



FAQs: Apprenticeship EEO Final Rule

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General

Why did OA revise its equal employment opportunity (EEO) regulations?

OA's existing EEO regulations needed to be modernized to reflect both the realities of today's workforce and the landscape of EEO law that have changed since the last revision in 1978. OA's modernized and streamlined regulations make it easier for apprenticeship sponsors to comply with them and to better understand their obligations. We expect that these updates will improve the participation rates of women and other under-represented populations in apprenticeship, who continue to face many barriers to entry and completion. Moreover, it will improve the quality of the applicant pool and thus of the participating apprenticeship programs.

Who is this final rule intended to benefit?

The final rule is intended to benefit sponsors, apprentices, applicants for apprenticeship, and the general public. Sponsors will benefit from modernization of a regulation last updated in 1978 that streamlines and clarifies many of the requirements for easier compliance. In addition, by reaching a broader range of applicants, programs will be able to grow and access a deeper well of talent. The final rule also allows new program sponsors more time to establish initial affirmative action programs, and current sponsors additional time to update their affirmative action programs. Apprentices and applicants, as well as the public, will benefit from increased entry for women, minorities, and persons with disabilities. Additionally, by updating the final rule to reflect current law and workplace practices and issues, the final rule will improve civil rights enforcement and public understanding of the law.

Who does this final rule apply to?

This final rule applies to all sponsors of apprenticeship programs registered either with the U.S. Department of Labor or a State Apprenticeship Agency (SAA).

Who is an apprentice protected by this final rule?

This final rule protects apprentices participating in apprenticeship programs registered either with the U.S. Department of Labor or an SAA, as well as applicants to such programs.

Nondiscrimination/Equal Employment Opportunity Obligations

What types of discrimination are prohibited under the final rule?

The previous regulation prohibited discrimination on the basis of race, color, religion, national origin, and sex. The final rule adds additional protected bases: disability, age (40 or older), sexual orientation, and genetic information to protected groups for nondiscrimination purposes. The final rule specifies that sponsors may not discriminate on these bases with respect to personnel actions, including recruitment, selection, placement, rates of pay, hours of work, and job assignments.

What position does this final rule take on whether gender identity is a form of sex discrimination?

As discussed in the preamble, per the language of relevant authorities and case law, gender identity has been analyzed as a form of sex discrimination. The final rule, and specifically the EO pledge at § 30.3(c), states that sex discrimination includes discrimination on the basis of gender identity (as well as discrimination on the basis of pregnancy). The Department will continue to monitor the developing law related to the issues raised by the commenters, and will consider issuing further guidance on this subject as appropriate.

In addition to the nondiscrimination obligations, what other equal employment opportunity measures are all sponsors, regardless of size, required to take? How is this different from the previous regulations?

The previous regulation required sponsors with an AAP to take "a significant number" of activities from a list of ten different outreach and recruitment activities. The final rule provides greater clarity relating to every sponsor's general duty to engage in affirmative action by requiring four specific, straightforward actions that OA

believes are most important to ensure EEO. These are: (1) designating one or more individuals as responsible for overseeing its EEO obligations; (2) disseminating internally its equal opportunity policy; (3) satisfying their general outreach and recruitment obligation; and (4) taking steps designed to ensure that apprenticeship programs operate free from harassment, intimidation, and retaliation.

To what extent is a sponsor responsible for the actions of a participating employer?

As under the previous regulation, regardless of the model of sponsorship, the sponsor is ultimately responsible for ensuring that the apprenticeship program complies with the equal employment opportunity and affirmative action obligations of this final rule. When the sponsor is the direct employer of the apprentices and controls, or otherwise has input into, employment actions held unlawful by these regulations, it must ensure that these actions comply with the equal employment opportunity obligations of the final rule.

What recruitment sources can the sponsor utilize to meet its outreach and recruitment requirements?

Under the final rule, sponsors must develop and update annually a list of current recruitment sources that will generate referrals from all demographic groups within the relevant recruitment area. Examples of relevant recruitment sources include: the public workforce system’s One-Stop Career Centers and local workforce investment boards; community-based organizations; community colleges; vocational, career and technical schools; pre-apprenticeship programs; and federally-funded youth job-training programs such as YouthBuild and Job Corps or their successors.

If the sources that a sponsor is using to meet its outreach and recruitment obligation are not generating referrals from the various demographic groups in the sponsor’s recruitment area, what should the sponsor do?

OA would expect that the sponsor, upon realizing that the sources it is using are not fulfilling the intent of this provision, would seek a good faith alternative or additional sources that are more effective at referring qualified applicants. The Department and SAAs has provided some information to sponsors regarding recruitment sources, as available and appropriate. The Department intends to increase technical assistance available to sponsors and provide additional recruitment sources to the extent that our resources allow. During compliance reviews, sponsors would only be expected to undertake these efforts in good faith.

Who within the apprenticeship program must receive anti-harassment training? What topics must this training include?

All individuals connected with the administration or operation of a sponsor’s apprenticeship program must receive this training, including all apprentices and journeyworkers who regularly work with apprentices. These sessions must involve active participation by trainees and must include communications to apprentices and journeyworkers that harassing conduct will not be tolerated, the definition of harassment and types of conduct that constitute harassment, and the right to file a harassment complaint. The final rule specifies that the training is not a passive transmittal of information.

What are sponsors’ and employers’ responsibilities regarding harassing, intimidating, or retaliatory conduct towards apprentices?

The sponsor must develop and implement procedures to ensure that its apprentices are not harassed because of their race, color, religion, national origin, sex, sexual orientation, age (40 or older), genetic information, or disability and to ensure that its apprenticeship program is free from intimidation and retaliation as prohibited by § 30.17. In those situations where discriminatory actions or other actions in violation of this part are taken by employers participating in the sponsor’s program, the sponsor has an obligation to undertake steps to address the violation when it has knowledge of such actions.

Complaints

What can an apprentice do if he or she believes that he or she is being discriminated or retaliated against, or if his or her program is failing to follow the equal opportunity standards?

If an apprentice believes that he or she is being discriminated against on the basis of race, color, religion, national origin, sex, sexual orientation, age (40 or older), genetic information, or disability, or that his or her program is not following the equal opportunity standards, he or she can file a written complaint with the Registration Agency under which the apprenticeship is registered. This complaint must be filed within 300 days of the alleged discrimination or the alleged failure to follow the equal opportunity standards. He or she may also be able to file a complaint directly with the EEOC, or the State fair employment practices agency in which the apprenticeship is located. The contact information for those agencies will be included on the EEO notice that

must be provided in the application for apprenticeship and must also be displayed in a prominent, publicly available location where all apprentices will see the notice.

Can others besides apprentices file a complaint?

Yes, an authorized representative may file a complaint on behalf of an apprentice. This could allow a friend, family member, advocate, union, or lawyer to file such a complaint. It could also allow a journeyworker or a higher status worker to file a complaint on behalf of the apprentice, if an apprentice feared risking his or her job or personal safety. The only requirement is that any such representative be authorized by the apprentice.

What information must the complaint to a Registration Agency contain?

Each complaint must be in writing and contain: (1) the apprentice’s name, address and telephone number, or other means of contacting the apprentice; (2) the identity of the individual or entity that the apprentice alleges is responsible for the discrimination or failure to follow the equal opportunity standards; (3) a short description of the actions that the apprentice believes were discriminatory or a failure to follow the equal opportunity standards and why the apprentice believes these actions were discriminatory; and (4) the signature of the apprentice or the apprentice’s authorized representative.

General Affirmative Action Program Requirements

What is an Affirmative Action Program (AAP)?

An affirmative action program is a tool designed to assist a sponsor in detecting, diagnosing, and correcting any barriers to equal opportunity that may exist in its apprenticeship program. An AAP is designed to ensure equal opportunity and prevent discrimination in apprenticeship programs and is more than mere passive nondiscrimination. Such a program requires the sponsor to take affirmative steps to encourage and promote equal opportunity, to create an environment free from discrimination, and to address any barriers to equal opportunity in apprenticeship. An AAP helps the sponsor identify and correct underutilization and helps the sponsor establish procedures to monitor and examine its employment practices and decisions with respect to apprenticeship. As part of an AAP, sponsors must create and maintain a written document memorializing and discussing the contents of the program.

Are AAPs a new requirement?

No. Sponsors were required to maintain AAPs under the previous regulations. While we have updated the requirements and added AAP obligations for individuals with disabilities in this final rule, the analyses required are very similar to those analyses required under the previous rule with regards to race, sex, and ethnicity and, in many cases, are more streamlined and easier for sponsors to conduct.

Which sponsors are required to have an AAP?

All sponsors who are not otherwise exempted have long been required to develop and maintain an affirmative action program. As under the previous rule, each sponsor must develop its own AAP, even if employers participating in the sponsor’s program maintain their own AAPs.

The final rule provides two exemptions from the requirement to establish and maintain an AAP: (1) Programs with fewer than five apprentices; and (2) Programs subject to approved equal employment opportunity programs.

For point #2, a sponsor that already maintains an equal employment opportunity program providing for affirmative action in apprenticeship, including the use of goals for any underrepresented group or groups of individuals, that has been approved as meeting the requirements of title VII of the Civil Rights Act of 1964 or Executive Order 11246 and section 503 of the Rehabilitation Act (which apply to federal contractors), does not need to create a separate AAP for its apprenticeship program so long as that equal employment opportunity program 1) extends to apprentices and 2) covers individuals with disabilities. Additionally, programs will qualify for this exception only if the goals for any underrepresented group are likely to be equal to or greater than the goals required under the final rule.

These exemptions are the same as those that were contained in the prior regulations and only exempt sponsors from the requirement to maintain an AAP; sponsors are still required to comply with the other obligations created by the final rule, including the Equal Opportunity Standards applicable to all sponsors, contained in § 30.3.

What needs to be in an AAP?

An affirmative action program must include the following components:

1. Utilization analysis for race, sex, and ethnicity (comparing the workforce and availability analyses)
2. Utilization goals for race, sex, and ethnicity (if necessary)
3. Utilization goals for individuals with disabilities
4. Targeted outreach, recruitment, and retention activities (if necessary)
5. Review of personnel processes
6. Invitations to self-identify

Each of these components requires the sponsor to examine different elements of its apprentice workforce and document its review. At various stages of its AAP review, a sponsor will have to analyze its utilization, recruitment activities, and selection, training, and assignment practices in order to determine whether any element of its program is adversely impacting individuals within certain groups. The Department will be providing a Model Written AAP that sponsors can review and use to ensure that their own AAPs contain all necessary elements. **Do sponsors need to send their AAPs to the Registration Agency every time they update it?**

No. Each sponsor simply needs to maintain an up-to-date AAP and make that AAP available to the Registration Agency upon request, including during its compliance review.

Affirmative Action Program Requirements for Race, Sex, and Ethnicity

What analyses are required by the final rule?

The final rule requires conducting two analyses and then comparing those analyses to each other. Both of these analyses were required under the previous rule. However, the new rule streamlines and provides greater clarity as to how sponsors, working with Registration Agencies, can complete these analyses.

First, each sponsor will conduct a workforce analysis. The workforce analysis simply identifies the racial, sex, and ethnic composition of its apprenticeship workforce (this step also needs to be conducted to identify the apprentices and applicants in each program with disabilities). Second, each sponsor, with assistance from the Registration Agency, will conduct an availability analysis. The purpose of the availability analysis is to

determine the racial, sex, and ethnic representation of individuals available in the relevant recruitment area. This analysis will result in an availability figure for each major occupation group represented in the sponsor's program.

Finally, each sponsor, again working with the Registration Agency, will compare these two analyses: the racial, sex, and ethnic representation of its apprenticeship workforce to the racial, sex, and ethnic representation of people available in the relevant recruitment area. If this comparison shows that the sponsor is underutilized in any particular group, the sponsor must then establish utilization goals and engage in targeted outreach, recruitment, and retention activities.

Should a sponsor include journeyworkers in its analyses?

Generally, no it should not. If journeyworkers are eligible for enrollment in the apprenticeship program, those workers should be included within the sponsor's availability analysis. But currently employed journeyworkers should not be included in the sponsor's workforce analysis.

How can a sponsor determine the availability of qualified individuals within its recruitment area?

The availability analysis looks at the racial, sex, and ethnic breakdown of these available individuals." Individuals are considered available if they meet the basic qualifications for enrollment in the apprenticeship program. Registration Agencies work closely with each sponsor at its regular compliance reviews to develop and conduct an availability analysis.

The final rule has streamlined the availability analysis by reducing the number of factors each sponsor must take into account. Previously, sponsors had to look at five different factors to determine availability. Now, sponsors only need to look at two factors for each major occupation group in its apprenticeship program:

1. The percentage of individuals who are eligible for enrollment in the apprenticeship program within the sponsor's relevant recruitment area broken down by race, sex, and ethnicity; and
2. The percentage of the sponsor's employees who are eligible for enrollment in the apprenticeship program broken down by race, sex, and ethnicity.

Will the Registration Agency provide assistance in conducting these analyses?

Yes. The Registration Agency will provide significant technical assistance during compliance reviews to help sponsors conduct their availability and utilization analyses.

For new sponsors, the Registration Agency will also provide further guidance on the AAP requirements more broadly during the program’s provisional review conducted within one year of registration.

At what point does a sponsor have to establish a utilization goal for race, sex, or ethnicity?

A sponsor is “underutilized” when the sponsor’s utilization of women, Hispanics or Latinos, or individuals of a particular racial minority group is significantly less than would be reasonably expected given the availability of such individuals for apprenticeship. If the sponsor finds that its utilization of a particular race, sex, or ethnicity falls significantly below that group’s availability in the relevant recruitment area, it must establish a utilization goal.

How can a sponsor know if it’s meeting its utilization goals?

Sponsors will work with the Registration Agency at each compliance review to establish or review utilization goals. Sponsors then compare their workforce analyses to the goals to determine if they are meeting their goals.

What happens if an apprenticeship program doesn’t reach its utilization goals?

If the Registration Agency determines that a sponsor is not meeting its goals, the Registration Agency will work with that sponsor to identify potential problem areas in the program and devise corrective, action-oriented programs, and the sponsor will engage in more targeted outreach, recruitment, and retention activities in order to try to correct any impediments to equal opportunity in the apprenticeship program.

Failure to meet utilization goals will not, in and of itself, result in the assessment of any enforcement actions or sanctions. A sponsor’s compliance with the final rule will be determined based upon the sponsor’s good faith efforts to eliminate impediments to equal employment opportunity and not purely on whether it has met its goals. The Registration Agency will look at the totality of the sponsor’s affirmative action efforts to determine whether it is in compliance with its affirmative action obligations.

Are utilization goals the same thing as quotas?

No. Utilization goals are not rigid and inflexible quotas and they do not establish a ceiling or a floor for the utilization of a particular group. Similarly, the final rule provides that a sponsor cannot use its utilization goals as a way to extend a preference to any individual on the basis of that person’s race, sex, or ethnicity, nor can the sponsor create set-asides for specific groups. The application of utilization goals does not require sponsors to select a person who lacks qualifications to participate in the apprenticeship program successfully, or select a less-qualified person in preference to a more qualified one.

Defined Terms in the Final Rule Related to Disability

How does this final rule define “disability?”

Under the rule, “disability” means, with respect to an individual: (a) a physical or mental impairment that substantially limits one or more major life activities of such individual; (b) a record of such an impairment; or (c) being regarded as having such an impairment. This definition, as with other terms defined in the regulation related to disability, are taken directly from title I of the Americans with Disabilities Act (ADA), and from the Equal Employment Opportunity Commission’s regulations implementing the ADA, to the extent that the ADA, as amended, did not provide a definition.

What is a “reasonable accommodation?”

A “reasonable accommodation” includes making existing facilities used by apprentices readily accessible to and usable by individuals with disabilities and other measures, such as, job restructuring; part-time or modified work schedules; reassignment to a vacant position; acquisition or modifications of equipment or devices; appropriate adjustment or modifications of examinations, training materials, or policies; the provision of qualified readers or interpreters; and other similar accommodations for individuals with disabilities.

Affirmative Action Program Requirements for Individuals with Disabilities

Does a sponsor have to accept someone into the program who can't perform the essential functions of the apprenticeship program in order to meet a utilization goal?

No. The goal only applies to “qualified individuals with disabilities,” and the application of a utilization goal does not require or authorize a sponsor to hire an individual who is not eligible or qualified for apprenticeship. Sponsors are also not required to hire a less qualified candidate instead of the best qualified candidate for the purposes of affirmative action.

Sponsors should keep in mind, though, that just because an individual is disabled, it does not mean they are incapable of performing the essential functions of the position. While some individuals with certain disabilities may not be able to perform some jobs, sponsors must make this determination on an individual basis and consider the ability of an individual with disabilities to perform the job with a reasonable accommodation.

How can a sponsor know if an apprentice or applicant has a disability and should therefore be counted as an individual with a disability in its workforce analysis?

The identification of individuals within the apprenticeship workforce that have a disability is done through self-identification, and the sponsor should not be attempting to identify individuals with disabilities who do not self-identify. If an apprentice has an obvious visible disability (i.e., someone is blind or missing a limb), or if an apprentice requests a reasonable accommodation, a sponsor may include that individual as an individual with a disability within its workforce analysis. Otherwise, a sponsor should be relying only on self-identification as the method for capturing disability within its apprenticeship workforce.

Does the final rule include a national utilization goal?

Yes, the final rule includes an aspirational utilization goal of seven percent for individuals with disabilities that applies to all covered sponsors. This goal provides a benchmark against which the sponsor can measure the representation of individuals with disabilities in the sponsor's apprentice workforce by major occupation group.

What happens if a sponsor does not meet the seven percent goal?

Failure to meet the disability goal is not a violation of the regulations and will not lead to a fine, penalty or sanction. The regulations specifically provide that the disability goal is not to be used as a quota or a ceiling that limits or restricts the employment of individuals with disabilities. It further states that a sponsor's determination that it failed to meet the disability goal does not constitute either a finding or admission of discrimination in violation of the regulation. However, when the percentage of individuals with disabilities in one or more major occupations groups is less than the utilization goal, the sponsor must take steps to determine whether and where impediments to equal employment exist, and develop action-oriented programs to correct them.

Under the final rule, there is an obligation to invite individuals to self-identify as a person with a disability. How will that work?

The final rule requires that sponsors invite applicants to self-identify at two separate stages: (1) to all candidates before apprenticeship offers are made (“pre-offer”); and (2) to those who have accepted apprenticeship offers before they begin their apprenticeship (“post-offer”). Additionally, sponsors must remind all apprentices yearly that they may voluntarily update their disability status.

In order for current sponsors to come into compliance with the final rule and to ensure that all apprentices have an opportunity to self-identify as an individual with a disability, all current sponsors will also need to invite each current apprentice to inform the sponsor whether he or she is an individual with a disability.

OA will provide technical assistance to sponsor about how to implement the self-identification procedure.

Does a sponsor have to provide an accommodation to someone who identifies as an individual with a disability?

Self-identifying as an individual with a disability does not automatically entitle that individual to an accommodation, but the sponsor must provide a reasonable accommodation to an apprentice who requests one or where the need for such an accommodation is clear.

Targeted Outreach, Recruitment, and Retention

What (targeted outreach, recruitment, and retention) activities does a sponsor need to engage in if it finds that its apprenticeship program is underutilized?

There are some specific targeted outreach, recruitment, and retention activities that all sponsors whose programs are underutilized must engage in. Those activities are:

1. Disseminating information to organizations serving the underutilized group regarding the nature of apprenticeship;
2. Advertising openings for apprenticeship opportunities in appropriate media;
3. Cooperating with local school boards and vocational education systems to develop and/or establish relationships with pre-apprenticeship programs;
4. And establishing linkage agreements or partnerships with pre-apprenticeship programs, community-based organizations, advocacy organizations, or other appropriate organizations.

What are linkage agreements?

Linkage agreements are agreements or partnerships that sponsors can enter into with various organizations, including pre-apprenticeship programs, community-based organizations, advocacy organizations, or other appropriate organizations or referral sources, that can leverage the resources and knowledge of that organization to help the sponsor connect with qualified applicants from various populations. Linkage agreements do not need to be highly formal, detailed arrangements, but rather are intended to be straightforward, dynamic partnerships that can be easily tailored to meet sponsors' needs. The types of agreements, and how many agreements, should be entered into should be determined by the specific needs of each sponsor.

Requirements for Selecting Apprentices

What are the requirements relating to selection of apprentices?

In contrast to the previous rule, which permitted four specific selection methods, the new rule provides much greater flexibility, allowing sponsors to select apprentices through any selection method, as long as it does not discriminate on any of the protected bases and complies

with the requirements for selection devices under the Uniform Guidelines on Employee Selection Procedures.

Compliance

What happens during an EEO compliance review?

An EEO compliance review may consist of, but is not limited to, comprehensive analyses and evaluations of each aspect of the apprenticeship program through off-site reviews, such as desk audits of records submitted to the Registration Agency, and on-site reviews conducted at the sponsor's establishment that may involve examination of records, inspection and copying of documents, and interviews with employees, apprentices, journeyworkers, supervisors, managers, and hiring officials.

Will the Registration Agency provide me with technical assistance if my program needs to implement a compliance action plan?

Yes. In the Notice of Compliance Review Findings, the Agency will identify any deficiencies, how those deficiencies could be remedied, and the timeframe for remedying the deficiencies. Additionally, the Registration Agency, in keeping with current practice, will provide technical assistance to sponsors with deficiencies on how they may come into compliance.

What happens if a sponsor fails to implement a corrective action plan?

If a sponsor is found to not be in compliance, they may be required to implement a corrective action plan. If they fail to implement that corrective action plan, the Registration Agency can take a number of steps. First, the Registration Agency may offer the sponsor technical assistance to promote compliance.

If the sponsor still does not come into compliance, the Registration Agency may suspend the sponsor's right to register new apprentices. The Registration Agency can seek to do this if the sponsor fails to implement a compliance action plan within 30 business days from the date the sponsor is notified of the violation(s) or within 30 days of receiving the Registration Agency's notice upholding its initial noncompliance findings. The final rule includes a suspension provision as a way to give Registration Agencies some flexibility in working with sponsors who are not in compliance. It was not intended as a punitive option, but an intermediate step that Registration Agencies could take rather than moving immediately into deregistration proceedings.