



DEC 6 2011

Mr. Keith Kelly  
Commissioner  
Department of Labor and Industry  
Post Office Box 1728  
1327 Lockey Avenue  
Helena, Montana 59624-1728

Dear Mr. Kelly:

On December 15, 2010, the Montana Department of Labor and Industry's Apprenticeship and Training Program, which is the State Apprenticeship Agency (SAA) submitted an application for continued recognition as the Registration Agency for Federal purposes in the State of Montana. Revised Title 29 Code of Federal Regulations (CFR) part 29, Labor Standards for Registration of Apprenticeship Programs, which took effect on December 29, 2008, established a modernized and flexible regulatory framework for registered apprenticeship that recognizes the critical role that SAAs, such as the Montana Department of Labor and Industry's Apprenticeship and Training Program, play in the National Registered Apprenticeship System. By submitting this application, I applaud your efforts to ensure that the Montana Department of Labor and Industry's Apprenticeship and Training Program continues to be a federally recognized Registration Agency in the National Registered Apprenticeship system and that opportunities for good jobs through Registered Apprenticeship are available to its citizens into the 21<sup>st</sup> Century.

The Office of Apprenticeship (OA) has completed its review of Montana's application for continued recognition as the Registration Agency for Federal purposes. The review revealed that Montana's apprenticeship law and regulations do not fully conform to the requirements of 29 CFR parts 29 and 30. We understand that the Montana Department of Labor and Industry is willing to take action to correct the identified non-conformities. We stand ready to work with the Montana Department of Labor and Industry's Apprenticeship and Training Program to that end. I am, therefore, granting continued recognition of the Montana Department of Labor and Industry's Apprenticeship and Training Program as the Registration Agency, conditioned on the completion of the corrective action prescribed below.

### **Identified Issues of Non-Compliance with 29 CFR 29**

#### Montana Code Annotated (MCA) 2009, Title 39 Labor, Chapter 6 Apprenticeship, Part 1

- 39-6-106 is missing corresponding requirements to paragraphs (a), (b),(c),(i),(j) and (k) of 29 CFR 29.7. Please revise to include the language conforming to part 29.
- MCA also uses the terms "craft" and "trade," which have been replaced in part 29 by the term "occupation." Please revise to adopt the terms used in part 29.

## Administrative Rules of Montana (ARM) Chapter 21 Apprenticeship

- ARM 24.21.102 Definitions
  - The definition for the term "Apprenticeship Agreement" does not conform to § 29.2. See comments above regarding 39-6-105(c).
  - The definition for the term "Sponsor" does not conform to § 29.2, as Montana is limiting who can be a sponsor to an employer or joint apprenticeship committee. Please see § 29.2, which defines "Sponsor" as "any person, association, committee, or organization operating an apprenticeship program." Montana must revise the definition to conform part 29.
  - The term "Indenture Agreement" is covered not in part 29 and it seems to have the same meaning as "Apprenticeship Agreement." We recommend that Montana use the term Apprenticeship Agreement.
  - Definitions for the following terms are missing: "Competency," "Electronic Media," "Federal Purposes," "Interim Credential," and "provisional registration." Please revise the ARM Chapter 21 to conform part 29.
- ARM 24.21.205, State Apprenticeship Advisory Council does not conform to § 29.13 (a)(2)(ii), which requires an equal number of representatives of employers and of employee organizations and include public members who shall not outnumber in excess of the number named to represent either employer or employee organizations. Montana's council membership is made up of 3 members representing employer organizations; 3 members from Management, 2 of which represent labor and one designated non-union, independent employer status which Montana says is prescribed by state rule for committee composition. The public is represented by 2 members. Montana must revise the membership of the State Apprenticeship Council to conform to part 29.
- The corresponding requirement for § 29.9, Reinstatement of program registration, is missing. Montana must amend ARM Chapter 21 and include the corresponding requirement for § 29.9.
- ARM 24.21.302 (g), ARM 24.21.405 (3), and ARM 24.21.405 (4) do not conform to § 29.8, Deregistration of a registered program. MCA 2009 2-4-702 provides that "a person who has exhausted all administrative remedies available within the agency and who is aggrieved by a final written decision in a contested case is entitled to judicial review." Section 29 CFR 29.8(b)(7) establishes that requests for hearing for deregistration are submitted to the Administrator of the Office of Apprenticeship and the Administrator will refer the matter to the Office of the Administrative Law Judge. Montana must revise this section to conform to part 29. See § 29.8 (b)(7).

### **Other Issues**

- Montana has provided a description of the policies and operating procedures that depart from part 29 (see Document 12 and associated attachments in the application package submitted on December 15, 2010). The following provisions are not included in that document: ARM

24.21.150, Veterans Approval, and ARM, 24.21.1001 On Job Training Registration Policy. Pursuant to § 29.13(a)(5), please address these policies and procedures that depart from or impose requirements in addition to those prescribed in part 29.

- The Montana Apprenticeship Agreement does not conform to § 29.7, Apprenticeship Agreement. The Montana Apprenticeship Agreement is missing the following corresponding requirements:

- § 29.7(b): "on a voluntary basis, the Social Security number of the apprentice,"
- § 29.7(e)(2): "related instruction hours;" and
- § 29.7(j): "A statement that the apprentice will be according equal opportunity in all phases of apprenticeship employment and training without discrimination because of race, color, religion, national origin or sex."

Montana must revise the Apprenticeship Agreement to conform to part 29. Please see § 29.7.

- Please see #3 on the Montana's Apprenticeship Agreement; the name of the Office of Apprenticeship is incorrect. Montana uses the term "Office of Apprenticeship and Training." The correct name is the "Office of Apprenticeship." Please revise to conform to part 29.
- The Montana Apprenticeship Agreement uses the term "trade," which has been replaced by the term "occupation" in part 29.
- The Montana Apprenticeship Agreement requires the Dictionary of Occupational Titles (DOT) code. The DOT was replaced by the Occupational Information Network (O\*NET). O\*NET codes and titles are based on the new Standard Occupational Classification (SOC) system mandated by the federal Office of Management and Budget for use in collecting statistical information on occupations. The O\*NET classification uses an 8-digit O\*NET-SOC code. Use of the SOC classification as a basis for the O\*NET codes ensures that O\*NET information can be readily linked to labor market information such as occupational employment and wage data at the national, State, and local levels. We recommend that Montana's adopts the use of O\*NET.

### **Identified Issues of Non-Compliance with 29 CFR part 30, Equal Employment Opportunity (EEO) in Apprenticeship and Training**

The race and ethnic categories identified in Montana's Apprenticeship Agreement are: African American, American Indian or Alaskan, Asian or Pacific Islander, Hispanic or White. These race and ethnic categories are not sufficient to permit sponsors to comply with their apprenticeship EEO obligations. Sponsors are to comply with the procedures contained in the Uniform Guidelines on Employee Selection Procedures at 41 CFR part 60-3 (UGESP) when evaluating whether their apprenticeship selection procedures are discriminatory.

The UGESP, in turn, requires sponsors to maintain and have available records or other information that will disclose the impact of their selection procedures by gender and by the following race and ethnic groups: Blacks (Negroes), American Indians (including Alaskan

Natives), Asians (including Pacific Islanders), Hispanics (including persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish origin or culture regardless of race), whites (Caucasians) other than Hispanic and totals. See 41 CFR 60-3.4. Montana needs to revise the race ethnic categories currently used in the apprenticeship agreement to permit sponsors to collect data in the categories needed to comply with UGESP.

## **Next Steps**

Many of the areas of non-compliance outlined above require only relatively minor technical corrections. Other areas may require additional changes to State law, regulations, and/or policy. Please note that any legal or regulatory revisions, as well as any subsequent revisions, must be submitted for OA review and receive Departmental concurrence prior to implementation.

As we have during this two year transition period, my staff and I are always available to assist in any way we can to support your compliance with 29 CFR parts 29 and 30. As such, I would propose setting up a conference call with you or your designee within the next two weeks to respond to any questions you may have regarding this letter and any other technical assistance needs you may have.

Within 90 days from the receipt of this letter, please provide us with your proposed corrective action plan to address issues of non-compliance that would include the following:

- To the fullest extent possible, corrected/revised legislation, regulations, or policy pursuant to issues outlined above;
- A timetable and specific action required to resolve any outstanding items that cannot be resolved within the 90 day timeframe;
- Additional information or clarification you wish to submit to support maintaining the existing non-compliance provision; and/or
- Specific requests for additional (non-financial) technical assistance to resolve any outstanding items not covered above.

Once again, I applaud your efforts to continue Montana's vital role in the National Registered Apprenticeship System. DOL strongly values our partnership with State Apprenticeship Agencies in the oversight and administration of the National Registered Apprenticeship System. If any of my staff can be of assistance in addressing OA's concerns and recommendations, please contact me at (202) 693-3704, Steve Opitz, OA's Region IV Regional Director, at (972) 850-4682, or Franchella Kendall, Chief, Division of Standards and National Industry Promotion, at (202) 693-3798.

Sincerely,



JOHN V. LADD  
Administrator  
Office of Apprenticeship

cc Mark Maki, Director, Apprenticeship and Training Program  
Steve Opitz, OA Region IV Regional Director  
Nicholas Lalpui, ETA Region IV Acting Regional Administrator