

APPENDIX A

U.S. Department of Labor

Information Collection Request

**Industry-Recognized Apprenticeship Programs Accrediting
Entity Information**

Summary of Public Comments and Responses

**Docket No. ETA-2018-0001
OMB Control No. 1205-0NEW**

I. Estimated Time to Complete Form.

Comments: Three commenters stated that the assumptions and logic behind the estimates of costs and burdens appeared to be reasonable, and that prospective accreditors should be capable of absorbing the administrative burden associated with the proposed form. However, several other commenters opined that the Department had underestimated the time estimate associated with the burden to potential accreditors of the proposed information collection instrument. The commenters stated that the proposed application process seemed unduly burdensome, and would require the extensive preparation of submission documents.

One commenter stated that the Department's burden estimate – contained on page 7 of the supporting statement that accompanied the 60-day notice – that the proposed accreditor form would require a maximum of 43 hours to complete did not appear to consider the time required to describe the processes for an entirely new program. Another commenter maintained that the draft information collection form required accrediting entities and/or industry-recognized apprenticeship programs to provide unnecessary and burdensome information, and that the purpose for soliciting some of the requested information seemed unclear. This same commenter also took exception to a separate burden estimate contained in the “Public Burden Estimate” section of the draft accreditor form, which estimated that the collection of information would average 82 minutes per response; the commenter opined that this estimate seemed understated given the significant breadth of the requested information.

Response: After carefully reviewing the comments received relating to the time burden required of completers of the draft form, the Department takes the view that the original total burden estimate of approximately 43 hours per potential program accreditor that was contained in the supporting statement accompanying the 60-day notice was reasonable. In reaching this conclusion, the Department reviewed the calculations of the total burden of this information collection. The Department determined that in order to provide a more accurate estimate, the total number of respondents (i.e., established accreditors and new accreditors without an established process) should be pooled together. This produced a standardized burden estimate of 43 hours and 10 minutes (33 hours and 10 minutes per response, plus an additional 10 hours per response if substantive changes are needed) per respondent, and a concomitant increase in the monetized value of respondent time.

While the information requested in the form is fairly comprehensive in scope, it is unlikely that a potential accrediting entity with a background in the training and credentialing of workers in a particular industry or sector would find the specific types of information being solicited – such as the submission of articles of incorporation – to be unduly difficult to provide. The Department's time burden estimate was based on the reasonable expectation that a training and development manager with a potential accrediting entity could locate, develop, and submit the data and supporting documentation requested in the form after devoting a full business week exclusively to this task.

However, the Department acknowledges that the separate burden estimate contained in the “Public Burden Estimate” section of the draft accreditor form, which estimated that the collection of information would average 82 minutes per response, constitutes an inadvertent administrative error on the Department’s part. Accordingly, this figure has been corrected in the updated version of the accreditor form to conform to the 43 hours and 10 minutes total burden estimate that is contained in the supporting statement.

II. Postponing the Information Collection Request (ICR) Pending the Issuance of a Rule Addressing Industry-Recognized Apprenticeship Programs.

Comments: Several commenters opined that the Department should consider postponing or withdrawing the current information collection request (ICR) relating to the proposed accreditor application form until the Department has developed a comprehensive regulation amending 29 CFR part 29 to address industry-recognized apprenticeship programs (IRAPs). Some of these commenters expressed the view that relevant stakeholders – including the accreditors and sponsors of IRAPs – should first be provided with the opportunity to review and respond to a comprehensive regulation that fully addresses the roles and responsibilities of the various parties that would participate in the IRAP framework. One commenter recommended that the Department pause the information collection request process until such additional details and requirements are available for potential accreditors to review. Another commenter suggested that moving to finalize the accreditation process before finalizing the details of how the system will function limits the public’s ability to provide substantive comments. One commenter suggested that the Department extend the period of comment because a significant amount of additional information regarding industry-recognized apprenticeship programs has been provided since the request for comments was originally issued. A different commenter urged the Department to propose all standards and requirements for industry-recognized apprenticeship programs—including the Accrediting Entity Information Form—through notice-and-comment rulemaking.

Other commenters argued that while the Department needs robust data to evaluate potential accreditors, the development of a new system of apprenticeships to support this function should not proceed until the Department undertakes a formal notice-and-comment rulemaking. In addition, one commenter stated that the form and TEN 3-18 comprise a rule within the meaning of the Congressional Review Act (CRA) and must undergo review before implementation. The commenter argued that because the form and TEN 3-18 would substantially affect the rights or obligations of non-agency parties, such as accreditors applying for approval or, more indirectly, employers and employees participating in an apprenticeship program, they are subject to the CRA. The commenter further stated that the form and TEN 3-18 represent statements of policy that amount to a rule, providing another basis for the applicability of the CRA. Another expressed the view that the proposed accreditor form should only be issued as a part of a formal rulemaking process that adheres to the Administrative Procedures Act (APA) of 1947.

Response: The Department acknowledges the comments received on this issue. On July 27, 2018, after considering the recommendations of the Task Force on Apprenticeship Expansion, the Department proceeded to issue TEN 3-18 as an interim informational document that potential

accreditors could utilize “to develop the plans, structures, and key partnerships” required to obtain a favorable determination from the Department concerning the organization’s qualifications to serve as an IRAP accreditor. The TEN further stipulated that “the public will have the opportunity to provide input on the proposed [accreditor] application.” The TEN was intended to offer interim information to potential accrediting entities and sponsors of IRAPs to help them develop their programs with an option to have the quality of their program assessed by DOL, and is not meant to prescribe all of the rules, roles, responsibilities governing accreditors and IRAPs. The public will have a chance to provide comments on these topics and others when the Department issues a rulemaking, as discussed in the Fall 2018 regulatory agenda.

Moreover, given the importance of this initiative to the future economic growth of the United States, the Department considers it imperative that preliminary practical and administrative steps for pursuing the Task Force’s key recommendations on developing an industry-driven approach to apprenticeship expansion be undertaken without unnecessary delay. While the U.S. is currently enjoying an impressive economic expansion, the Trump Administration is acutely aware of the existence of a persistent skills gap in our country that poses a serious threat to the long-term sustainability of such growth. There are currently more than 7 million job vacancies in our nation, yet many of those positions are going unfilled because employers have not been able to locate workers with the skills required to perform them.

To address the urgency of the challenge posed by this skills gap, the Department proposes to move forward rapidly with the phased development of key IRAP structures (such as the identification of high-quality IRAP accreditation entities) that constitute a prerequisite to the rapid scaling of the number of quality apprenticeships in the United States. Such an incremental, industry-driven approach will give employers both the time and the flexibility they will need to devise customized programs that serve their specialized business requirements. This phased approach to the deployment and implementation of IRAPs will also enable the Department to acquire greater familiarity with the practical operation of industry-recognized programs before drafting regulations that would foster the growth and development of this industry-led approach. Postponing the introduction of IRAPs until after the Department has finalized a regulation on this topic would unnecessarily hamper the Department’s strategy to immediately address the skills gap through the iterative process described above.

Publication of this accreditor form for public comment has been undertaken in conformity with applicable federal statutes, and, as noted above, the Department plans to issue an IRAP regulation in accordance with the notice and comment requirements of the APA, as discussed in the Fall 2018 regulatory agenda.

III. Reforming the Existing Registered Apprenticeship System In Lieu of Creating an Industry-Recognized Apprenticeship System.

Comments: A few commenters suggested that the Department should streamline the existing Registered Apprenticeship system, rather than create a separate, parallel system for industry-recognized apprenticeship programs. Similarly, other commenters expressed concern that the

proposed industry-recognized apprenticeship system would undermine the existing Registered Apprenticeship system.

Response: The Department appreciates the effort the commenters undertook to express their views; however, changes to the Registered Apprenticeship program fall outside the scope of the topics for which comments were sought. The Department wishes to reiterate that the intention of industry-recognized apprenticeship programs is to supplement, rather than replace, the existing Registered Apprenticeship system. It is important to note that the President’s Executive Order directed the Department of Labor to consider denying expedited and streamlined registration to industry-recognized programs “in any sector in which . . . registered apprenticeship programs are already effective and substantially widespread.” However, it is also important to note that the Department is committed to identifying and implementing administrative procedures and reforms that will streamline the existing Registered Apprenticeship system and intends to address the concerns in a separate action in the future.

IV. IRAP Pilot Program

Comments: In line with the Task Force on Apprenticeship Expansion recommendation of a pilot IRAP program, several commenters suggested that the Department conduct a thorough, transparent process to assess whether industry-recognized apprenticeship programs are viable and would not have disproportionately negative impacts on underrepresented communities.

Response: The Department respects the recommendation adopted by the Task Force concerning the launch of a pilot IRAP program prior to the development of a more comprehensive, industry-led apprenticeship scheme. However, the Department has determined that such a limited-scale approach to initial IRAP development and implementation will only postpone the need to confront the immediate and growing skills gap in this nation, and the serious threat that it poses to our future economic growth. The Department takes the view that if apprenticeships are to accelerate and flourish in key emerging sectors, our nation will need to develop a full-scale, complementary system of apprenticeship, one that can rapidly scale the number of apprenticeships and spread them to new and cutting-edge occupations and to underserved populations. The accelerated development of such industry-recognized apprenticeship programs would enable non-governmental entities (i.e., IRAP accreditation entities) to provide recognition to these programs on an expedited basis, without sacrificing apprenticeship program quality and rigor.

V. Addressing Conflicts of Interests.

Comments: Several commenters raised broad concerns about the potential susceptibility of accrediting entities to conflicts of interest with other parties involved in the operation of IRAPs. While noting that “aspects of the ICR acknowledge the need to mitigate possible conflicts of interest and ensure the objectivity and impartiality of accreditors,” a group of commenters jointly expressed concern that one of the questions in the ICR appears to permit accreditors to provide related technical instruction themselves (or to identify prospective educational partners on behalf

of apprenticeship providers). This same group of commenters raised a number of additional concerns and questions relating to potential conflicts of interest, such as: whether the accrediting entity's mechanisms for funding its operations may expose that organization to conflicts; whether the Department intends to develop a mechanism for revoking an accreditor's approval status if a conflict of interest comes to light; and whether the Department intends to enumerate the factors that may constitute a conflict of interest. Another commenter expressed concern that the Department may be willing to permit accreditation entities to be responsible for policing programs they have devised, or be allowed to market instruction products to programs they oversee.

Response: The Department fully concurs with the commenters that potential accrediting entities must identify and disclose all potential conflicts of interest with respect to the industry-recognized programs that they accredit. This approach is consistent with the language in TEN 3-18 and the final report of the Task Force, which stress that accreditors must be independent in their partnerships. For example, it is critically important that those entities that develop the training and instructional curricula for industry-recognized programs are not the same entities that will be accrediting them; or, if they are, that they have established and documented policies, procedures, systems, or constructs to maintain objectivity and transparency and thereby, negate a potential conflict of interest. For example, establishing a "firewall" between program designers and program accreditors, or working with a separate partner can help ensure public confidence in the integrity of these programs. Accordingly, in response to these commenters, the revised ICR asks if an accrediting entity sells or provides services or products to the industry-recognized programs that it intends to accredit, and if so, how the accrediting entity plans to mitigate that conflict of interest to ensure transparency and objectivity.

As one group of commenters acknowledged, the proposed information collection instrument already poses certain questions to potential accreditors that are intended to disclose potential conflicts of interest – including requesting a potential accreditor's attestation as to whether it offers any services to industry-recognized programs that would affect the accreditor's impartiality, and whether the accrediting entity intends to provide any consultative services to the programs it certifies.

As a general matter, the Department takes the view that the overall thrust of the comments received concerning potential accreditor conflicts of interest should be considered in the context of a draft regulation on industry-recognized apprenticeship programs. The Unified Regulatory Agenda lays out the Department's plan for rulemaking; accordingly, the Department encourages interested persons to monitor www.regulations.gov, where they will have an opportunity to comment on regulations that are issued concerning this topic.

VI. Oversight of Industry-Recognized Apprenticeship Programs Regarding Key Labor Protections in the Registered Apprenticeship Program.

Comments: Several commenters requested that the Department clarify the respective responsibilities of the accrediting entity and/or the Department in identifying and resolving issues relating to ensuring the welfare of apprentices, including on-the-job safety, wage

protections, and equal employment opportunity (EEO) with respect to the operation of industry-recognized apprenticeship programs.

Response: Because these comments raise overarching policy concerns about the operation of IRAPs rather than specific concerns concerning the content of the ICR, the Department takes the view that they are not germane to the content of the proposed accreditor form. Accordingly, the Department will consider these issues when it drafts a proposed regulation on industry-recognized apprenticeship programs. The Unified Regulatory Agenda lays out the Department's plan for rulemaking; accordingly, the Department encourages interested persons to monitor www.regulations.gov, where they will have an opportunity to comment on regulations that are issued concerning this topic.

VII. Fees Charged by Industry-Recognized Apprenticeship Program Accrediting Entities.

Comments: Some commenters expressed concern that accrediting entities would be permitted to charge a fee for the service of certification. These commenters argued that such fees could add costs to apprenticeships that do not exist currently and that certification fees would be particularly burdensome for small- and medium-sized businesses. Further, these commenters recommended that the Department provide clarity and guidance on the ability of accrediting entities to charge fees and, if accrediting entities can charge fees, that the Department estimate the impacts of such fees on employers and program providers.

Response: Because the comments raised by these commenters generally relate to overarching policy considerations rather than to defects in the content of the form, the Department takes the view that they are not germane to the content of the proposed accreditor form. Accordingly, the Department will consider these issues when it drafts a proposed regulation on industry-recognized apprenticeship programs. The Unified Regulatory Agenda lays out the Department's plan for rulemaking; accordingly, the Department encourages interested persons to monitor www.regulations.gov, where they will have an opportunity to comment on regulations that are issued concerning this topic.

VIII. Existing Accrediting Entity Approval Process.

Comments: A commenter expressed concern that the Department has not provided sufficient details regarding the process for approving accrediting entities and who will perform the evaluations. More specifically, another commenter suggested that the Department adopt the already existing American National Standards Institute (ANSI) accreditation process in determining which potential accrediting entities are qualified.

Response: While the Department appreciates the concerns raised by these commenters, the Department has determined that the accreditation standards suggested by the questions posed in the draft ICR are sufficiently robust to ensure that the accrediting entities that receive favorable determinations will possess the impartiality, expertise, and rigorous processes necessary to serve

in this capacity. While aiming to ensure that accreditors meet rigorous, objective standards, the Department also wants to encourage small- and medium-sized enterprises to develop and seek accreditation of industry-recognized programs.

Because these comments appear to raise overarching policy concerns about the possible accreditation standards to be utilized by IRAP accreditors rather than specific concerns concerning the content of the ICR, the Department takes the view that they are not germane to the content of the proposed accreditor form. The Department will consider these issues when it drafts a proposed regulation on industry-recognized apprenticeship programs. The Unified Regulatory Agenda lays out the Department's plan for rulemaking; accordingly, the Department encourages interested persons to monitor www.regulations.gov, where they will have an opportunity to comment on regulations that are issued concerning this topic.

IX. Exclusion of the Construction Sector from Industry-Recognized Apprenticeship Programs.

Comments: Several commenters expressed support for the exclusion of the construction industry from industry-recognized apprenticeships in TEN 3-18, and opined that the proposed accreditor form should be amended to expressly state that construction industry programs are ineligible for IRAPs. One of these commenters further recommended that the form clearly define the scope of what occupations constitute the “construction industry,” require an affirmation that respondents understand and would adhere to the exclusion of apprenticeship programs in the construction industry, and state that the Department would withdraw approval for accreditors who failed to comply. However, another commenter expressed continued disappointment that construction and military programs would initially be excluded from industry-recognized apprenticeship programs, per the language of TEN 3-18.

Response: In TEN 3-18, the Department expressed its view that, consistent with the directive contained in Executive Order 13801, IRAPs should be initially promoted in sectors where apprenticeship programs are currently insufficient thereby excluding apprenticeships offered by the U.S. Military (USMAP) and in the construction industry. The proposed text of the ICR maintains this policy with respect to the occupations and sectors that may be eligible to seek accreditation under the industry-recognized apprenticeship program rubric. As noted in TEN 3-18, the Department wishes to emphasize that more definitive policy guidance regarding the construction industry and USMAP will be addressed in rulemaking on the scope and operation of such programs.¹

Because the other comments raised by these commenters relate to overarching policy considerations rather than to perceived defects in the content of the form, the Department takes the view that they are not germane to the content of the proposed accreditor form. Accordingly, the Department will consider these issues when it drafts a proposed regulation on industry-recognized apprenticeship programs. The Unified Regulatory Agenda lays out the Department's plan for rulemaking; accordingly, the Department encourages interested persons to monitor

¹ “[A] Notice of Proposed Rulemaking has been placed on the Department’s semi-annual regulatory agenda and the Department looks forward to receiving input from the public on this TEN and the proposed rule implementing the Executive Order as part of that process.” TEN 3-18.

www.regulations.gov, where they will have an opportunity to comment on regulations that are issued concerning this topic.

X. Clarifying Key Terms in the ICR.

Defining the Term “Standing and National Reach” in the Draft ICR.

Comments: A number of commenters requested that the Department clarify the meaning and scope of a number of terms utilized in the ICR. For example, several commenters requested clarification of the ICR’s use of the term “standing and national reach.” One commenter proposed that the Department ask potential accrediting entities for information regarding their ability to ensure the apprenticeship programs they accredit are responsive to the needs of small and medium businesses in their area. Another commenter pointed out that in the manufacturing industry, a broad-based, national consensus on occupational standards in that sector has proven difficult to reach, and suggested that the Department should instead establish an accreditation model that emphasizes program responsiveness to the customized needs of local labor markets. In addition, a commenter expressed concern that the term “national reach” could be construed to exclude potential accreditors that operate primarily at the State level, and requested clarification from the Department on this point.

On the other hand, a different group of commenters jointly recommended that the Department clarify the term “standing and national reach” in order to reduce the risk that different accrediting entities might attempt to claim national recognition of their preferred standards. These commenters expressed concern that the largely qualitative metrics set forth in the form for selecting IRAP accreditors will be insufficient to safeguard against competing standards that are likely to emerge within industry sectors and occupational roles, which could lead to fragmentation and confusion in the setting of standards at the national level. Similarly, another commenter warned that in the absence of guidelines explaining how potential accreditors should demonstrate their overall qualifications (e.g., what it means to obtain “substantial, broad-based input, support, and consensus” from industry), the evaluation process may lead to conflicting and duplicative standards from multiple accreditors within the same industries, with inadequate resources for oversight. With respect to the requirement that accreditors must submit a copy of the accreditation application (and any instructions) that they provide apprenticeship programs, the commenter asked whether the Department intends to try to standardize what information is collected from the programs.

To determine whether an accrediting entity possesses “national standing and reach,” a commenter recommended that the Department collect more information about an accreditor’s effectiveness and reach, including which employers participate in the apprenticeship programs the accreditor approves, what geographic area the accreditor and the industry-recognized programs it approves cover, and what costs and fees the accreditor will charge to employers. Another commenter suggested adding questions to the form to help determine how potential accreditors fit within the relevant industry; this commenter further recommended that the Department look to Registered Apprenticeship programs in that industry and consult with the architects of those programs as part of its evaluation.

Response: The Department appreciates the numerous comments received concerning this topic. To increase the likelihood of receiving a favorable determination from the Department, a potential accrediting entity need not have the ability to provide accreditation services on a nationwide basis. At a minimum, a potential accrediting entity should establish clear policies and procedures that ensure that the industry-recognized apprenticeship programs they approve will provide nationally-recognized, portable credentials in a given field or occupation. In addition to the provision of a nationally recognized credential, the accrediting entity's key governing structures (such as its steering or advisory committee) should demonstrate broad input and participation from relevant industry stakeholders who are recognized in their respective fields for setting high-quality, national occupational (and/or related instructional) standards and/or apprenticeship program designs. Potential accrediting entities that operate on a state and regional level should consider establishing a consortium of apprenticeship partners that will adopt American National Standards; such an approach may prove helpful in obtaining a favorable determination from the Department.

Accordingly, in response to these comments, the Department has modified the information collection instrument (in Section I) to ascertain the geographical scope of the potential accrediting entity's operations. While retaining the existing inquiry pertaining to the "standing and national reach" of a potential accrediting entity (in Section II), the Department intends to develop a "hover over" function in the electronic version of the collection instrument that will assist applicants in understanding the meaning of this phrase and other technical terms that are utilized in the form. Once this function is fully developed, the Department will submit a non-material change request to the Office of Management and Budget (OMB) that will include the full set of terms to be clarified through this electronic information collection instrument.

XI. Other Terms Requiring Clarification in the ICR.

Comments: One commenter requested that the Department provide definitions or clarification for a number of other terms that are utilized in the form, such as "related bodies," "granted scope," "other services," impartiality," and "consultative services." A second commenter stated that many of the form's subsections and individual questions required detailed information regarding concepts that were undefined. Another commenter suggested that the form would be strengthened by the inclusion of a glossary of terms to ensure that the terminology included in the form would be utilized in a manner consistent with industry practices. This commenter suggested that such accreditation and assessment terminology could be obtained from ANSI publications on this topic.

Response: The Department appreciates the commenters' recommendations on clarifying terms in the ICR. In response to these concerns, the Department has added some clarification in the ICR regarding the terms "related bodies" and "conflicts of interest." In addition, the Department intends to issue a separate, external reference mechanism that will clarify several key terms with respect to the accreditation of industry-recognized apprenticeship programs. Specifically, the Department intends to develop a "hover over" function in the electronic version of the collection instrument that will assist applicants in understanding the meaning of the various technical terms that are utilized in the form. Once this function is fully developed, the Department will submit a

non-material change request to OMB that will include the full set of terms to be clarified through this electronic information collection instrument.

XII. General Organization of the Form.

Comments: Many commenters offer specific recommendations regarding the organization and flow of the ICR. Some commenters suggested that certain questions be deleted from the form; others recommended that certain questions be transposed from one heading or section of the form to another; still other suggested that the form be modified to substitute different questions or to add new questions. One commenter expressed concern that the proposed accreditor form was internally inconsistent; this commenter pointed to questions relating to industry-recognized apprenticeship programs that were grouped under a section of the form seeking information about accrediting entities, and vice versa. The commenter also opined that the form's arrangement seemed to be lacking in flexibility and was excessively bureaucratic in style.

Response: The Department considers the substance of the questions asked and the information being requested in the proposed collection to be, in their totality, necessary for the Department to assess whether a potential accrediting entity should receive a favorable determination from the Department that it is qualified to serve as an accreditor of industry-recognized programs. The information that the Department seeks to obtain from potential accreditors corresponds closely with – but is not identical to – the data which ANSI typically requests of such entities. However, the Department agrees that the overall quality of the draft accreditor form could be improved and made more user-friendly by reorganizing and streamlining its content. Accordingly, the revised form is now organized into six distinct sections, and several questions have been grouped together and consolidated into a single response prompt per subject area. The resulting form has 11 narrative response fields, which are similar in subject and therefore easier for applicants to respond to, and for evaluators to review. The Department has also added a small number of questions to determine an accreditor-applicant's potential conflicts of interest and, most notably, how the applicant plans to mitigate such conflicts to ensure transparency and objectivity in the programs it accredits.