

November 19, 2018

Deputy Assistant Secretary Rosemary Lahasky
Employment and Training Administration
U.S. Department of Labor
200 Constitution Avenue NW
Washington, DC 20210

Dear Deputy Assistant Secretary Lahasky,

This letter contains the comments of North America's Building Trades Unions (NABTU) responding to the DOL notice titled, "Agency Information Collection Activities; Comment Request; Data Collections From Industry-Recognized Apprenticeship Program Accreditors," 83 Fed. Reg. 47643-47644 (Sept. 20, 2018) (hereafter referred to as "Information Collection Request" or "ICR").

- ***Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.***

NABTU's position on the proposed information collection spelled out in the ICR is that robust data collection is necessary for the DOL to "determine whether [an] applicant is qualified to act as an accreditor of high-quality industry-recognized apprenticeship programs".

In general terms, NABTU supports the expansion of apprenticeship into new industries because our affiliates and their contractor partners have seen firsthand the economic benefits of the expansion of Registered Apprenticeship, over many years, in the construction industry. Today, our affiliates and their 80,000 contractor partners administer a Registered Apprenticeship training system in the U.S. with hundreds of thousands of apprentices, 20,000 trained instructors and 1,600 state-of-the-art training centers. This system is financed by a collectively bargained, private sector investment of \$1.53 billion annually. NABTU also provides its nationally-recognized Multi-Craft Core Curriculum for use in one of the largest pre-apprenticeship programs in the construction industry, which provides a pathway for underserved communities - including women, communities of color and veterans - into Building Trades Registered Apprenticeship. Other industries do not have the kind of effective and substantially widespread Registered Apprenticeship training that the construction industry enjoys. Thus, these other sectors may be suitable candidates for using Industry-Recognized Apprenticeship Programs ("IRAP") as a means to realize in a more limited way the benefits of the Registered Apprenticeship training model.

Based upon our history with Registered Apprenticeship, NABTU's position is that the DOL should be able to gather all necessary information from potential IRAP "accreditors," in order to ensure that the IRAP accreditor approval process is as rigorous and comprehensive as possible. That said, we believe that the "public reporting burden" outlined in the ICR is inadequate, largely because the accreditor data collection and program approval requirements described in these comments require greater rigor and specificity if they are to generate the outcomes that employers and workers need to have full faith in these new training programs.

The basic problem with the ICR is that information requested from potential accreditors is limited and not clearly defined. This makes the approval process for accreditors inadequate to the task at hand. For example, what is the definition of “standing and national reach” required for an applicant to be approved as an accreditor? What might constitute a “conflict of interest” among accreditors, educational providers and IRAPs when the related technical instruction is contracted to third-party providers? The DOL’s Training and Employment Notice (TEN) 3-18, dated July 27, 2018, also fails to provide sufficient details regarding the process for approving IRAP accreditors. The TEN simply states that, “[u]pon receiving a submission by an organization seeking to serve as a certifier [accreditor], DOL will determine whether a proposed certifier meets the criteria” set forth in the TEN. Who in the DOL will perform these evaluations? And who will make the final decisions regarding accreditor approval? Staff with experience in accreditation procedures?

Further, the ICR states that the IRAP accreditors must “describe or explain” their “policies and procedures” that will verify that the IRAP will “adhere to all applicable Federal, state and local laws and regulations pertaining to Equal Employment Opportunity (EEO).” But does this include regulations that are equivalent to the existing apprenticeship sponsor EEO requirements in 29 CFR 30? Or are these programs subject to a lesser standard for EEO? If so, why? How will the DOL ensure that the vague EEO requirements accreditors are supposed to flow down to approved programs are enforced? And under what standard? If a prospective IRAP accreditor does not adequately fulfill these EEO requirements – the definition of which is not included in the document – would that mean that their approval would be rescinded? Given the importance of EEO regulations in the Registered Apprenticeship System, this seems to be a significant omission in the implementation of a system for IRAPs that is intended to extend the benefits of the apprenticeship models to new and underserved groups of workers.

NABTU appreciates that there were certainly limitations to what could be developed through the issuance of a TEN 3-18 as opposed to notice-and-comment rulemaking. We believe that the creation of a new system to approve accreditation entities should not be initiated until it is subjected to notice and comment. We note that given the substantive authority bestowed upon IRAP accreditors that the procedures set forth in the TEN 3-18 and the ICR constitute a rule and are subject to Congress’ consideration under the Congressional Review Act.

To strengthen the IRAP accreditor approval process, NABTU recommends that the DOL consider the accreditor approval processes used in higher education and by the American National Standards Institute (ANSI). In contrast to the simple form that is estimated in the ICR to be completed in less than 90 minutes, the process for accreditor approval in higher education includes a detailed application submitted by prospective accreditors, opportunities for public comment on these accreditor applications, and a multi-layered review process that involves Department of Education staff and a separate advisory committee comprised of industry professionals.

This process is much more rigorous and detailed than the process described in the ICR and in TEN 3-18. Prospective accreditors in higher education must first submit a detailed application to the Accreditation Group, a separate office within the Department of Education that was set up to deal with accreditation issues. Applicants must demonstrate that they can successfully comply with the criteria necessary for approval. After the application goes to the Accreditation Group, Department staff publish the application in the Federal Register for public comment.

The accreditor application then goes to the National Advisory Committee on Institutional Quality and Integrity (NACIQI), a group of industry appointees authorized to provide recommendations regarding accrediting agencies to the Department of Education. During this part of the process, Department staff may schedule interviews or site visits at the offices of accreditor candidates. After the site visits and analysis of the application, only then does the DOE staff and NACIQI make recommendations to senior Department staff regarding the prospective accreditor.

DOL could also improve the IRAP accreditor process and lend credibility to it by adopting the accreditation process of ANSI, which is referenced in footnote 1 of the ICR notice. ANSI has spent decades developing highly valued, respected and rigorous “accredited third-party conformity assessment” standards

(https://www.standardsportal.org/usa_en/conformity_assessment/conformity_assessment.aspx, accessed 16 Nov 2018). ANSI is “actively engaged in accreditation - assessing the competence of organizations determining conformance to standards”

(https://www.ansi.org/about_ansi/overview/overview, accessed 16 Nov 2018). In fact, ANSI accreditation is considered the gold standard of quality due to its rigorous and transparent process that stands in sharp contrast to the process delineated by the ICR. Organizations seeking ANSI accreditation must submit an application under one of the internationally recognized ANSI standards. The application is reviewed by ANSI staff for eligibility. This is followed by a public review announcement in *Standards Action* – ANSI’s web-based weekly publication – that describes the type of accreditation being sought and the related standards, and a 30 to 60-day public comment period. Any negative feedback on the application must be addressed by the applicant. A team of ANSI qualified evaluators then conducts an extensive document review, followed by a two-day site visit. Based on the findings, the review team recommends the organization for accreditation to the appropriate ANSI Accreditation Committee. The Committee reviews the records and makes the final decision.

As ANSI explains, one of the most important advantages of a rigorous and thorough process for accredited third-party assessment is that it pushes accredited organizations to achieve verifiable outcomes, which are essential for industry support. In their words, “[i]ndustry, consumers, and governments alike recognize the dependability of ANSI accreditation,” because “the ANSI name brings with it a level of confidence and trust that gives assurance to the *outputs* of an accredited program” (ANSI_Accred_Value_Brochure_FINAL-3.pdf, accessed 16 Nov 2018; emphasis added).

The lessons in these two examples are clear: The DOL’s model of IRAP accreditor information collection must be strengthened and the process for accreditor approval should be made much more rigorous. The ultimate goal is to build the kind of employer and societal “confidence and trust” in IRAPs that are associated with accreditation in higher education and ANSI processes. If this does not occur, then this ICR is inadequate to the task. Simply reviewing an applicant’s unverified assertions without any site visits, opportunity for public input, or post approval auditing will not instill confidence that participants in approved IRAPs will be trained to perform to the required levels of their profession or that they will be treated fairly. Done correctly, this process should take much longer than the 82 minutes described in the ICR and provide far more transparency and rigor.

- *Enhance the quality, utility and clarity of the information to be collected.*

In NABTU's experience, third-party evaluation of apprenticeship programs has played a key role in the integrity of the Registered Apprenticeship System in the US, since the passage of the Fitzgerald Act of 1937. NABTU appreciates and fully agrees with the commitment in TEN 3-18, that IRAPs shall not be "available" in the construction industry (including construction maintenance and other related activities) because of "the existing high concentrations" of apprentices already in the industry. We suggest that this proscription in TEN 3-18 be expressly acknowledged in the information collection form proposed in the ICR. NABTU also believes that the history of Registered Apprenticeship in the U.S. is also instructive in guiding the DOL in the implementation of IRAPs.

Developed in the early 1930s to create labor standards for apprentices, the Federal Committee on Apprentice Training (FCAT), whose recommendations served as the basis for the Fitzgerald Act, concluded that by the 1930s the U.S. lacked an effective system for training apprentices. Although apprenticeship had a long history in the U.S., especially in the Building Trades and in states like Wisconsin, there were two forces at work that by the 1930s had had a detrimental impact on apprenticeship training. One was the long-term decline of the indenture system, where "[a]pprentices contracted themselves to work during the period of apprenticeship with [a single] employer" (*To Safeguard the Welfare of Apprentices: Hearing on H.R. 6205 Before the Subcomm. of the House Comm. on Labor, 75th Cong. 56 (1937) (hereafter Hearing)*). The shorter-term challenge to apprenticeship was, of course, the Great Depression, which had destroyed millions of jobs and in the process ended apprenticeship training in most industries. As more people went back to work in the late 1930s, however, labor and industry advocates called upon the federal government to spell out standards for apprentices, who were vulnerable to exploitation by unscrupulous employers.

For the members of the FCAT, the "remedy" for "the present haphazard apprenticeship system" was to have the federal government safeguard apprentices by establishing a "three-legged stool" of employment standards in apprenticeship. The first leg of the stool, or first standard, was "that every apprentice should receive at least 144 hours per year of related [technical] instruction." This was the classroom instruction component of apprenticeship education. The "second standard" was that every apprentice should be placed under a written agreement. According to the FCAT, the written agreement was the key to what they considered "real apprenticeship." The written agreement codified employment standards. It established the graduated wage scale over the course of the apprenticeship, set the length of apprenticeship, specified the branch of the trade the apprentice should attain competency, and spelled out whether the apprentice was to be paid for "school time" (Hearings, 72 – 74).

The third leg of the FCAT "stool" was that "the written agreement be approved by a third-party to whom the apprentice or the employer or anyone concerned may go for an adjustment of complaints or difficulties that may arise." Third-party evaluation provided protections to both apprentices and for the larger economy. On one hand, third-party evaluation implied the existence of a "central registration" for apprentices, which could guide workforce development policy. A central registration of apprentices would provide policy makers with a detailed knowledge of "just how many people are in training for a given occupation" (Hearings, 74). On the other hand, third-party evaluation ensured program quality and due process in apprenticeship. As FCAT Executive Secretary William Patterson explained, third-party evaluation was "of vital importance" because "the apprentice and his parent,

both, have more faith and confidence in the entire transaction knowing that a third neutral agency is sitting there to whom they can go for redress, for a hearing, if there is any complaint.” Employers also benefited from third-party evaluation, because they could be confident that apprentices trained in different programs would have the same level of preparation and skill (Hearings, 74).

NABTU’s position is that the IRAP accreditor approval process described in the ICR and in TEN 3-18 should be *more* rigorous than the regulations that guide individual program registration and training in the existing Registered Apprenticeship System, 29 CFR 29 and 29 CFR 30. This is especially true as they pertain to the “three-legged stool,” as well as the equal employment opportunity provisions. Though still undefined, an important distinction to keep in mind is that we are not being asked to comment on the establishment of a single program as reviewed and administered through the Registered Apprenticeship System, but rather an entirely new accrediting regime outside of proven standards and processes that we have referenced above. The IRAP accreditors will be, at a minimum, providing an equivalent function to that of the DOL or state apprenticeship agencies in the Registered Apprenticeship System, if not entirely supplanting it. Given this broad delegation of power from a federal government agency to *private sector actors*, the process for their approval should be *more* rigorous and detailed than the process for registration and operation of a single program in the Registered Apprenticeship System. It must also be open and transparent to the industries and workers it is supposed to serve, as well as the public. Only then will employers, workers and our nation trust and support IRAP outcomes in industries that lack a tradition of apprenticeship training.

Thank you for the opportunity to share our comments.

Submitted on behalf of NABTU by Thomas J. Kriger, PhD