

November 19, 2018

Deputy Assistant Secretary Rosemary Lahasky
U.S. Department of Labor
200 Constitution Ave., NW
Washington, DC 20210

Dear Deputy Assistant Secretary Lahasky,

Thank you for the opportunity to comment on the U.S. Department of Labor's (DOL or the Department) information collection request (ICR) titled, *Industry-Recognized Apprenticeship Program Accrediting Entity Information*, which was published in the Federal Register on September 20, 2018 (OMB Control Number: 1205-0NEW). Below, please find feedback from New America in response to the four topics on which DOL invited feedback in Federal Register notice.

1. Necessity of information collection request

On the issue of whether the proposed collection of information is necessary for the proper performance of the functions of DOL, including whether the information will have practical utility, we believe that an ICR is necessary for DOL to appropriately evaluate the qualifications of entities interested in serving as accreditors of industry-recognized apprenticeship programs (IRAPs). However, in the absence of a clearly articulated quality framework or standards, the proposed ICR might not yield targeted information that will enable the Department to accurately judge an entity's qualifications to serve as an IRAP accreditor at this time.

It is within the Secretary of Labor's authority under the National Apprenticeship Act of 1937 (29 U.S. Code § 50) to establish "labor standards necessary to safeguard the welfare of apprentices." Consistent with this authority, Executive Order 13801 (82 FR 28229), titled, *Expanding Apprenticeships in America*, directed DOL to determine how qualified accreditors may provide recognition to IRAPs and "establish guidelines or requirements that qualified [accreditors] should or must follow to ensure that the [IRAPs] they recognize meet quality standards."

As DOL acknowledges in the supporting statement accompanying this ICR, the July 2018 Training and Employment Notice (TEN) (No., 3-18), *Creating Industry-Recognized Apprenticeship Programs to Expand Opportunity in America*, was issued as an interim informational document pending the promulgation of an amendment of 29 CFR Part 29, which would, among other things, establish more specific guidelines or requirements that qualified entities must follow to ensure that the IRAPs they accredit meet quality standards. The interim guidance contained in the TEN and related questions in the ICR are insufficient to provide potential accreditors of IRAPs with a detailed overview of the quality standards that an entity must satisfy in order to obtain a favorable determination letter from DOL concerning their qualifications to act as an IRAP accreditor.

Can DOL please explain why it is not adhering to the sequencing of IRAP guidance and regulations outlined in the supporting statement accompanying this ICR? DOL has not provided sufficient information on its expectations to ensure high-quality applications from prospective accreditors. Without more information about what DOL is looking for and its criteria for making favorable accreditation determinations, prospective applicants do not have enough information to develop a comprehensive application. We suggest that DOL delay this ICR until it has finalized planned amendments to 29 CFR 29. If not, at a minimum the Department should provide substantially more detail about the IRAP quality standards it expects prospective accreditors to uphold, and republish this ICR for another 60-day comment period following greater guidance. Furthermore, DOL should revise its burden estimates to appropriately account for the time prospective accreditors will spend revising and resubmitting their applications to fully address amendments to 29 CFR 29 that might be finalized after they have completed this ICR.

2. Accuracy of estimated burden of the information collection request

On the question about the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used, New America believes that the information requested in the ICR presents a significant burden to applicants that is underestimated in the accompanying supporting statement and lacks appropriate justification. DOL must explain how it determined that Section II-A, which, among other things, requires potential accreditors to develop and submit a copy of the application an IRAP must submit for accreditation, would take less than one hour to complete.

It should also consider how these burden estimates are similar to those for other, comparable programs. For instance, the U.S. Department of Education (ED) published an ICR on October 29, 2018, seeking public comment on the application required for institutions to participate in the Educational Quality through Innovative Partnerships (EQUIP) experiment conducted under the Experimental Sites Initiative (ED-2018-ICCD-0112). Applicant institutions to that program must, in part, identify an independent third-party quality assurance entity and respond to an array of questions about how that entity will evaluate the institution's program, how it will respond if the program fails to meet quality benchmarks, and how it will monitor programs on an ongoing basis

to ensure compliance. ED estimated that the EQUIP application would require 80 hours per institution to complete. While the EQUIP application includes several components not present in the IRAP accreditor application, DOL's estimate that this ICR will take a maximum of 43 hours seems inaccurate and does not appear to consider the time required both to establish processes for an entirely new program as well as the time required to describe those processes in an application.

Furthermore, in the absence of specific guidelines or requirements that qualified entities must follow to adequately ensure that IRAPs seeking accreditation meet quality standards established by DOL, pursuant to its authority under the National Apprenticeship Act and the directives in Executive Order 13801, we believe this ICR will lead to the collection of extraneous or incomplete information that does not respond to the quality standards that DOL has yet to propose or finalize in binding regulations. As such, we are unclear on how DOL determined certain burden estimates. For example, how did DOL accurately estimate how long it would take an applicant to determine conflicts of interest (see Section I) without clarifying what constitutes a conflict of interest? Additionally, how did DOL accurately estimate how long it would take an applicant to describe the portability benefits of credentials awarded by an IRAP (see Section II-F) without defining what portability means? If DOL does not delay this ICR until it has finalized amendments to 29 CFR 29, we recommend that DOL revise its burden estimates to account for the re-writing of accreditation processes--and possible re-application--that prospective accreditors will need to engage in to meet the Department's forthcoming expectations.

3. Opportunities to improve the information collection request

On the question of how DOL might enhance the quality, utility, and clarity of the information to be collected, New America offers the following feedback organized by each section of the *Industry-Recognized Apprenticeship Programs Accrediting Entity Information* form.

Section I – Accrediting Entity Identifying Information

- Accrediting entities: The ICR calls for the “Employer Identification Number of Accrediting Entity” and “Name of Accrediting Entity.” Does the organization completing the ICR need to be recognized as an accrediting entity? If so, by whom must the organization be considered an accrediting entity (for instance, must it be a Department of Education-recognized accreditor, or recognized by the Council for Higher Education Accreditation [CHEA])? The supporting statement indicates that while 200 of the anticipated 300 applicants will be experienced accreditors that have already established and documented their occupation accreditation process, the remaining 100 expected applicants will not have previously served as accreditors. If it is not the case that organization completing the ICR already be recognized as an accrediting entity, we suggest using the term “applicant” instead of “accrediting entity” to more accurately describe the role of prospective accrediting bodies completing the ICR.
- Related bodies: Please clarify what is meant by the term “related bodies.”

- Scope of certifications: Section I asks applicants to indicate the “Scope of Certification(s) by occupation(s) to be issued.” To what does the term “certifications” refer? Does it refer to industry-recognized credentials, which the TEN and Section II-F indicate are a requirement of all IRAPs? Does “certification(s)” refer to apprenticeship certificates? The meaning of certification(s) in this instance needs clarification. Additionally, by whom will certification(s) be issued? Is the expectation that accreditors will issue the certification(s)?
- Number of certifications awarded: The ICR appears to request that applicants indicate the number of certifications (see the previous question about what constitutes a “certification”) awarded to graduating apprentices from a minimum of two cohort cycles/graduating classes in order to be eligible to apply for DOL recognition as an IRAP accreditor. Does this mean that a prospective IRAP accreditor must have awarded certifications to at least two cohorts of graduating apprentices? If so, this runs contrary to the Department’s assertion in the supporting statement that as many as 100 prospective applicants--one-third of the total anticipated applications--will not have conducted quality assurance activities previously. Alternatively, does this question indicate that in order for an apprenticeship program to be considered an IRAP by a DOL-approved accreditor, it must have already graduated a minimum of two cohorts? The July 2018 TEN and other aspects of the ICR imply that the processes of IRAP development and accreditor qualification determination can occur concurrently. Please clarify.
- Attachment 1: Documentation of organization’s legal status: *No comments at this time.*
- Attachment 2: Certification agreement with program(s): The ICR requires prospective accreditors to submit a generic certification agreement with program(s) that includes the following elements. New America has several questions and concerns about these required fields, which we detail below.
 - *Commitment to fulfill the requirements of certification(s) to be offered* - Which entity or entities (i.e. the IRAP, the accrediting body, or both), are expected to commit to fulfilling the requirements of the certification offered?
 - *Access to personnel, facilities, and documents as needed by your organization* - Is the IRAP expected to provide access to personnel, facilities, and documents as a condition of accreditation? If so, will DOL also have access to this information?
 - *Claim certification(s) are only to the granted scope* - To what does “granted scope” refer? As previously asked, what does DOL consider a “certification”?
 - *Affirmation that your organization does not offer other services that would affect the impartiality of the program(s)* - Does the term “other services” refer to the responsibilities of prospective accreditors in their normal course of business? Additionally, does this restriction apply both to the impartiality of the program (as noted in the ICR) *and* to the impartiality of the accreditation entity with respect to those programs? If so, DOL should clarify that both are true. Moreover, DOL should provide examples of such services. Additionally, can DOL explain what course of action it will take if a program is found to offer services that affect the impartiality of that program after an accreditor receives a positive determination from the Department?

- *Attestation that your organization does not provide any consultative services to the apprenticeship program(s)* - What is a “consultative service?” Would it include advising an IRAP on who to select as an education provider or which credential(s) to award? DOL should clarify examples of such services and the related or affiliated entities to which this requirement applies. Furthermore, can DOL explain what course of action it will take if an IRAP accreditor is found to provide consultative services after receiving a positive determination from the Department?
- *Attestation that your organization has no conflicts of interest* - The term “conflict of interest” is not defined in either the ICR or the July 2018 TEN. Clarifying what constitutes a conflict of interest is critical considering that the IRAP model and process for accrediting programs could affect the impartiality of accrediting entities. For example, Section II-E of the ICR and the July 2018 TEN indicate that an IRAP accreditor must explain how it will ensure that the apprenticeship programs it certifies will provide or arrange for classroom or related instruction that is high-quality and adequate to help apprentices achieve their proficiency goals or earn credentials or certifications. Both documents go on to suggest that if an accreditor does not itself provide the classroom or related instruction for an apprenticeship program, it must identify potential education partners qualified to provide the instruction or provide suggestions to help employers, unions, and other individual apprenticeship program sponsors find education partners. This expectation of IRAP accreditors--that it will either provide a portion of the instruction itself or identify those who will do so--calls into question its independent, third-party status and appears to constitute a conflict of interest. DOL must consider which roles accrediting entities and education providers must play, detail those roles *prior* to soliciting public comment on an ICR, and disentangle any potential conflicts of interest that could undermine the quality protections an accrediting entity can offer.

We encourage DOL to provide detailed guidance on what constitutes a conflict of interest and lack of impartiality. Specifically:

- What does DOL consider a “conflict of interest?”
- How is DOL defining “impartiality” and how will it communicate that definition to applicants?
- Is it a conflict of interest for an entity to accredit an IRAP that results in a certification awarded by the accreditor?
- Is it a conflict of interest for an entity to serve as the education provider for the IRAP program it accredits?
- Is it a conflict of interest for there to be overlap in personnel affiliated with the education provider and the accrediting entity?

Section II – Operational Information Concerning the Industry-Recognized Apprenticeship Programs to be Evaluated by the Accrediting Entity

A. Qualifications and Structure of Accrediting Body:

- The Department has indicated that it expects to approve as many as 75 different entities to accredit IRAPs, which will likely result in the emergence of multiple accreditors within a single industry sector and a multitude of distinct and competing industry standards. How will DOL address the potential for the fragmentation and duplication of industry standards that could result from this process? How will it ensure that, given the dispersal of programs across so many accrediting entities, the accrediting entities have adequate resources to review, monitor, and assure quality among education providers?
- What does it mean to have “standing and national reach” to serve as the accreditor of an IRAP? Must an entity possess “standing and national reach” at the time they apply to serve as an IRAP accreditor? Are there guidelines for obtaining “substantial, broad-based input, support, and consensus from employers and industry experts?” Does DOL expect that accrediting entities would also solicit and respond to input from student-apprentices and stakeholders representing the interests of such apprentices? Given that DOL is expecting 300 applications from prospective IRAP accreditors and may select as many as 75 entities, these clarifications would help reduce the amount of duplication within industries.
- The ICR asks prospective accreditors to provide a copy of the application and associated instructions prospective IRAPs must address for accreditation. Will DOL provide application guidelines to help standardize the collection of information from prospective IRAPs? If so, when?

B. Accreditation Process:

- The ICR requires potential accreditors to explain their proposed processes for removing the accreditation of an IRAP. Will the Department issue guidelines related to what warrants the removal of an IRAP’s accreditation, including a maximum time frame for noncompliance with the accrediting entity’s standard prior to removal of accreditation? If not, how will the Department ensure consistency in the process across IRAPs accredited by different entities?
- This section requests evidence of the applying organization’s provision of nationally portable credentials. How is DOL defining “national portability?” How are potential IRAP accreditors expected to prove “national portability?”
- This section also requires applicants to provide information regarding the proper qualifications for accreditors and their staff. Is there a minimum set of qualifications the relevant staff of a prospective IRAP accreditor must possess? Will accrediting entities be expected to document adequate qualifications by providing resumes or other sources to DOL?
- The ICR asks applicants to document that they have acquired, or have “developed plans to acquire the financial resources to sustain the program for the next five years.” The reference to financial resources raises a number of questions, including:
 - Does “program” refer to the accreditation work of an applicant or the program offered by an actual IRAP?
 - Does DOL have guidelines on what is considered an acceptable funding model?

- What constitutes an adequate “plan” for financial resources to assure DOL that the entity will be financially secure and stable for the foreseeable future?
- Are there limitations on how an applicant can fund the accreditation of an IRAP to avoid possible conflicts of interest? For instance, are potential accreditors prohibited from accepting a fee from a prospective IRAP for which it will decide its accreditation? Can accreditation fees be passed along to apprentices?
- The ICR requires a potential IRAP accreditor to notify DOL of any substantive change to the accreditation process. DOL provides an illustrative list of major changes that could affect the operations of a program such as financial or personnel changes to the accreditation process, lawsuits, and legal status. Does the development of a conflict of interest constitute a substantive change? We believe any conflicts of interest that arise after DOL selects an IRAP accreditor should constitute a substantive change as it compromises the integrity of the accreditation process and might be grounds for DOL to revoke a positive determination for an IRAP accreditor.
- Should the accreditor also be required to notify DOL of substantive changes to the programs it accredits? For instance -- major expansions of programs, major changes to the type of IRAP offered, and/or changes in the level of the credential offered? We contend that certain changes to the nature and scope of an IRAP might necessitate a review of an entity’s accreditation determination and/or an update to its accreditation processes to ensure continued alignment with the programs it's approving.

C. Paid Work Component:

- While the ICR asks prospective accreditors to explain how they will oversee the paid work component of an IRAP, it fails to require potential accreditors to articulate how they will intervene if an IRAP does not abide by wage schedules. If an IRAP fails to pay apprentices, at the minimum, the appropriate Federal, state, or local minimum wage or a Federally-approved stipend, what course of action are accreditors expected to take? Are accreditors expected to notify DOL about any violations of applicable wage laws and regulations, and/or terminate approval of an IRAP if it fails to comply with wage requirements? DOL should describe those requirements in the application and require accreditors to submit a description of how they will handle such violations in compliance with the DOL guidelines.
- The ICR requires a potential accreditor to explain the following circumstances under which the wages of apprentices *may* increase under the IRAPs that an organization will accredit. Does this mean that accreditors, and not individual apprenticeship sponsors, determine if and when an apprentice’s wages will increase?

D. On-the-Job Instruction/Work Experience:

- The ICR requests descriptions of policies and procedures used to determine whether accredited IRAPs provide mentorship opportunities for apprentices. Are there any guidelines regarding what constitutes an appropriate mentorship opportunity? Can the Department please clarify minimum requirements for the mentorship component of an IRAP? This determination should have a quantitative component: either the ratio of apprentices to designated mentors, or a mentorship favorability rating from completed

apprentices, or both.

E. Classroom Instruction, Educational Partners, and Educational Credentials:

- Please clarify what constitutes high-quality classroom or related instruction. What are the characteristics of a high-quality classroom or related instruction provider? What entities (e.g. organizations on a state's Eligible Training Provider List, etc.) can serve as a provider of high-quality classroom or related instruction?
- Regarding accreditation standards and accreditation statuses, what plan does DOL have for making these public facing? This seems to be a good role for Skills Commons or apprenticeship.gov. If accrediting standards and statuses are housed only on the individual websites of as many as 75 separate accreditors, it will be nearly impossible for prospective apprentices and other stakeholders to access information about IRAPs. DOL has an obligation to ensure at least minimal transparency for IRAPs approved by accreditors under federal auspices.
- What kind of documentation would constitute sufficient evidence of "separation between individuals who assess apprenticeship programs and the individuals who make the accreditation decision" that mitigates potential conflicts of interest?

F. Occupations and Occupational Credentials:

- The ICR requires that all credentials offered to apprentices are "nationally portable" and "industry-recognized credentials." As previously mentioned, what does the term "nationally portable" mean? Additionally, what constitutes an "industry-recognized credential? Will DOL use the Workforce Innovation and Opportunity Act (WIOA) definition? Additionally, this section is problematic because it requests only an affirmation (rather than evidence) of the portability and industry recognition of credentials included in an IRAP. DOL should offer clear guidelines about credentialing requirements.

G. EEO Requirements:

- The ICR requires a potential IRAP accreditor to articulate the policies and procedures it will adopt to verify the IRAPs it accredits adhere to all applicable Federal, state, and local laws and regulations pertaining to Equal Employment Opportunity (EEO). Yet the ICR fails to articulate DOL's EEO enforcement authority over IRAPs. How are IRAP accreditors expected to address issues of EEO noncompliance? Is there an expectation that DOL is notified of any violation of EEO regulations, and/or that the accreditor will terminate approval of IRAPs that violate those rules? If not, how will DOL monitor adherence to EEO regulations among IRAPs?

H. Quality Assurance Processes: In the absence of a quality assurance framework for IRAP accreditation outlined prior to publication of this ICR, New America has several questions:

- To whom will accrediting bodies submit apprentice feedback from the two most recently completed accreditation cycles?
- How will apprentice feedback be used?
- To whom (e.g. State Apprenticeship Agency, DOL, Federal Trade Commission, etc.) will accreditors submit apprentice complaints? Are accreditors required to share complaints

with other state and federal agencies to ensure shared responsibility for the oversight of IRAPs? Could DOL clarify what it considers an appropriate appeals process? Will there be restrictions on the use of forced or pre-dispute arbitration to settle disagreements between an apprentice and an employer, institution, or apprenticeship sponsor?

- How, if at all, will continual improvements to accreditation processes constitute a “substantive change”?

Section III – Additional Representations of Program Quality by the Accrediting Entity

A. Accrediting Body Record Retention: *No comments at this time.*

B. Contact Information: *No comments at this time.*

C. Safe Workplaces:

- The July 2018 TEN indicates that accreditors “must describe the policies and procedures in place to ensure that sponsors provide a safe working environment that adheres to all applicable Federal, state and local safety laws and regulations.” How will prospective accreditors require IRAP programs to abide by applicable workplace safety laws and regulations? What recourse will accreditors take if an IRAP is found to violate applicable workplace safety laws and regulations? How will accreditors elevate issues of workplace safety noncompliance to DOL? The ICR’s required affirmation of adherence to workplace protections is a low bar and fails to adequately address the requirements outlined in the July 2018 TEN.

D. Data and Performance Metrics:

- Section II-G of the ICR requires a potential IRAP accreditor to explain “comprehensively outreach strategies [it] will develop to reach diverse populations.” However, the data and performance metrics on which IRAP accreditors would be required to report do not allow for the monitoring of apprenticeship participation, persistence, completion, and success for diverse populations. Will DOL require a potential IRAP accreditor to disaggregate data and performance metrics by demographic/participant characteristics to better highlight equity and opportunity gaps in IRAPs? We recommend, for instance, that DOL require data disaggregation by the categories of individuals with barriers to employment under WIOA, in addition to race/ethnicity and gender.
- What is the time frame to which the employer retention rate of apprentices who successfully complete an IRAP program applies?
- Will DOL will have access to data and performance metrics of IRAPs, and will it make those data public? How will DOL know about and evaluate IRAPs accredited under this system? DOL currently maintains the Registered Apprenticeship Partners Information Data System (RAPIDS), which includes information about registered apprenticeship programs. A national database of IRAPs would provide useful information about the national scope and scale of these programs, as well as the labor market outcomes of IRAP participants, and would also enable comparisons between the two apprenticeship systems.

Section IV – Attestation

No comments at this time.

4. Opportunities to minimize the burden associated with the information collection request

On the issue of how to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (e.g., permitting electronic submission of responses), we believe that DOL's proposal to enable the online completion and submission of the ICR will ensure efficiency and minimize the burden on applicants. However, given that DOL intends to promulgate a regulation amending 29 CFR part 29 to establish requirements, beyond what is included in the July 2018 TEN, that qualified entities must follow to ensure that the industry-recognized programs they accredit meet quality standards, will applicants be expected to complete a new application once the regulations have been finalized? Will applicants be able to amend their original electronic application submissions to reflect additional information required under the revised regulations? We recommend that DOL withdraw this ICR and republish it after the publication of the final regulations. Failing that, we urge DOL to consider ways to permit accreditor entities to update and revise their applications in response to the final rule and to include those updates in its burden estimates in the next iteration of this ICR.