The availability and cleanliness of restroom facilities are a major concern for tradeswomen, as documented in the Chicago Women in Trades (CWIT) report cited in the HASWIC Report.<sup>xxxvi</sup> Of tradeswomen surveyed, 80% had encountered worksites with dirty toilets or no toilets at all.<sup>xxxvii</sup> Respondents to the survey further reported that facilities, when available, were filthy or were some distance from the worksite.<sup>xxxviii</sup>

The HASWIC Report recommended, among other things, that gender-separate, external and internal locking sanitary and changing facilities be provided on worksites, that employees be allowed to use such facilities as needed and be provided keys for gender appropriate facilities, that the toilet facilities be maintained in a sanitary condition and in good repair (e.g., with working locks), that clean toilet paper be provided within reach of the toilet, and that hand washing facilities be located within close proximity to toilet facilities to ensure privacy between the sexes and support safety and health measures.

Accordingly, we urge DOL 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. We also urge DOL to include language in the regulations that makes clear to sponsors that if sex-segregated facilities are available, they must provide access to gender-appropriate facilities for individuals in accordance with their gender identity. As set forth in the Occupational Safety and Health Administration's "Guide to Restroom Access for Transgender Workers,"<sup>xxxix</sup> the decision of which restroom corresponds with an apprentice's gender identity is a decision that should be left to the transgender apprentice to determine the most appropriate and

safest option. Apprentices should not be asked to provide any medical or legal documentation of gender identity in order to have access to gender-appropriate facilities. Specifically, the regulations' anti-harassment provisions should be strengthened by stating 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, "*and must provide equal access to such facilities consistent with an individual's gender identity.*" This clarification is crucial to ensuring that apprentices are not subject to inappropriate personal questions or other verbal or physical harassment for using public restrooms consistent with their gender identity.

**VI. Require all Sponsors to Create Affirmative Action Programs, Not Just Sponsors with 5 or More Apprentices.**

The TWTF urges DOL to reconsider the proposed exemption of apprenticeship programs with fewer than 5 apprentices from having to adopt an affirmative action program. Such an exemption would exclude a significant percentage of apprenticeship programs from the promises of equal opportunity offered by the regulations. This exemption would also exclude a large number of new apprenticeship programs in their early years of growth when the adoption of an affirmative action program would have the greatest long term, positive impact.

**VII. Clarify that Affirmative Action Programs are Intended to Institutionalize a Sponsor's Commitment to Inclusivity**

The TWTF recommends that DOL explicitly state in this section that affirmative action programs are also intended to institutionalize the sponsor's commitment to *foster inclusivity*. It is common practice for government agencies and industry to include this language in diversity programs to reaffirm the notion of a commitment to equality that is action based and designed to intentionally and systematically create an environment that engages and supports all workers and benefits from the unique contributions and perspectives of everyone.<sup>x1</sup>

**VIII. Ensure that the Affirmative Action Regulations Actually Increase Participation of Women and People of Color in Apprenticeships and the Trades.**

We commend DOL for updating the affirmative action regulations, which is a necessary step in addressing and combating the drastic underrepresentation of women in apprenticeships and the underrepresentation of members of racial and ethnic groups in certain apprenticeship industries. The utilization analysis and establishment of a utilization goal are integral aspects of the affirmative action regulations and clarity as to the required processes, in combination with robust enforcement and compliance mechanisms, is essential to ensuring equal opportunity in apprenticeship programs. While we support DOL efforts to simplify these processes, we strongly recommend that DOL clarify the analysis a sponsor must undertake to determine whether certain groups are underrepresented in their apprenticeship program when compared to their share of the relevant local workforce, as well as the point at which "underutilization" occurs thereby requiring the designation of a utilization goal. Finally, in order to make real progress towards increasing the representation of women and people of color in apprenticeships, the proposed compliance mechanism consisting only of internal review and self-monitoring by sponsors should be augmented by requiring goals and timetables subject to DOL oversight.

**a. Clarify the Meaning and Scope of the Terms “Qualified” and “Present or Potential Capacity for Apprenticeship.”**

We support DOL’s requirement that sponsors compare their “utilization” of women apprentices and apprentices of color with the “availability” of women and people of color who have the “present or potential capacity for apprenticeship” to determine whether they must set a utilization goal and engage in targeted outreach, recruitment, and retention as part of their affirmative action programs. However, we strongly urge DOL to clarify the terms used in this section to provide sufficient guidance to sponsors. Specifically, DOL should clarify that individuals who are “qualified” or “with the present or potential capacity for apprenticeship,” as stated in proposed §§ 30.5(c)(3)(i) and (ii), are individuals who meet the generally-accepted industry requirements for apprenticeships and that these requirements are minimal. DOL should explicitly clarify that apprenticeships are entry-level positions, generally requiring no previous experience and little-to-no requirements other than being at least 18 years of age and holding a high school diploma or equivalent.<sup>xli</sup> Such a clarification is consistent with and supported by the current apprenticeship regulations, which clearly state:

T]he regulation adopted today reflects the Department’s determination that apprenticeships, like other entry-level jobs, do not require any particular training or qualification other than the capability to be trained. The use of the word ‘qualified’ in the Preamble to the proposed regulation was not intended to signify anything contrary to this position.<sup>xlii</sup>

Importantly, DOL should affirm in the regulations its longstanding understanding that, given the minimal requirements for apprenticeship, the population of women and people of color who are “qualified” or have the “present or potential capacity” for apprenticeship will largely correspond with that group’s share of the civilian labor force in the relevant recruitment area. This would serve to confirm that the determination of individuals who are qualified for an apprenticeship in the proposed regulations remains unchanged from the existing regulations in effect since 1978, as summarized in the Preamble to the current regulations:

[A]pprenticeships are entry level positions, requiring no previous skills or training. Thus, the applicable labor market is not those in the labor force who have already acquired skills, but those who possess the capability to be trained. In the absence of any proof to the contrary, the Department assumes that the percentage of the female labor force capable of being trained in the skilled trades is approximately equal to the percentage of the male labor force with that capability. Thus, *the Department assumes that in the absence of discrimination women would be represented in the skilled trades in a fashion comparable to their representation in the total workforce in a given geographic area.*<sup>xliii</sup>

We appreciate that DOL acknowledges that sponsors should not determine the availability of women or people of color based only on their existing representation in apprenticeships in the recruitment area, but also based on the percentage of women or people of color with the “potential capacity for apprenticeship.” As the Preamble to the current regulations aptly explains, “[t]o base goals on the current percentage of women in the skilled trades would serve to

perpetuate the discrimination which has resulted in so few women entering the trades.”<sup>xliv</sup> However, without the above recommended clarifications to the meaning and scope of “potential capacity for apprenticeship,” sponsors might inaccurately or inappropriately restrict the meaning of this term, thereby narrowing their calculation of “available” women and people of color and perpetuating existing underrepresentation of women and people of color in apprenticeship industries.

The recommended clarifications will ease the burden on sponsors to comply with, and DOL to enforce, the affirmative action regulations by providing greater guidance and a simplified standard for determining availability. They will also decrease the potential that the availability and utilization calculations will be manipulated or inconsistently applied by sponsors.

Specifically, the recommended clarification for determining the availability of qualified individuals ensures that the proposed utilization goal for sponsors, which must be “at least equal to the availability figure,” remains a robust goal that moves apprenticeship programs towards the share of women and people of color reflected in the overall civilian labor force. The recommended clarification ensures that sponsors must set a utilization goal at least equal to the percentage of women and people of color in the labor force in the relevant recruitment area. Such a robust goal is crucial because affirmative action programs that have more aspirational goals are shown to actually result in the hiring of more women and people of color.<sup>xlv</sup>

Such a goal is also consistent with other affirmative action programs. For example, the regulations implementing Section 503 of the Rehabilitation Act, which apply to individuals with disabilities and became effective on March 24, 2014, establish a utilization goal of 7% of individuals with disabilities for all federal contractors. The OFCCP determined this utilization goal based on calculations of the percentage of individuals with disabilities *in the civilian labor force*.<sup>xlvi</sup> Thus, DOL has adopted the percentage of the civilian labor force goal for individuals with disabilities in the apprenticeship regulations and should clarify that it is adopting a similar approach for sex, race, and ethnicity in the regulations.

**b. Clarify that Sponsors Must Calculate the Availability and Utilization of Women Overall and Women of Particular Racial and Ethnic Groups.**

We support the regulations’ proposal to move away from the current utilization analysis, which requires the sponsor to analyze availability and utilization for women and then for minorities as an aggregate group, and instead require sponsors to disaggregate the availability and utilization of individuals for apprenticeship by race, sex, and ethnicity. We urge DOL to further strengthen the utilization analysis by clarifying that this data must also be cross-tabulated by race, sex, and ethnicity. In other words, the regulations should require a sponsor to calculate the availability and utilization of individuals broken down by race, sex, and ethnicity, *and* calculate the availability and utilization of men or women of a particular racial or ethnic group. For example, a sponsor would calculate the utilization in their apprenticeship program of women and African Americans as general groups *and* calculate the utilization of African American women as a particular group.

Using data cross-tabulated by race, sex, and ethnicity would ensure that a sponsor’s utilization analysis does not mask the barriers to apprenticeship faced by subgroups of individuals, such as

African American women or Latinas. Women as a broad, generalized group make up 2.6% of construction workers, however, Latina women make up only 0.4 percent, African American women only 0.2 percent, and Asian/Pacific Islander and American Indian/Alaska Native women each make up only 0.1 percent of all construction workers.<sup>xlvii</sup> Analyzing data by subgroups will help bring to light barriers that otherwise would go unnoticed, and thus will lead to better targeted and more effective outreach, recruitment, and personnel processes.

Other laws and regulations have recognized the importance of cross-tabulation. For example, the regulations implementing Executive Order 11246 and establishing affirmative action programs for nonconstruction contractors require contractors to consider whether a substantial disparity exists “in the utilization of a particular minority group or in the *utilization of men or women of a particular minority group*.”<sup>xlviii</sup> Likewise, the Every Student Succeeds Act of 2015 requires state educational agencies to report student test scores and graduation rates, not only disaggregated by economic status, race/ethnicity, gender, English proficiency, disability status, and migrant status, but also in a manner that can be cross-tabulated across those six categories.<sup>xlix</sup> Clarifying that the proposed regulations require the cross-tabulation, in addition to the disaggregation, of availability and utilization data will not require the collection of any new data and does not create any new burdens. Cross-tabulation would simply require that the data already collected and reported by sponsors be presented in a format that is more helpful and useful.

**c. Clarify and Simplify the Definition of “Underutilization.”**

We similarly urge DOL to provide additional guidance for determining “underutilization” of women and people of color as proposed in § 30.5(d). The proposed regulations would require sponsors to establish a utilization goal and engage in targeted outreach, recruitment, and retention efforts when the sponsor’s utilization analysis demonstrates that women, Hispanics or Latinos, or individuals of a particular racial minority group in its apprenticeship program are “underutilized,” meaning “*less than would be reasonably expected* given the availability of such individuals for apprenticeship.”

We strongly urge DOL to clarify that “underutilization” occurs when a sponsor’s utilization of women or people of color is “*less than the percentage available* for apprenticeship in the relevant recruitment area.” This clarification simplifies the analysis of when a utilization goal must be set and targeted outreach, recruitment, and retention undertaken, and ensures that the determination of underutilization will not be manipulated or inconsistently applied by sponsors. This clarification is also consistent with other affirmative action programs and with the apprenticeship regulations governing utilization goals for individuals with disabilities (§ 30.7), which require a sponsor to undertake specific affirmative action measures when individuals with disabilities are represented at a rate “less than” the utilization goal, *not* less than “would be reasonably expected.”

**d. Ensure that Sponsors Make Actual Progress towards Utilization Goal.**

We commend DOL for setting an aspirational utilization goal, as discussed above. However, we are seriously concerned about sponsors actually making progress towards this goal. Although the current regulations include affirmative action requirements and have been in place for nearly forty years, women’s participation in apprenticeship programs has increased only slightly since 1978 to approximately 7%.<sup>1</sup> Sponsors’ failure to comply with affirmative action requirements

and be held accountable by DOL for their failure to comply is a key reason for the unacceptably small increase in women's participation in apprenticeship.<sup>li</sup> While we support sponsors being required to conduct annual or biannual internal reviews of their affirmative action programs, these self-reviews alone are insufficient to ensure that sponsors move towards their utilization goals. Accordingly, we urge DOL to require sponsors to set interim goals and timetables as well as establish external mechanisms for ensuring that sponsors progress towards their goals.

**i. Strengthen Proposed Internal Review Mechanism**

First, the TWTF supports the proposal to allow a sponsor to wait two years to complete its next internal affirmative action program review if its review demonstrates that there is no underutilization and its review of personnel practices did not indicate any necessary modifications. However, we recommend that DOL also require that there have been no substantiated complaints of discrimination against the sponsor during the review period to allow this extended subsequent review period. We believe that this provides a strong incentive to sponsors who have shown success in meeting their affirmative action and nondiscrimination obligations.

**ii. Require all Sponsors to Submit Affirmative Action Plans to DOL Annually or Biannually.**

We strongly urge DOL to require all sponsors to submit their affirmative action plans to the Registration Agency on an annual basis or, if the sponsor's internal review demonstrates that there is no underutilization within the sponsor's program, the sponsor's personnel practices do not require any necessary modifications, and the sponsor has not received a substantiated complaint of discrimination, on a biannual basis. Such a requirement will facilitate compliance and incentivize sponsors to conduct accurate utilization analyses and develop robust affirmative action programs. Requiring only biannual submission of affirmative action plans by sponsors who are not underutilizing women or people of color and do not have deficient personnel processes will incentivize sponsors to work quickly towards their utilization goals.

**iii. Require all Sponsors Underutilizing Women or People of Color to Set Interim Utilization Goals and Timetables.**

As in the current regulations, we urge DOL to require all sponsors who are underutilizing women and/or people of color to include in their affirmative action plans interim percentage goals and timetables for the utilization of women and people of color as apprentices. When the current regulations were promulgated in 1978, DOL recognized the importance of specific goals and timetables to providing women with equal opportunity in entering apprenticeship programs in light of the pervasive discrimination and longstanding historical barriers they have faced.<sup>lii</sup> Discrimination and harassment of women in apprenticeship programs continues to be pervasive and the percentage of women in apprenticeships has increased only slightly since 1978. Sponsors failure to comply with affirmative action requirements or make good faith efforts towards their utilization goals is a principal reason behind these stagnant numbers.<sup>liii</sup> Research has demonstrated that setting high goals that are supported by a strong commitment by leadership to implementing strategies to achieve these goals results in meeting and exceeding the goals.<sup>liv</sup> As a result, the need for interim goals and timetables is as important as ever.

We further urge DOL to set out, as it does in its current regulations, that where a sponsor fails to submit goals and timetables as part of its affirmative action plan or submits goals and timetables which are unacceptable, and DOL determines that the sponsor has deficiencies in terms of underutilization of women or people of color, DOL shall establish goals and timetables applicable to the sponsor for the admission of female applicants and applicants of color as apprentices, as appropriate. Finally, DOL should make explicitly clear, as it does in its current regulations, that compliance with the affirmative action requirements shall be determined by whether the sponsor has made good faith efforts to meet its goals and timetables. DOL should further clarify that a sponsor's good faith efforts shall be judged by whether it is following its affirmative action program and attempting to make it work, including evaluation and changes in its program where necessary to obtain the maximum effectiveness toward the attainment of its goals. These clarifications will provide sponsors with much needed guidance as to what noncompliance means in the affirmative action context and make it easier for sponsors to ensure they are taking the necessary steps to be in compliance with the regulations.

**iv. Require Additional External Monitoring and Compliance Assistance for Sponsors with Less than 50% of the Proportion of Women or People of Color Available in Their Relevant Recruitment Area.**

For sponsors which have less than 50% of the proportion of women, Hispanics or Latinos, or individuals of a particular racial minority group available in the sponsor's relevant recruitment area, external monitoring and technical assistance is particularly important. Accordingly, we urge DOL to require such sponsors to work with an agency representative to develop and attain yearly graduated increases in the utilization of women apprentices and apprentices of color that are benchmarked to an initial "Year 1" starting point. Such a requirement would bring the apprenticeship regulations in line with Department of Education and Department of Labor workforce development programs provided for in the Carl D. Perkins Career and Technical Education ("Perkins") Act,<sup>lv</sup> the Workforce Innovation and Opportunity Act,<sup>lvi</sup> and the Trade Adjustment Assistance Community College and Career Training Grant Program.<sup>lvii</sup> Just as these programs have long measured progress, sponsors of apprenticeship programs should first be required to establish a benchmark derived from an analysis of the participation of various groups in the relevant recruitment area. Specifically, a representative group of apprenticeship stakeholders in a relevant recruitment area should be engaged to determine the original benchmark for each demographic group, with the understanding that the benchmark cannot be lower than the current apprenticeship workforce numbers for that group in the relevant recruitment area. Sponsors, working with a representative of the Registration Agency, should then develop an initial three-to-five-year plan that sets forth proscribed graduated increases in the utilization of women and people of color over the benchmark. The development of such plans is currently required for similar technical education programs under the Perkins Act.<sup>lviii</sup> Finally, sponsors should be required to report on their progress to the Registration Agency and the public annually. If progress is less than the goals within the three-to-five-year plan, a more rigorous compliance action plan should be mandated beyond the efforts already undertaken to meet the performance goals. The three-to-five-year plan should be evaluated and modified annually by the Registration Agency.

**IX. Require Robust Measures for Targeted Outreach, Recruitment, and Retention**

The TWTF believes that the four required outreach activities listed in § 30.8(a)(1) should be attainable for all programs. We strongly support the requirement that sponsors include specific mention of their outreach, recruitment, and retention activities in their written affirmative action plans to enable an analysis of the effectiveness of the efforts undertaken and whether they should be augmented to better achieve EEO/AA goals. We recommend that DOL reference in the final rule and/or on its website the technical assistance tools and materials developed by WANTO grantees that can be used to facilitate sponsors' outreach, recruitment, and retention efforts. Such technical assistance tools include research focusing on women and a multitude of best practices materials on retention, particularly in those industries that remain traditionally male-dominated.

In addition, we strongly support the inclusion of linkage agreements between sponsors and groups representing underutilized populations given that they have proven successful in increasing the numbers of individuals in apprenticeship programs from underrepresented groups.<sup>lix</sup> We encourage DOL to publish contact information for tradeswomen organizations that can provide best practice resources and technical assistance to programs in industries in which women are under-represented to inform their outreach, recruitment, and retention activities undertaken pursuant to § 30.8(a)(1)(i)-(iv).

The TWTF further supports the requirement in § 30.8(a)(2) that a sponsor evaluate and document the overall effectiveness of its outreach, recruitment, and retention activities after every selection cycle. The TWTF urges DOL to establish a standardized, but customizable evaluation tool which would include, at a minimum, the criteria that should be used to evaluate the effectiveness of such activity and the sponsor's subsequent conclusion as to its effectiveness. This evaluation tool should allow sponsors to self-document deficiencies and self-identify remediation activities and should be a part of the sponsor's affirmative action plan.

The TWTF further commends DOL for specifically mentioning retention activities in proposed § 30.8 and highlighting that a sponsor's retention efforts are an important part of the EEO regulatory framework for apprenticeships and emphasizing that the requirements for EEO in registered apprenticeship extend to the entire term of apprenticeship, not just to the recruitment and selection of apprentices. As discussed throughout these comments, women apprentices are particularly susceptible to not completing their apprenticeship programs given the unique barriers they face throughout their apprenticeships, including isolation, harassment, discrimination, stereotyping, micro-inequities, and a lack of training rotation on the job. Targeted retention measures are therefore necessary to confront these obstacles. We urge DOL to strengthen the regulations as they relate to retention by creating a separate "retention" section outlining efforts sponsors must undertake to increase retention rates.

With regard to "retention," we urge DOL to include in the Final Rule, a requirement that sponsors:

- Analyze their apprentice retention rates for women, people of color, and individuals with disabilities;
- Set forth in their written affirmative action plans the specific retention activities they plan to take for the upcoming program year, as appropriate; and

- Implement policy and professional development practices designed to build apprenticeship program staff and employers' capacity to support and serve traditionally underrepresented groups.

We also recommend that sponsors have in place a formal process to ensure and document that all apprentices are afforded an equitable schedule of rotation, assignments, and mentoring in the on-the-job training component to achieve core skill competencies. To ensure such equitable opportunities have been afforded, apprentices should undergo a review prior to their transition to the next year of their apprenticeship and an "exit interview" upon completion.

The TWTF applauds the additional activities proposed in § 30.8(b), however, we recommend that it be mandatory for a sponsor to conduct an exit interview with each apprentice leaving the sponsor's apprenticeship program prior to receiving his/her certificate of completion to better understand the reasons for the early departure.

Finally, the TWTF further recommends that sponsors be required to provide training on cultural and gender competence to apprenticeship, union, and employer personnel, as well as to the apprentices themselves, that extends to both classroom-related instruction and worksites. For equal employment opportunity standards and policies to be effective in recruiting and retaining a diverse group of participants, shifts in behavior and practices are required. Even when apprenticeship personnel are willing to adhere to such policies, they may not have the experience or training necessary to act in a culturally competent manner. Training on cultural competency complements EEO/AA policies by providing personnel a set of tools, knowledge and skills to take into the classroom, a Joint Apprenticeship and Training Committee (JATC), the interview and selection process, and the worksite.

Moreover, this training is an important mechanism for addressing the behaviors, practices, statements, and/or actions that in many cases may be unintentional or taken without malice, and that, taken individually might seem slight or minor, but can cumulatively constitute severe or pervasive harassment when they are a consistent part of the work environment. Commonly referred to as micro-inequities or micro-aggressions, these behaviors may not rise to the level of overt discrimination or harassment, but can still have a deleterious impact over time on underrepresented groups, causing them to feel excluded and unsupported in the apprenticeship program and on the worksite, which negatively affects retention.<sup>lx</sup>

We recommend that this section reference best practice guidelines for program staff, instructors and On-The-Job Training (OJT) journey workers and supervisors, such as the "Inclusive and Equitable Classrooms, Instruction and OJT" training guidelines and materials and other online resources at "The Midwest Technical Assistance Center."<sup>lxi</sup>

Examples of best practices in this regard include:

- Lessons on topics related to Sexual Harassment Prevention, Cultural Competency, and Health and Safety from a Gender Lens- such as those prepared under a DOL Green Jobs Training Grant for NABTU's Multi-Craft Core Curriculum;<sup>lxii</sup>
- Consistency in achievement expectations, grading, discipline, and duties;

- Examples of underrepresented groups in materials and throughout the training facility and OJT worksites;
- A diverse teaching and support staff;
- Support for informal support groups, mentoring, peer counseling and networking activities;<sup>lxiii</sup> and
- Practices to avoid isolating individuals from underrepresented groups.

Because it may be difficult for sponsors to find deficiencies with regard to outreach, recruitment, and retention and/or obtain the necessary technical assistance to remedy such deficiencies, the TWTF recommends that sponsors undergo periodic external review to ensure appropriate EEO/AA plans with respect to outreach, recruitment, and retention activities are in place and that best practices are being implemented, measured and evaluated.

**X. Involve Apprentices and Journey Workers in Review of Personnel Processes**

The TWTF supports the requirement in proposed § 30.9 that sponsors conduct an annual review of all personnel processes related to apprenticeship and include a description in the AAP to ensure that the program is free from discrimination. We strongly believe that it would be beneficial to involve apprentices and journey workers in this review.

**XI. Ensure Nondiscriminatory Selection of Apprentices**

The TWTF commends DOL for requiring 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 and requiring sponsors to evaluate the impact of their selection procedure(s) on race, sex, and ethnic groups (Hispanic or Latino/non-Hispanic). We urge DOL to clarify that the former requirement also applies to pregnancy, gender identity, and caregiver status, and the latter to pregnancy, sexual orientation, gender identity, and caregiver status.

We commend DOL for allowing the use of *any* selection procedure, and recommend that DOL explicitly state that sponsors are required to implement or add 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.

We support the requirement that sponsors must demonstrate job-relatedness and business necessity for those selection procedures that result in an adverse impact on underutilized groups. Historically, unnecessary skills requirements have at times had the intended or unintended effect of excluding certain groups of people. Thus, the regulations should explicitly state that skills requirements, including any 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). We recommend that DOL further require that a sponsor which wishes to maintain such a selection process must demonstrate that there is no alternative procedure available to meet the business necessity.

We recommend that the DOL provide links to best practices for gender neutral assessment practices.<sup>lxiv</sup>

Finally, we recommend that DOL establish guidelines for standardizing the direct entry into apprenticeships for graduates of pre-apprenticeship programs that adhere to the best practices framework to be set out in § 30.2.

**XII. Include Robust Measures for Ensuring Sponsor Compliance with All Antidiscrimination and Affirmative Action Requirements.**

While we support the self-monitoring mechanisms proposed in the regulations, such mechanisms alone will be insufficient to ensure sponsor compliance with the regulations' antidiscrimination and affirmative action requirements. Accordingly, we urge DOL to establish external review mechanisms for all sponsors, including the following:

**a. Require Regular Sponsor Reporting.**

We strongly urge DOL to require sponsors to report annually or biannually, if the sponsor's internal review demonstrates that there is no underutilization within the sponsor's program, the sponsor's personnel practices do not require any necessary modifications, and the sponsor has not received a substantiated complaint of discrimination, to the Registration Agency and the public detailing the sponsor's antidiscrimination and affirmative action efforts and progress. This requirement is necessary to ensure sponsors' compliance with the regulations.

Specifically, the TWTF recommends use of an EEO annual report that will capture critical data and outcomes to evaluate a program's effectiveness in meeting EEO/AA goals, as well as provide information that should be made available to the public, especially potential apprenticeship candidates and industry stakeholders.

Examples of data that might be requested include:

- Total number of active apprentices
- Total number of active female apprentices
- Total number of applicants
- Total number of female applicants
- Total number of registrations
- Total number of females registered
- Total number of apprentices completing apprenticeship
- Total number of female apprentices completing apprenticeship

**b. Require Regular Agency Compliance Reviews.**

We further believe that it is essential that the Registration Agency regularly conduct compliance reviews of sponsors' antidiscrimination and affirmative action efforts and make the results of these reviews accessible to the public. Further, we recommend that Registration Agencies provide notice of public hearing on findings and recommendations.

**c. Require Compliance Action Plans for Sponsors Found to be Noncompliant.**

The TWTF further recommends that a finding of deficiency in making good faith, i.e. demonstrated, explicit efforts to meet EEO/AA goals, should result in a Compliance Action Plan, which shall be published in a national registry.

Compliance Action Plans should include: (1) a clear and reasonable timetable for remediation of deficiencies; (2) an assigned staff member and/or advisory committee to design, develop, and implement the corrective action plan; and (3) regular, ongoing antidiscrimination and cultural competency training for apprenticeship training staff, instructors and administrators. Further, the TWTF recommends that Compliance Action Plans be reviewed and evaluated by the Registration Agency for effectiveness until the sponsor demonstrates explicit remedial actions have been taken to meet EEO/AA plan goals as outlined. Such remedial plans have proven successful in addressing the underrepresentation of certain groups in a variety contexts, as reflected in OFCCP conciliation agreements and EEOC consent decrees.

Lastly, the TWTF recommends that sponsors in need of a Compliance Action Plan be provided with a list of approved or reliable technical assistance providers, as well as resources and materials (such as those developed under WANTO) to include in the design, development and implementation of the Compliance Action Plan.

**d. Establish Opportunities for Stakeholder Participation.**

DOL should establish opportunities for stakeholder participation in compliance reviews and in the filing and review of EEO/AA complaints. Specifically, DOL should provide the opportunity for stakeholder organizations, i.e. pre-apprenticeship programs and other referral agencies, to submit complaints regarding policies and/or practices that result in exclusionary outcomes and to provide suggested remedial actions.

TWTF recommends that the agency provide a list of tradeswomen organizations for sponsors in an effort to increase technical assistance to sponsors falling short of EEO/AA goals.

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We urge DOL to adopt final regulations that provide apprenticeship sponsors and the Department the strongest possible tools for increasing women’s participation in apprenticeship programs. If strengthened as recommended above, these regulations will be instrumental in increasing women’s participation in high-wage, high-skill trades, improving women’s economic security, and helping to close the wage gap.

We thank you for the opportunity to provide comments on these important regulations.

Sincerely,

Task Force on Tradeswomen’s Issues

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- <sup>i</sup> U.S. Census Bureau, How Do We Know? America's Changing Labor Force 2-3 (Dec. 2012), *available at* [http://www.census.gov/content/dam/Census/library/infographics/labor\\_force.pdf](http://www.census.gov/content/dam/Census/library/infographics/labor_force.pdf).
- <sup>ii</sup> *Women in Construction, Still Breaking Ground*, National Women's Law Center 3 (2015), [http://nwlc.org/wp-content/uploads/2015/08/final\\_nwlc\\_womeninconstruction\\_report.pdf](http://nwlc.org/wp-content/uploads/2015/08/final_nwlc_womeninconstruction_report.pdf).
- <sup>iii</sup> Ben Olinsky & Sarah Ayers, *Training for Success: A Policy to Expand Apprenticeships in the United States*, Center for American Progress, 6 (Dec. 2013) (citing data provided by the Office of Apprenticeship at the Department of Labor).
- <sup>iv</sup> *See e.g.*, Port Jobs, Apprentice Utilization Goals and Requirements: A Countywide Impact Study (2007 Update), *available at*: [http://portjobs.org/storage/documents/2007\\_AU\\_Report.pdf](http://portjobs.org/storage/documents/2007_AU_Report.pdf); Sebrina Owens-Wilson, *Constructing Buildings and Building Careers: How Local Governments in Los Angeles Are Creating Real Career Pathways for Local Residents* (2010), *available at*: <http://www.forworkingfamilies.org/sites/pwf/files/publications/1110-ConstructingBuildingsBuildingCareers.pdf>; Corinne Wilson, Center on Policy Initiatives, September 2009; Reed, et al Mathematica Policy Research, *An Effectiveness Assessment and Cost-Benefit Analysis of Registered Apprenticeship in 10 States Final Report* (July 25, 2012) at 51.
- <sup>v</sup> *See e.g.*, Amy Denissen, *The right tools for the job: Constructing gender meanings and identities in the male-dominated building trades*, 63 *Human Relations* 1051 (2010); Wider Opportunities for Women, *available at* <http://www.wowonline.org/gender-equity/#link5>.
- <sup>vi</sup> *Midwest Technical Assistance Center*, Chicago Women in Trades, <http://chicagowomenintrades2.org/mtac/pre-apprenticeship/training/>.
- <sup>vii</sup> *Pink to Green Toolkit: Section 4, Jobs for the Future*, <http://www.jff.org/initiatives/greenways/pink-green-toolkit-section-4> (last visited Jan. 19, 2016).
- <sup>viii</sup> Brad Sears & Christy Mallory, The Williams Institute, *Documented Evidence of Employment Discrimination & its Effects on LGBT People*, (2011), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Sears-Mallory-Discrimination-July-2011.pdf>. (According to a 2008 survey, "42% of the nationally representative sample of LGB-identified people had experienced at least one form of employment discrimination because of their sexual orientation at some point in their lives and 27% had experienced such discrimination during the five years prior to the survey.")
- <sup>ix</sup> David Baldwin, EEOC Appeal No. 0120133080 at 14, (July 15, 2015), *available at* <http://www.eeoc.gov/decisions/0120133080.pdf>.
- <sup>x</sup> *Executive Order 11246*, Office of Federal Contract Compliance Programs, <http://www.dol.gov/ofccp/regs/statutes/eo11246.htm>.
- <sup>xi</sup> *Koren v. Ohio Bell Telephone Co.*, 894 F.Supp.2d 1032 (N.D. Ohio 2012) (discrimination based on sex stereotype that man should not take a male spouse's surname is sex-based under Title VII); *Centola v. Potter*, 183 F. Supp. 2d 403, 410 (D. Mass. 2002) ("The harasser may discriminate against an openly gay co-worker, or a co-worker that he perceives to be gay, whether effeminate or not, because he thinks, 'real men don't date men.' The gender stereotype at work here is that 'real' men should date women, and not other men"); *Heller v. Columbia Edgewater Country Club*, 195 F. Supp. 2d 1212 (D. Or. 2002) (discrimination because a woman "is attracted to and dates other women, whereas [the employer] believes that a woman should be attracted to and date only men," violates Title VII).
- <sup>xii</sup> *Price Waterhouse v. Hopkins*, 490 U.S. 228, 250 (1989).
- <sup>xiii</sup> David Baldwin, EEOC Appeal No. 0120133080 at 14, (July 15, 2015), *available at* <http://www.eeoc.gov/decisions/0120133080.pdf>.
- <sup>xiv</sup> JAIME M. GRANT, LISA A. MOTET & JUSTIN TANIS, NAT'L CTR. FOR TRANSGENDER EQUAL. & NAT'L GAY & LESBIAN TASK FORCE, *INJUSTICE AT EVERY TURN: A REPORT OF THE NATIONAL TRANSGENDER DISCRIMINATION SURVEY 53* (2011), *available at* [http://www.thetaskforce.org/static\\_html/downloads/reports/reports/ntds\\_full.pdf](http://www.thetaskforce.org/static_html/downloads/reports/reports/ntds_full.pdf).
- <sup>xv</sup> *Id.* at 56.
- <sup>xvi</sup> *Id.*
- <sup>xvii</sup> Mia Macy, EEOC DOC 0120120821, 2012 WL 1435995 (Apr. 20, 2012).
- <sup>xviii</sup> U.S. Dept. of Labor, Office of Fed. Contract Compliance, DIR 2014-02 (Aug. 19, 2014), *available at* [http://www.dol.gov/ofccp/regs/compliance/directives/dir2014\\_02.html](http://www.dol.gov/ofccp/regs/compliance/directives/dir2014_02.html).
- <sup>xix</sup> U.S. Dept. of Justice, Office of Public Affairs, *Treatment of Transgender Employment Discrimination Claims under Title VII of the Civil Rights Act of 1964*, (Dec. 15, 2014), *available at* <http://www.justice.gov/file/188671/download>.

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- <sup>xx</sup> See *Glenn v. Brumby*, 663 F.3d 1312 (11<sup>th</sup> Cir. 2011) (holding that the termination of an employee on the basis that she was transition from male to female constituted sex discrimination under Title VII); *Smith v. City of Salem*, 378 F.3d 566, 574 (6<sup>th</sup> Cir. 2004) (“...employers who discriminate against men because they do wear dresses and makeup, or otherwise act femininely, are also engaging in sex discrimination, because the discrimination would not occur but for the victim’s sex.”); *Barnes v. City of Cincinnati*, 401 F.3d 729, 737 (6<sup>th</sup> Cir. 2005) (“By alleging that his failure to conform to sex stereotypes concerning how a man should look and behave was the driving force behind defendant’s actions, Smith stated a claim for relief pursuant to Title VII’s prohibition of sex discrimination.”); see also *Rosa v. Park W. Bank & Trust Co.*, 214 F.3d 213, 215-16 (1<sup>st</sup> Cir. 2000) (concluding a transsexual could state a claim for sex discrimination under Equal Credit Opportunity Act by analogizing to Title VII).
- <sup>xxi</sup> SARAH JANE GLYNN, CTR. FOR AM. PROGRESS, BREADWINNING MOTHERS, THEN AND NOW 2 (June 2014), available at <https://cdn.americanprogress.org/wp-content/uploads/2014/06/Glynn-Breadwinners-report-FINAL.pdf>. Primary breadwinners earn as much or more than their partners, or they are their family’s sole earner.
- <sup>xxii</sup> 42 U.S.C. § 2000(e)(k) (“The terms ‘because of sex’ or ‘on the basis of sex’ include, but are not limited to, because of or on the basis of pregnancy, childbirth, or related medical conditions . . .”).
- <sup>xxiii</sup> See, e.g., Vicki Schultz, *Telling Stories about Women and Work: Judicial Interpretations of Sex Segregation in the Workplace in Title VII Cases Raising the Lack of Interest Argument*, 103 HARV. L. REV. 1749, 1832-34 (1990).
- <sup>xxiv</sup> *Young v. United Parcel Service*, 135 S. Ct. 1338 (2015).
- <sup>xxv</sup> *Enforcement Guidance: Pregnancy Discrimination and Related Issues*, Equal Employment Opportunity Commission, available at [http://www.eeoc.gov/laws/guidance/pregnancy\\_guidance.cfm](http://www.eeoc.gov/laws/guidance/pregnancy_guidance.cfm).
- <sup>xxvi</sup> See *Fact Sheet on the EEOC’s Final Regulations Implementing the ADA*, Equal Employment Opportunity Commission, available at [http://www.eeoc.gov/laws/regulations/adaaa\\_fact\\_sheet.cfm](http://www.eeoc.gov/laws/regulations/adaaa_fact_sheet.cfm).
- <sup>xxvii</sup> EEOC Enforcement Guidance: Unlawful Disparate Treatment Of Workers With Caregiving Responsibilities (March 2007), available at <http://www.eeoc.gov/policy/docs/caregiving.html>.
- <sup>xxviii</sup> See *Employer Best Practices for Workers with Caregiving Responsibilities*, available at: <http://www.eeoc.gov/policy/docs/caregiver-best-practices.html>.
- <sup>xxix</sup> See <http://www.dol.gov/oasam/programs/crc/eo013152.pdf>
- <sup>xxx</sup> EEOC Enforcement Guidance: Unlawful Disparate Treatment Of Workers With Caregiving Responsibilities (March 2007), available at <http://www.eeoc.gov/policy/docs/caregiving.html>.
- <sup>xxxi</sup> *Id.*
- <sup>xxxii</sup> *Chicago Women in Trades, Breaking New Ground: Worksite 2000* (1989).
- <sup>xxxiii</sup> See e.g., *Pink to Green Toolkit: Section 1, Jobs for the Future*, <http://www.iff.org/initiatives/greenways/pink-green-toolkit-section-1>, *Midwest Technical Assistance Center*, Chicago Women in Trades, <http://chicagowomenintradest2.org/mtac/>; *2016 Women in Trades Career Fair*, Oregon Tradeswomen, Inc., <http://www.tradeswomen.net/fair/>; *Sisters in the Brotherhood: Become a Union Carpenter*, New England Regional Council of Carpenters, <https://www.youtube.com/watch?v=FmIhVESVcyA&feature=youtu.be>
- <sup>xxxiv</sup> *Women in the Construction Workplace: Providing Equitable Safety and Health Protection*, Occupational Safety and Health Administration, (June 1999), available at <https://www.osha.gov/doc/accsh/haswicformal.html>.
- <sup>xxxv</sup> *Id.*
- <sup>xxxvi</sup> *Id.*
- <sup>xxxvii</sup> *Id.*
- <sup>xxxviii</sup> *Id.*
- <sup>xxxix</sup> *Best Practices: A Guide to Restroom Access for Transgender Workers*, Occupational Safety and Health Administration, (2015), available at [http://www.transequality.org/sites/default/files/docs/OSHA\\_Trans\\_Bathroom\\_Access.pdf](http://www.transequality.org/sites/default/files/docs/OSHA_Trans_Bathroom_Access.pdf).
- <sup>xl</sup> See e.g., T. Hudson Jordan, *Profiles In Diversity Journal, Moving From Diversity to Inclusion*, available at <http://www.diversityjournal.com/1471-moving-from-diversity-to-inclusion/>.
- <sup>xli</sup> See *Apprentices Eligibility and Requirements*, U.S. Dept. of Labor, available at <https://www.doleta.gov/oa/apprentices.cfm> (“The eligible starting age can be no less than 16 years of age; however, individuals must usually be 18 to be an apprentice in hazardous occupations. Program sponsors may also identify additional minimum qualifications and credentials to apply, e.g., education, ability to physically perform the essential functions of the occupation, proof of age.”).
- <sup>xlii</sup> Equal Employment Opportunity in Apprenticeship and Training, 43 Fed. Reg. 20760, 7 (proposed May 12, 1978) (codified at 29 C.F.R. §§ 30.1-30.19)
- <sup>xliii</sup> *Id.* (emphasis added).
- <sup>xliv</sup> *Id.*

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- <sup>xlv</sup> See e.g., LeBreton, Loevy and Sugerman, Building Equal Opportunity, Chicago Women in Trades (1995), available at: [http://chicagowomenintrades2.org/?page\\_id=71](http://chicagowomenintrades2.org/?page_id=71); Policy Group for Tradeswomen’s Issues, *Finishing the Job: Best Practices for a Diverse Workforce in the Construction Industry*, available at: <http://www.policygroupontradeswomen.org/resources/bestpractices>.
- <sup>xlvi</sup> See *Frequently Asked Questions: New Section 503 Regulations*, Office of Federal Contract Compliance Programs, available at [http://www.dol.gov/ofccp/regs/compliance/faqs/503\\_faq.htm#Q9](http://www.dol.gov/ofccp/regs/compliance/faqs/503_faq.htm#Q9).
- <sup>xlvii</sup> National Women’s Law Center (NWLC) calculations using Miriam King et al., *Integrated Public Use Microdata Series, Current Population Survey 2013: Version 3.0*, IPUMS-CPS: Minnesota Population Center (March 2013), available at <http://cps.ipums.org/cps/index.shtml> (Machine readable data).
- <sup>xlviii</sup> Placement goals, 41 CFR § 60-2.16 (2015).
- <sup>xlix</sup> Every Student Succeeds Act, Pub. L. No. 114-95, sec. 1005, § 1111(g)(2)(N), 129 Stat. 1802 (2015) (to be codified at 20 U.S.C. § 6311).
- <sup>1</sup> Ben Olinsky & Sarah Ayers, *Training for Success: A Policy to Expand Apprenticeships in the United States*, Center for American Progress, 6 (Dec. 2013) (citing data provided by the Office of Apprenticeship at the Department of Labor).
- <sup>ii</sup> GAO Report – HRD 92-43, 1992.
- <sup>iii</sup> Equal Employment Opportunity in Apprenticeship and Training, 43 Fed. Reg. 20760, 5 (proposed May 12, 1978) (codified at 29 C.F.R. §§ 30.1-30.19) (“if women are to receive a fair number of these opportunities it is necessary to establish specific affirmative action requirements, including goals and timetables.”).
- <sup>iiii</sup> GAO Report – HRD 92-43, 1992.
- <sup>liv</sup> See e.g., LeBreton, Loevy and Sugerman, Building Equal Opportunity, Chicago Women in Trades (1995), available at: [http://chicagowomenintrades2.org/?page\\_id=71](http://chicagowomenintrades2.org/?page_id=71); Policy Group for Tradeswomen’s Issues, *Finishing the Job: Best Practices for a Diverse Workforce in the Construction Industry*, available at: <http://www.policygroupontradeswomen.org/resources/bestpractices>.
- <sup>lv</sup> See Carl D. Perkins Career and Technical Education Act § 113, 20 U.S.C. § 2323 (2006).
- <sup>lvi</sup> See Workforce Innovation and Opportunity Act § 116, 29 U.S.C. § 3141 (2014).
- <sup>lvii</sup> See Annual report, Trade Adjustment Assistance Community College and Career Training Grant Program, 19 U.S.C. § 2371 (2009).
- <sup>lviii</sup> Carl D. Perkins Career and Technical Education Act § 113, 20 U.S.C. § 2323 (2006).
- <sup>lix</sup> An example of this partnership approach can be found at <http://www.policygroupontradeswomen.org/resources/bestpractices>.
- <sup>lx</sup> T. Shawn Taylor, *The Pathway to Apprenticeship* (2006) at 9.
- <sup>lxi</sup> *Midwest Technical Assistance Center*, Chicago Women in Trades, <http://chicagowomenintrades2.org/mtac/>
- <sup>lxii</sup> *Pink to Green Toolkit: Section 41*, Jobs for the Future, <http://www.jff.org/initiatives/greenways/pink-green-toolkit-section-4>.
- <sup>lxiii</sup> See, e.g. Reed et.al, *An Effectiveness Assessment and Cost-Benefit Analysis of Registered Apprenticeship in 10 States Final Report* (2012) at 55.
- <sup>lxiv</sup> See e.g., *Pink to Green Toolkit: Section 2*, Jobs for the Future, <http://www.jff.org/initiatives/greenways/pink-green-toolkit-section-12>.