

FACT SHEET

Ensuring All Have Access to Apprenticeship, A Proven Path to the Middle class

Notice of Proposed Rulemaking to help employers and sponsors grow and diversify their apprenticeship programs
(Apprenticeship Equal Employment Opportunity NPRM, 29 CFR Part 30)

Background

Apprenticeships are an important part of growing our economy and provide opportunity for workers and businesses alike. In this job training model, workers learn skills on the job while earning wages. Businesses can develop top-notch, state-of-the-art workforces to stay competitive, while apprentices benefit from hands-on career training, national industry certifications, or even associate's or bachelor's degrees. Apprenticeships provide a great return on investment for our economy, as workers who complete apprenticeships earn thousands of dollars more per year and hundreds of thousands more over their careers than similar workers who do not participate in registered apprenticeships. Employers who sponsor apprenticeship programs report higher productivity and retention rates. As labor-management partnerships have long recognized, apprenticeship is also one of the linchpins of a reformed workforce system that is more job-driven and more responsive to employers' needs than ever before.

The Administration is working to double the number of apprentices in the United States and ensure that more Americans from all backgrounds can benefit from this proven training model. As part of this effort, we are updating and simplifying the guidelines for employers and other apprenticeship sponsors on how to use best practices to ensure equal employment opportunity in apprenticeship programs for traditionally under-represented groups, including women, minorities, and people with disabilities. These rules have not been updated since 1978. Modernizing and streamlining the rules will make it easier for employers and apprenticeship sponsors to effectively grow and diversify their apprenticeship programs. These rules are a tool to help programs reach a larger and more diverse pool of applicants, thereby broadening participation in apprenticeships and improving the quality of programs.

The updated rules are designed to help employers and apprenticeship sponsors access all of the nation's talent. Women, for example, make up nearly one-half of the American workforce, but only 6 percent of apprentices, meaning employers are missing out on a large source of talent. Minorities are also under-represented in many industries compared to their share of the talent pool. For instance, the portion of apprenticeships in manufacturing and transportation held by Hispanics are about half of their rate in the industry's overall workforce. The new rules are designed to help employers and apprenticeship sponsors adopt best practices to access more of America's talent, to ensure that we tap into our nation's full potential.

What's New in the Apprenticeship Equal Employment Opportunity Proposal

Ensuring a workplace free from discrimination and taking affirmative steps to support diversity by reaching a broader pool of applicants has long been a responsibility of apprenticeship sponsors and employers. The first updates to these regulations in nearly 40 years will clarify these responsibilities and provide employers and other apprenticeship sponsors with greater flexibility in meeting these responsibilities.

The NPRM would improve on the existing regulations by:

- Extending protections against discrimination to include a broader swath of America's workforce, including protections based on disability, age (40 or older), sexual orientation, and genetic information.
- Simplifying and clarifying the affirmative steps employers and sponsors must take to ensure equal opportunity in apprenticeship.
- Providing new apprenticeship programs with more time to develop initial affirmative action programs, as well as providing all apprenticeship programs that meet their responsibilities under the rule with additional flexibility in how often they must update their plans.
- Simplifying and clearly defining the process for analyzing the talent available in the labor market to establish clear and achievable goals for diversity in apprenticeship.
- Clarifying the outreach, recruitment, and retention activities expected of employers by specifying four specific and common-sense required activities, such as advertising openings and partnering with educational institutions to recruit diverse talent.
- Creating a more flexible framework for the Office of Apprenticeship and States to provide technical assistance and work with apprenticeship programs that are not meeting their affirmative action responsibilities in order to bring them back into compliance.

How to Comment

The Department encourages interested parties to submit comments on the Notice of Proposed Rulemaking (NPRM). The full text of the NPRM and other information can be found on the Office of Apprenticeship's Proposed Rule website. Comments can be submitted on regulations.gov or by mail. The deadline to submit comments is January 5, 2016.

Detailed Summary of the Apprenticeship Equal Employment Opportunity Proposed Rule

The Department of Labor's Employment and Training Administration (ETA) administers registered apprenticeships under the National Apprenticeship Act of 1937. The existing equal employment opportunity (EEO) regulations for apprenticeships have not been updated since 1978. Updating, modernizing, and streamlining the rules will not only help employers to attract a large and more diverse applicant pool, but will also make it easier for sponsors to comply with the rules and will bring the rule in accord with the current landscape of civil rights statutes and developing case law. The existing regulations require registered apprenticeship program sponsors to provide equal opportunity for participation in their programs and to protect apprentices and applicants for apprenticeship from discrimination based on race, color, religion, national origin, and sex. The regulations also require that sponsors of registered apprenticeship programs take affirmative action to provide equal opportunity. The following is a summary of the existing rule and the changes proposed in the NPRM.

- **Nondiscrimination**

- The existing rule prohibits discrimination in the recruitment, selection, employment and training of apprentices on the basis of race, color, religion, national origin, and sex.
- The proposed rule would add disability, age (40 or older), sexual orientation, and genetic information to protected groups for nondiscrimination purposes, and clarify that sex discrimination includes discrimination on the bases of pregnancy and gender identity.

- **Affirmative Steps to Ensure Equal Employment Opportunity**

- The existing rule establishes that program sponsors have a general duty in operating their Registered Apprenticeship program to engage in affirmative steps to ensure equal opportunity. However, the existing regulation does not make explicit how companies can comply with this obligation.
- The proposed rule will clarify what sponsors must do by setting forth the basic steps that all Registered Apprenticeship programs must undertake. These affirmative steps include:
 - Assigning responsibility to an individual to oversee EEO efforts;
 - Internally distributing the EEO policy as well as conducting orientation and information sessions for apprentices regarding the EEO policy;
 - Conducting outreach and recruitment and providing notice about apprenticeship openings to community-based organizations, schools, and other groups that represent diverse populations and who can help increase apprenticeship applications from those populations; and
 - Keeping the workplace free from harassment, intimidation, and retaliation, and having procedures for handling and resolving complaints.

- **Written Affirmative Action Program**

- The existing rule requires sponsors with five or more apprentices to establish an Affirmative Action Program (AAP) at the time their apprenticeship program is registered (either with OA or a recognized State Apprenticeship Agency). The

AAP includes a written plan that details the steps the sponsor has taken and will take to ensure equal opportunity in recruitment, selection, employment, and training of apprentices.

- The proposed rule would allow new program sponsors more time to establish initial AAPs. New program sponsors that hire five or more apprentices will have up to one year to prepare and submit an initial written affirmative action plan to OA or a recognized state apprenticeship agency. This will give sponsors ample time for preparation and approval of their first plan under these proposed regulations.
 - The proposed rule exempts sponsors who are already in compliance with other equal opportunity programs on the bases of race, ethnicity, sex, and disability, such as federal contractors that have written AAPs developed in accordance with Executive Order 11246 and Section 503 of the Rehabilitation Act, administered by the Department's Office of Federal Contract Compliance Programs (OFCCP).
 - The existing rule requires that sponsors internally review and update their AAPs on an annual basis. The proposed rule would allow further flexibility in permitting sponsors whose AAPs are in full compliance to wait two years for the next internal review and update of their written AAPs. The proposed rule also clarifies that plan sponsors need only submit their written AAPs to OA or the state apprenticeship agency for review upon request, typically at the time of a compliance review.
- **Analysis of Apprenticeship Programs' Composition by Race, Ethnicity, and Sex**
 - Under the existing regulations, non-exempt sponsors must analyze the racial, sex, and ethnic composition of their apprenticeship workforce and compare that to the composition of qualified individuals in the relevant labor market. If the portion of women or minorities is less among the sponsor's apprentices than is reasonably expected given the availability of those individuals in the labor market, then the sponsor must set goals and undertake targeted outreach and recruitment efforts to increase participation of minorities and/or women.
 - The proposed rule explains that these goals are not rigid and inflexible quotas which must be met; do not allow preferential selection on the basis of race, sex, or ethnicity; do not create "set-asides" for specific groups; and cannot be used to supersede eligibility requirements.
 - The proposed rule would simplify the process for analyzing the labor market composition by decreasing the number of data sources sponsors must analyze, clarifying the steps required to do the analysis, and providing clear directions for establishing goals.
 - **Expansion to Individuals with Disabilities**
 - The existing regulations do not include nondiscrimination and affirmative action requirements on the basis of disability.
 - The proposed rule would add disability to the bases protected by the nondiscrimination requirement. It would also add disability as an element of sponsors' affirmative action programs. Rather than each program conducting an availability analysis specific to its labor market, the proposal would establish a single, national goal that 7 percent of programs' apprentices be individuals with disabilities. This approach is based upon available labor market demographic data

and is consistent with OFCCP's revised Section 503 regulations that, among other things, established a nationwide 7 percent goal for the utilization of qualified individuals with disabilities by federal contractors.

- As with race/sex goals, this proposed rule clarifies that the seven percent goal is not a quota, and sponsors will not be cited for violations simply for failing to meet the goal. Rather, sponsors that do not meet the goal would be required to examine if impediments to equal opportunity exist, and if so, to correct those impediments.
- To provide sponsors with necessary information on applicants' and apprentices' disability status, under the proposed rule sponsors would invite individuals to voluntarily self-identify as an individual with a disability.

- **Outreach and Recruitment**

- Sponsors must participate in outreach and recruitment activities. The existing rule sets forth 10 kinds of outreach, recruitment, and retention activities but does not specify which are required. The proposed rule would specify four kinds of required and common-sense activities. These activities are:
 - Distributing information to community-based organizations, local high schools, local community colleges, local vocational, career and technical schools, career centers at minority serving institutions, and other groups;
 - Advertising openings by publishing advertisements in newspapers, electronic media, and other forms;
 - Cooperating with local school boards and vocational education systems to develop relationships with pre-apprenticeship programs in order to prepare students from under-represented groups to meet apprenticeship entry standards; and
 - Establishing agreements to enlist the support of pre-apprenticeship programs, community-based organizations, and advocacy organizations in recruiting qualified individuals and in developing pre-apprenticeship programs.

- **Selection of Apprentices**

- The existing rule sets forth four detailed mechanisms by which sponsors may select apprentices into their programs.
- The proposed rule provides much greater flexibility, providing that sponsors may use any method to select apprentices so long as that method complies with long-established Uniform Guidelines on Employee Selection Procedures and the Americans with Disabilities Act, is uniformly and consistently applied, and is not discriminatory.

- **Complaint Procedure**

- The existing regulations provide that applicants or apprentices may file a written complaint with OA or the State Apprenticeship Agency alleging discrimination or a failure to comply with other equal opportunity provisions.
- The proposed rule would clarify the complaint procedures both for individuals to file EEO complaints and for OA and State Apprenticeship to handle these complaints.

- **Measures for Noncompliance**
 - OA recognizes the voluntary nature of these programs and wants registered apprenticeships to succeed. It uses compliance enforcement measures as a last resort after exhausting other avenues.
 - The existing regulations' measures for noncompliance include cancellation or deregistration of an apprenticeship program.
 - The proposed rule provides more flexible enforcement mechanisms. Rather than having the only enforcement mechanisms be deregistration or cancellation of a program, which essentially would shut down the apprenticeship program, this proposal would allow the placement of a temporary moratorium on a sponsor's registration of new apprentices until the program sponsor has addressed the violations or has met the steps identified in its compliance action plan.