

U.S. Department of Labor Employment and Training Administration Office of Apprenticeship (OA) Washington, D.C. 20210	<u>Distribution:</u> A-541 Headquarters A-544 All Field Tech A-547 SD+RD+SAA+; Lab.Com	<u>Subject:</u> Affirmative Action and Good Faith Efforts <u>Code:</u> 400.1
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PURPOSE: To inform the staff of OA, State Apprenticeship Agencies (SAA), Registered Apprenticeship program sponsors and other Registered Apprenticeship partners of the required elements of an affirmative action program.

BACKGROUND: The National Apprenticeship Act of 1937 29 U.S.C. 50 authorizes the U.S. Department of Labor to formulate and promote the furtherance of labor standards necessary to safeguard the welfare of apprentices. These standards set forth at 29 CFR §§29 and 30, are intended to provide for more uniform training of apprentices and to promote equal opportunity in apprenticeship. The 29 CFR § 30 regulations require registered apprenticeship program sponsors to provide equal opportunity for participation in their registered apprenticeship programs, and prohibit sponsors from discriminating against apprentices and applicants for apprenticeship based on race, color, religion, national origin, and sex. In addition, 29 CFR § 30 also requires that sponsors of registered apprenticeship programs take affirmative action to provide equal opportunity in such programs. Sponsors of registered apprenticeship programs with 5 or more apprentices must adopt an affirmative action plan (AAP). The purpose of an AAP is to actively ensure equal opportunity for apprentices and applicants for apprenticeship, to prevent discrimination in registered apprenticeship, and to address any barriers that exist to equal opportunity. An AAP is a written plan, which meets the requirements of 29 CFR § 30.4, in which a sponsor annually details the steps i.e. policies, practices and procedures including self-analyses it will take to ensure equal opportunity in recruitment of qualified applicants, selection, employment, retention and training of apprentices. An AAP should be a part of the way the sponsor regularly conducts its apprenticeship program.

RESPONSIBILITIES OF SPONSORS

Section 29 CFR § 30.3 of the § 30 regulations requires sponsors with 5 or more apprentices to adopt an AAP. The required elements of an AAP are set forth in 29 CFR § Section 30.4 of the § 30 regulations. These include:

1. Outreach and positive recruitment

A sponsor's AAP must contain adequate provisions for outreach and positive recruitment. 29 CFR § 30.4(c) sets forth examples of the types of activities sponsors are expected to undertake in order to increase minority and female participation in apprenticeship. Examples of such activities include, but are not limited to:

- a. dissemination of information regarding the sponsor's apprenticeship program, including the requirements for admission to apprenticeship, how to obtain an application for apprenticeship, and the equal opportunity policy of the sponsor;

- b. participation in annual workshops conducted by employment service agencies to inform the public and these agencies about the sponsor's apprenticeship program and the opportunities for apprenticeship;
- c. educating employees, including officers and supervisors, about the sponsor's equal employment policy;
- d. coordination with local school boards and vocation educational systems to develop programs for preparing students to meet entrance requirements for apprenticeship programs;
- e. internal communication of the sponsor's equal opportunity policy in a manner that encourages acceptance, support, and participation from the sponsor's officers, supervisors, and employees; and
- f. establishment of pre-apprenticeship programs and preparatory occupational training which prepares candidates for apprenticeship.

For additional examples, please refer to Section 29 CFR § 30.4(c) of the regulations. Sponsors are not required to engage in each outreach/recruitment activity listed in the regulations. The scope of the outreach efforts will depend on all the circumstances including the size and type of the program and its resources. However, a sponsor must undertake a significant number of activities in order to enable it to meet its positive recruitment responsibilities. The AAP must identify *with specificity* the steps the sponsor intends to take with respect to its outreach and positive recruitment.

2. Underutilization analysis

Section 30.4(e) of the § 30 regulations requires that sponsors perform an underutilization analysis to determine whether minorities and/or females are being underutilized. Sponsors must analyze minority and female availability based on an analysis of at least the following 5 factors:

- a. The size of the working age minority and female (minority and nonminority) population in the program sponsor's labor market area;
- b. The size of the minority and female (minority and nonminority) labor force in the sponsor's labor market area;
- c. The general availability of minorities and women (minority and nonminority) with present or potential capacity for apprenticeship in the program sponsor's labor market area;
- d. The percentage of minority and female (minority and nonminority) participation as apprentices in the particular occupation as compared with the percentage of minorities and women (minority and nonminority) in the labor force in the sponsor's labor market area; and

- e. The percentage of minority and female (minority and nonminority) participation as journeyworkers employed by the employer or employers participating in the program as compared with the percentage of minorities and women (minority and nonminority) in the sponsor's labor market area and the extent to which the sponsor should be expected to correct any deficiencies through the achievement of goals for the selection of apprentices.

The sponsor's analysis must contain a proper definition of the labor market area and must show consideration of the 5 factors enumerated above and identified at 29 CFR § 30.4(e). A sponsor's labor market area is defined as that geographic area from which apprentices may reasonably commute and from which the sponsor generally recruits. It may include one or more contiguous cities, counties, states, or parts thereof in which the sponsor is situated.

3. Establishment of goals

Section 30.4(f) of the § 30 regulations requires that sponsors establish goals on the basis of their underutilization analyses. In establishing goals, sponsors should consider the results which could *reasonably* be expected from each sponsor's *good faith* efforts to make its overall AAP work. Goals are *defined* as numerical objectives for minority and female (minority and nonminority) participation in a sponsor's apprenticeship program that can be reasonably attained through good faith efforts. Good faith efforts should be judged by whether the sponsor is following its AAP and attempting to make it work, including through periodic evaluation and changes in its AAP, where necessary, to obtain the maximum effectiveness toward the attainment of its goals. Goals are to be *expressed* as a percentage of all apprenticeship applicants either (1) to be recruited and admitted into a pool of eligible candidates from which selections will be made; or (2) to be actually selected from among all eligible candidates.

4. Selection procedures

In addition to the development of a written AAP to ensure that minorities and women have equal opportunity in apprenticeship, the § 30 regulations require that each sponsor set forth in its AAP the method that it will use for selecting apprentices. Specifically, Section 30.5 of the § 30 regulations requires that each sponsor select one of four approved methods of selection. These are: (1) selection on the basis of rank from a pool of eligible applicants; (2) random selection from a pool of eligible applicants; (3) selection from a pool of current employees; and (4) alternative selection method approved by DOL. For more on selection procedures, see Section 30.5 of the § 30 regulations.

5. Self-analysis and recordkeeping

Section 30.8 of the § 30 regulations requires sponsors to review the effectiveness of their AAP annually and update them when necessary. As part of this review, sponsors are expected to assess their outreach and recruitment efforts as well as their established goals. Where deficiencies exist, sponsors are expected to revise their AAP accordingly. In addition, sponsors must retain a copy of its AAP, including all data and analyses, for 5 years. Such records must be made available upon request to OA and authorized representatives, including SAs.

6. Good faith efforts

As explained in the section above on the establishment of goals, sponsors are required to make good faith efforts in making their overall AAP work. Good faith efforts do not mean that a sponsor must attain its established goals within the timeframe allotted. Rather, such efforts should be judged on:

1. whether the sponsor is following its written AAP;
2. whether the sponsor is periodically evaluating the overall effectiveness of its AAP and updating it at least annually as required by 29 CFR § 30.8(b);
3. whether the sponsor has identified and engaged in adequate outreach and positive recruitment efforts; and
4. whether the sponsor modifies such outreach and recruitment efforts as needed.

ACTION: The OA staff should familiarize themselves with this Circular.

If you have any questions regarding this circular please contact the Chief, Division of Standards and National Industry Promotion (DSNIP), at 202-693-3813.

NOTE: This circular is being sent via electronic mail.