National Center for Women's Equity in Apprenticeship and Employment

EEO TOOLKIT FOR

REGISTERED APPRENTICESHIP PROGRAMS

EFFECTIVE IMPLEMENTATION OF THE REQUIREMENTS FOR EQUAL EMPLOYMENT OPPORTUNITY IN APPRENTICESHIP

INTRODUCTION

The **National Center for Women's Equity in Apprenticeship and/Employment** created this **EEO Toolkit** to support Registered Apprenticeship Programs (RAPs) and other industry partners Equal Employment Opportunity in achieving diversity, equity, and inclusion throughout their apprenticeship programs and in implementing the U.S. Department of Labor (DOL) regulatory requirements for Equal Employment Opportunity (EEO). It is designed for you to use as you register and operate your programs and for that reason, it uses the second person to address *you*, the staff and leadership of RAPs.

Why should you be trying to build diversity, equity, and inclusion, anyway?

First, of course, it's the law. Complying with the DOL Apprenticeship EEO Regulations is required for all RAPs. If you do not follow them, your program is at risk of being de-registered – and losing the many benefits of registration, including lower Davis-Bacon rates, GI benefits, Workforce Innovation Opportunity Act (WIOA) funding, and nationally recognized certifications for your apprentices. (True, it's probably a low risk, but why put your program in jeopardy? And it's better to try to avoid the process of going through an audit and having to respond to findings, which can be a drain on resources.)

Second – and more important – diversity, equity, and inclusion are good for you as an employer (or for your participating employers), your apprentices, and the U.S. economy as a whole.

⚛ *Good for you/your employers.* Increased diversity is good for the bottom line in several ways. For one thing, if you or your employers are government contractors, meeting EEO goals can prevent having to pay economic penalties. More broadly, a larger and more diverse talent pool increases the quality of a workforce. Diversity adds value by fostering team creativity, improving individual and collective performance and effort. Diversity also can increase employee retention and thus the return on sponsors' recruitment and training investments. Apprenticeship is a proven method for building the skilled and diverse workforce that companies need to compete in the global economy. Those companies that adapt and embrace diversity and inclusion in apprenticeship are best able to attract top candidates and compete in the marketplace.

RESOURCES

Studies confirming benefits of increased employee diversity:

A **2015 McKinsey study** found that companies in the top quartile of racial/ethnic diversity were 35% more likely to have financial returns above their national industry median. Those in the top quartile for gender diversity were 15% more likely.

A **2016 Peterson Institute for International Economics analysis** of almost 22,000 companies worldwide found that an increase from zero to 30 percent women in leadership positions increased a typical firm's profitability by 15%.

A **2015 Deloitte study** found that the talent-management strategies that correlated with the highest positive impact on business performance were embedding inclusion and diversity into hiring, performance management, succession management, leadership development, and learning; specifically measuring diversity; and holding leaders accountable for inclusive behaviors and diversity results.

A **2016 Harvard Business Review** article summarized the body of research finding that non-homogenous teams are simply smarter.

❀ *Good for your apprentices.* As the gateway to higher-paying, more highly skilled occupations with greater potential for advancement, apprenticeship has an outsized impact on the employment, and ultimately the standard of living, of disadvantaged groups such as women, people of color, and individuals with disabilities (IWDs). Indeed, as DOL has found, "[e]education and training investments for … underrepresented groups can result in lifetime earnings benefits." Efforts to achieve equity, diversity, and inclusion in apprenticeship address the discrimination and other significant barriers that have led, for women and specific minority groups, to lower enrollment rates in registered apprenticeships than would be expected based on labor market data; greater concentration in apprenticeships for lower-paying occupations; and lower rates of completing apprenticeships [DOL found that apprenticeship participants see average lifetime earnings benefits of nearly $100,000, and for those completing apprenticeships, there are average lifetime earnings benefits of over $240,000 compared to similar individuals who do not enter an apprenticeship. Construction, the largest represented industry sector in the National Registered Apprenticeship System, offers a higher median wage than many traditionally female-dominated jobs and many other jobs that do not require a college education for advancement, thus providing opportunity to move out of poverty or working poor status…. [I]ndividuals that participated in an apprenticeship program are 8.6 percent more likely to be employed both six and nine years after participation. **Preamble to the DOL final Apprenticeship EEO rule** ("Final Rule Preamble"), 81 FR 92026, 92086 (footnotes omitted)].

❀ *Good for the U.S. labor force and economy*. When, through an equitable and diverse apprenticeship system, employers draw talent from the entire American workforce without discrimination, they tap into our nation's full potential. This not only makes individual companies more competitive, but our entire economy becomes more competitive globally. And when more Americans have access to the good jobs and careers with living wages that apprenticeships offer, it not only improves their individual economic status but also benefits the economy as a whole, reducing unemployment, expenditures on social-security disability benefits, and economic inequality in general [DOL has estimated that, if the aspirational goal that 7% of apprentices be IWDs in the Apprenticeship EEO Regulations were met, more than 9,200 additional individuals with disabilities would be enrolled in apprenticeship over a 10-year period (2017-2026) who would not otherwise be. **Final Rule Preamble**, 81 *FR* at p. 92086].

Finally – and if ethics and morals are the foundations of a healthy society, this may be the most important reason – striving for diversity, equity, and inclusion is a way to combat the institutionalized racism and sexism that pervades so many occupations and indeed, that pervades American society as a whole. The apprenticeship system – employers, trade unions, apprenticeship sponsors, educational systems, government agencies, and their hiring and other employment practices and the way they structure work and the workforce – have long been part of the institutionalization of racism and sexism. It is time to stop being part of the problem and start being part of the solution.

That's why *your* efforts – the efforts of the leadership of apprenticeship programs across the country – are so important. By redoubling your commitment to equal opportunity, you can be part of the leading edge of solving these problems. We know that with your commitment, change can happen; but without it, change is impossible.

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The purpose of this Toolkit is to make it easy for you to build equity and diversity in your program. It addresses what you need to do to implement the EEO regulations and, beyond that, what you can do to boost the effectiveness of your diversity efforts. It breaks what you need to do to achieve both goals down into what we hope are easy-to-follow steps. The steps are accompanied by links to *Resources* you can use as you follow the steps.

✣ The *Step-by-Step Guide* is organized according to the Office of Apprenticeship (OA) EEO regulations, which are published in part 30 of title 29 of the Code of Federal Regulations (29 CFR part 30). It describes, first, what those regulations require *all* RAPs to do (in Sections II and III), and second, what the regulations require RAPs that have five or more apprentices to do – including the steps for building and implementing the Affirmative Action Plans that are so crucial to achieving diversity, equity, and inclusion (this is covered in Section IV).

   (The regulations at 29 CFR part 30 apply to you if you are registered with OA. If you are registered with a State Apprenticeship Agency (SAA), you must follow state regulations, instead of the federal ones. But the state regulations are required to conform to OA's regulations. For that reason, the steps outlined in this Toolkit should, in general, be helpful to you as well. Consult your SAA to find out if there are any differences between the state and federal regulations that you need to know about.) [Find your SAA at **https://www.doleta.gov/oa/stateagencies.cfm**]

   ✓ *The steps required to comply with the regulations are designated with checkmarks.*

   Simply following the EEO regulations may keep you out of trouble with your Registration Agency. But it is not usually enough to truly achieve equity, diversity, and inclusion. For that reason, the Toolkit also contains Best Practices and *"Focus"* sections that include steps to take to maximize the effectiveness of your efforts.

   ➢ *The best-practices steps are designated with arrows.*

✣ The *Resources* provided are of various types. Some resources are links or citations to materials referred to in the *Step-by–Step Guide*, in case you want to read a reference in the original or show a colleague why you have to undertake a particular step. Some resources are provided for you to use *as* you implement a step – for example, OA's video that you can show as part of your anti-harassment training, a tip sheet on preventing workplace harassment that you can give to your apprentices and the journeyworkers who work with them, or OA's Equal Opportunity Pledge and Complaints Information poster template that you can customize and post. Other resources are provided to lead you to other information you may need, like the link to the list of SAAs above. Some resources are "tools you can use" such as online calculators, checklists, and assessment surveys. Some resources provide the reasons behind a regulation or suggestion. Some just lead to more information on a topic, for those (gluttons for punishment?) who are interested in reading more.

   One resource you might want to consult as you begin using this Toolkit is the Center's Registered Apprenticeship Equity Survey. The Center created this Survey to help RAPs assess gender equity in their programs and establish best practices for achieving diversity and inclusion. The survey contains searching questions about RAPs' outreach and recruitment practices; application, assessment, and selection procedures; and practices that affect retention. These questions are designed to jump-start your thinking about the impact of your practices on opportunities for women, people of color, and individuals with disabilities and what you can do to maximize those opportunities.

We have tried to make sure that all these *Resources* provide accurate information. *Resources are listed for information purposes only. Neither CWIT nor the Center endorses any resource or product (other than our own resources/products) mentioned in this Toolkit.*

We are providing these *Resources* in the hope that they will make your work easier. We welcome suggestions for additional resources that you would find helpful.

Finally, we provide Appendices at the end of the Toolkit that spell out the acronyms and abbreviations and define the terms we use.

> ### THIS TOOLKIT IS DESIGNED FOR YOU TO USE.
>
> And if you like, we can help you! Chicago Women in Trades' **National Center for Women's Equity in Apprenticeship and Employment** offers support through customized technical assistance, resources, and materials. To learn more about how the National Center *or* one of our subject-matter expert partners in your region can support you as you implement the Toolkit or more generally in your diversity and inclusion efforts, please contact us at **womensequitycenter@cwit.org**.

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STEP-BY-STEP GUIDE AND RESOURCES

SECTION I: **OVERVIEW OF THE EEO REGULATIONS**

OA published a final rule revising the EEO regulations on December 19, 2016, with an effective date of January 18, 2017. OA's EEO regulations had not been updated since they were originally issued in 1978. The requirements of the revised regulations phased in over a two-year period [The full final rule, including a long Preamble explaining the changes and the reasons for them, is at **volume 81 of the Federal Register, page 92026**].

Adhering to these regulations is not just a matter of having an EEO policy. An EEO policy is a required step, but it is not enough: the regulations require RAPs to do some specific additional things. Many of the requirements in these regulations are *in addition to* requirements that you may have to follow under other equal opportunity laws (such as Title VII or WIOA).

A. Purpose of the Revised Regulations

OA updated its EEO regulations to reflect the workplace of the 21st century and the need for businesses to access all of the nation's talent, to align the rules with current legal approaches for increasing diversity and protecting against discrimination, and to make compliance easier for RAPs.

The purposes of the regulations are two-fold:

- First, to open more doors to apprenticeship for all workers, including women, people of color, and individuals with disabilities – to, as OA said in its preamble, "[b]uild[ ] a sustained effort to ensure that the benefits apprenticeship programs provide are broadly available to all" and "help improve the experience of all individuals while in the program."

    OA recognized that this is necessary because "[t]he history, demographic patterns, and documented experiences in apprenticeships of members of certain underrepresented groups demonstrate the continuing obstacles to the full participation of these groups in Registered Apprenticeship Programs."

- And second, "to help employers and apprenticeship sponsors access more of America's talent, and to ensure that we tap into our nation's full potential."

    Again, OA recognized that this is necessary because "[w]omen ... make up nearly one-half of the American workforce, but less than ten percent of all registered apprentices, meaning many 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, while Hispanics make up approximately one sixth of the labor force, they account for less than one tenth of apprenticeship enrollments in industries such as manufacturing, utilities, and transportation."

B. Significant Changes from the Previous Regulations

1. Expanded Bases of Prohibited Discrimination

The previous regulations prohibited discrimination on the basis of race, color, religion, national origin, and sex. The updated rule adds four protected characteristics: disability, age, sexual orientation, and genetic information.

2. New Requirements for All RAPs

The updated rule eliminates the previous requirement that RAPs that have five or more apprentices use one of four specified selection procedures. Instead, *all* RAPs must avoid discrimination in selecting apprentices, including making sure that their selection criteria and practices do not have a disparate impact based on race, sex, national origin, or disability.

Also, the regulations now require *all* RAPs, regardless of the number of apprentices they have, to:

⚘ Identify and empower an individual with responsibility for EEO.

⚘ Post their equal opportunity pledge and EEO complaints information.

⚘ Reach out and recruit.

⚘ Conduct EEO information sessions and anti-harassment training.

⚘ Keep records.

3. Affirmative Action Programs

The regulations require RAPs that have 5 or more apprentices to develop AAPs. There were a number of changes to the requirements for these programs:

⚘ Under the previous regulations, RAPs had to analyze their apprentice workforces by sex and minority status – that is, all minorities were lumped together. Now, these analyses must be performed for *each* Census-defined race (white, African American, Asian, American Indian/Native American, and Native Hawaiian/Pacific Islander) and ethnicity (Hispanic/non-Hispanic), as well as by sex.

⚘ RAPs must measure the availability of individuals in each of these categories by their proportion among all the individuals in their recruitment areas who meet the basic eligibility requirements for their apprenticeship program. And these proportions must be based on actual data – the most current and discrete statistical information available.

⚘ For the first time, RAPs must invite all applicants to their programs and their apprentices identify whether they are an IWD. Using this information, they must also determine whether at least 7% of their apprentice workforce are IWDs, and if not, take steps to eliminate barriers for IWDs.

⚘ RAPs have two years from the date they register with OA (or an SAA) to develop their AAPs. Moreover, they are not required to analyze the availability of individuals eligible for their programs by sex, race, national origin, to determine if there is "underutilization" that their program has to address, or set goals if needed, without the assistance of OA or their SAA during an EEO compliance review.

The rest of this Toolkit describes how to implement these requirements -- and some of the most effective ways of doing so, drawn from the experience of CWIT and other tradeswomen's groups.

SECTION II: DISCRIMINATION IS PROHIBITED

Central to the Apprenticeship EEO Regulations is the prohibition on RAPs' discriminating in any apprenticeship-related activity against apprentices or applicants for apprenticeship. The regulations align OA's requirements for RAPs with other laws against employment discrimination that also apply to RAPs – primarily, Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act of 1990 (ADA), the Age Discrimination in Employment Act of 1967 (ADEA), and the Genetic Nondiscrimination Act of 2008 (GINA) – which are enforced and interpreted by the U.S. Equal Employment Opportunity Commission (EEOC). [The basic prohibition of discrimination is contained in 29 CFR § 30.3(a)(1).]

A. Avoid Discrimination Based on Any of the Protected Characteristics

"Discrimination" in employment, as defined in the Apprenticeship EEO Regulations (and the other employment discrimination laws), does not mean that there can be no differences in treatment among apprentices (or other employees). Difference in treatment is covered by these laws only if it is based on one of the protected characteristics: race, color, religion, national origin, sex, disability, age (40 or older), sexual orientation, and genetic information. [OA's **Protected Characteristics webpages** contain more information on each characteristic. The EEOC also has issued **guidances and Q&As** on each of the protected characteristics.]

There are some special aspects of each of these characteristics for you to be aware of:

1. **Sex.** Discrimination because of sex includes what we usually think of in this category – women and men being treated differently because of sex. Sex discrimination also includes discriminatory treatment based on pregnancy, childbirth and medical conditions related to pregnancy or childbirth; on sex-based stereotyping, including sex stereotypes about caregiver responsibilities; and on gender identity.

    i.   *Pregnancy.* The term "sex" is explicitly defined to include pregnancy, childbirth, and related medical conditions. Among other things, this means that RAPs must give pregnant employees light-duty reassignments (even if they normally only give light duty to apprentices who are injured on the job) if not doing so would impose significant burdens on pregnant apprentices without sufficiently strong justification. [**EEOC Q&As** on pregnancy discrimination]

    ii. *Sex stereotyping.* The Supreme Court has ruled that sex stereotyping is a form of sex <u>discrimination</u> under Title VII, and the EEOC has issued guidance explaining how sex stereotyping can include sex-based stereotypes about caregiver responsibilities – addressing typical experiences of women apprentices, who too frequently may find themselves facing less favorable scheduling or assignments based on assumptions of caregiving responsibilities outside of work and comments about the reliability of working mothers. [**EEOC guidance** on caregiving responsibilities]

    iii. *Gender identity.* The term "gender identity" refers to one's internal sense of one's own gender. Some people's gender identity is transgender, meaning having a male or female gender identity that is different from the gender assigned at birth. Others' gender identity is non-binary, meaning not fitting into rigid gender categories -- neither female nor male, but identifying with aspects of either or both genders or having an identity completely outside the binary.

The Supreme Court has ruled that discrimination against someone because of their gender identity (or status as a transgender person) is a form of sex discrimination. (This ruling is echoed in the Equal Opportunity Pledge that the Apprenticeship EEO Regulations require, which specifically includes gender identity discrimination as a form of sex discrimination.) The Court has also ruled that discrimination because of sexual orientation (gay, lesbian, bisexual, straight) is a prohibited form of sex.

In very limited circumstances, discrimination on the basis of sex is permissible – for jobs where sex is "a bona fide occupational qualification [BFOQ] reasonably necessary to [a program's] normal operation." For example, being female has been determined to be a BFOQ for the job of prison guard in some women's prisons.

2. **Race/color.** EEOC's Q&As on race and color discrimination explain that—

> Everyone is protected from race and color discrimination: Whites, Blacks, Asians, American Indians, Alaska Natives, Native Hawaiians, Pacific Islanders, persons of more than one race, and all other persons, whatever their race or color.

Color discrimination occurs when a person is discriminated against based on his/her skin pigmentation (lightness or darkness of the skin), complexion, shade, or tone. Color discrimination can occur between persons of different races or ethnicities, or even between persons of the same race or ethnicity. [EEOC Questions and Answers About Race and Color Discrimination in Employment: **www.eeoc.gov/policy/docs/qanda_race_color.html**.]

3. **National origin.** For purposes of discrimination law, national origin discrimination involves treating individuals differently because they are from a particular country or part of the world or because they are or appear to be of a certain ethnic background. This includes (but is not limited to) discrimination based on Census-defined ethnicity.

In addition, the concept of "national origin" can overlap with the concept of "race." Different treatment because an apprentice is, for example, "South Asian," would be considered both race-based and national origin-based treatment. [EEOC Q&As on national origin discrimination: **www.eeoc.gov/laws/guidance/national-origin-qa.cfm**]

4. **Religion.** Title VII and the Apprenticeship EEO Regulations prohibit RAPs from discriminating against individuals because of their religion (or lack of religious belief) in hiring, firing, or any other terms and conditions of employment. In addition, RAPs must reasonably accommodate the religious beliefs and practices

INTERSECTIONAL DISCRIMINATION

Discrimination on the basis of the "intersection" of protected characteristics – that is, on the basis of two or more protected characteristics combined—is also unlawful. Discrimination against African American women – because of their race and sex—is an unfortunately all-too-common example of such intersectional discrimination.

of apprentices and applicants, unless doing so would cause more than a minimal burden on a RAP's operation. A reasonable religious accommodation is an adjustment to the work environment or rules that allows the apprentice or applicant to practice their religion, such as flexible scheduling, voluntary shift substitutions or swaps, and exceptions to dress or grooming rules.

There are some circumstances in which religious discrimination *is* permitted. The primary one is that a religious organization may discriminate in favor of hiring only individuals whose beliefs and conduct are consistent with the employers' religious precepts – for example, a Baptist Church may hire only Baptists to teach in its Sunday school. Religious organizations are religious corporations, associations, educational institutions, and societies -- that is, entities that are organized for religious purposes and engage in activity consistent with, and in furtherance of, such purposes. If you are a religious organization or have religious objections to certain RAP policies and want to understand your obligations, OA or your SAA should be able to direct you to appropriate advice or resources. [Follow EEOC's "Best Practices for Eradicating Religious Discrimination in the Workplace": **www.eeoc.gov/policy/docs/best_practices_religion.html.**]

5. **Sexual orientation.** Sexual orientation refers to an individual's physical, romantic, and/or emotional attraction to people of the same and/or different gender. Examples of sexual orientations include straight (or heterosexual), lesbian, gay, and bisexual. [EEOC, **"Sexual Orientation and Gender Identity (SOGI) Discrimination".**]

6. **Disability.** As described on the EEOC's disability webpage [EEOC disability webpage: **EEOC Resources on the ADA** (contains user-friendly Q&As and fact sheets, extensive listing of resources (bottom of page)). **JAN's explanation of the definition of disability**] **–**

    Disability discrimination occurs when a RAP treats a qualified individual with a disability who is an apprentice or applicant unfavorably because she has a disability or a history of a disability (such as cancer that is controlled or in remission) or because she is believed to have a physical or mental impairment … (even if she does not have such an impairment).

The definition of "disability" comes directly from the ADA. [**The Job Accommodation Network** (JAN), a service provided by DOL's Office of Disability Employment Policy, provides free, expert, and confidential guidance on disability employment issues.] It means –

  * a physical or mental impairment that substantially limits one or more of an individual's *major life activities*;

  * a record of such an impairment; or

  * being regarded as having such an impairment.

"Major life activities" include caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working. Major life activities also include operation of major bodily functions, such as digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, normal cell-growth, immune-sys- tem, and reproductive functions.

There is no list of covered disabilities; whether a disability is covered depends on whether it meets these functional definitions. Thus, many conditions may be considered "disabilities" for this purpose. They include the ones we usually think of when we think of "handicap" or "disability," like blindness, deafness, loss of limb, cerebral palsy, birth defect, multiple sclerosis, intellectual disability (formerly called mental retardation). They also include diseases like cancer and diabetes, and emotional disabilities like obsessive-compulsive disorder, if they meet the definition – that is, if they are "impairments that substantially limit a major life activity." These disabilities are often called "hidden disabilities" because they are not obvious upon meeting someone.

To be protected under disability nondiscrimination laws, a person also needs to be "qualified" for the job. You do not have to admit applicants into your program or retain them as apprentices if they do not meet the basic requirements or cannot perform the essential functions of the job they are being trained for, whether or not they have a disability.

Also, you do not have to admit or retain apprentices if they pose a significant risk to the health or safety of others in the workplace that cannot be eliminated by reasonable accommodation (a "direct threat"). Having tested positive for, or showing symptoms of, COVID-19 or other illnesses caused by a pandemic virus is considered a direct threat [**EEOC Guidance on pandemics in the workplace and the ADA**].

A person with a disability *is* considered qualified if they can perform the job with some reasonable accommodation. And you must provide reasonable accommodation to an apprentice or applicant with a disability, unless doing so would modify core aspects of the job or cause you significant difficulty or expense [undue hardship] [**JAN Workplace Accommodation Toolkit**].

A reasonable accommodation is any change in the work environment (or in the way things are usually done) to help a person with a disability apply for a job, perform the duties of a job, or enjoy the benefits and privileges of employment. Reasonable accommodation might include , for example, providing portable lift equipment to help workers with medical conditions preventing them keeping their arms raised for long periods of time complete overhead tasks, or giving workers with diabetes a ten-minute break every two hours, instead the thirty-minute break every four hours that workers generally get, to allow them to eat or drink, test blood sugar levels, or take medications [**JAN's Searchable Online Accommodation Resource (SOAR) system**].

7. **Age (40 and older).** Age limits that exclude (or otherwise discriminate against) people age 40 or older are unlawful under the Apprenticeship EEO Regulations and the ADEA [**EEOC guidance on age discrimination**].

   Note that federal law does allow RAPs and employers to *favor* individuals who are 40 or over. So, a program that only hires people age 40 and older may be lawful, while a program that only hires people age 39 and younger would be unlawful. (Some states have laws that protect younger workers from age discrimination. In those states, a program that only hires people age 40 and older would *not* be lawful.)

8. **Genetic information.** The definition of "genetic information" includes information about an individual's or their family members' genetic tests and medical history. Discrimination against apprentices and

applicants for apprenticeship because of their genetic information are unlawful under the Apprenticeship EEO Regulations and GINA [**EEOC Q&As about GINA**].

Treating applicants or apprentices differently because of their protected status can happen at any point in an apprenticeship program or in any apprenticeship-related action. For that reason, you should guard against discrimination in all aspects of your program.

The following sections focus on some manifestations of discrimination that occur with some frequency in connection with particular aspects of apprenticeship programs – selection of applicants to admit to programs; apprentices' progression to completion and attainment of journey-level skills; harassment and hostile work environments; and provision of bathrooms and changing facilities.

B. *Focus:* Avoid Discriminatory Practices in Selection Procedures [**Quick Reference Guide: Selecting Apprentices for Registered Apprenticeship Programs**]

For purposes of ensuring equity, inclusion, and diversity, one of the single most important actions to focus on is included in the first item on the list immediately above: the *selection procedures* you use when you decide which applicants to accept into and then progress through and complete your program. Nondiscriminatory selection procedures are important because, of course, apprenticeship is the gateway to the trades and other well-paying, skilled careers – but first one must be selected to be an apprentice and complete the program.

Making sure that selection procedures – particularly the procedures for selecting applicants for *admission* into apprenticeship programs – are nondiscriminatory is also important to reverse an unfortunate history of discrimination. Selection procedures have too often been used as barriers that exclude women, people of color, and people with disabilities. Sometimes this has been intentional; other times, sponsors have not realized the discriminatory effect of the pro-

The Apprenticeship EEO Regulations specify the following actions in which discrimination is prohibited (29 CFR § 30.3(a)(1)):

- Recruitment, outreach, and selection procedures;

- Hiring and/or placement, upgrading, periodic advancement, promotion, demotion, transfer, layoff, termination, right of return from layoff, and rehiring;

- Rotation among work processes;

- Imposition of penalties or other disciplinary action;

- Rates of pay or any other form of compensation and changes in compensation;

- Conditions of work;

- Hours of work and hours of training provided;

- Job assignments;

- Leaves of absence, sick leave, or any other leave;

  and

- Any other benefit, term, condition, or privilege associated with apprenticeship.

Even if a term or condition of employment is not specifically stated in this list, the last item on this list functions as a "catch-all," covering any decision materially affecting the conditions of the apprenticeship.

cedures they have used. Indeed, discriminatory selection procedures continue to be used today in some programs, whether intentionally or unintentionally.

So how do you avoid discrimination – especially unintentional disparate-impact discrimination and selections based on implicit bias – when you select apprentices [**EEOC Guidance on Employment Tests and Selection Procedures**]? According to the applicable Apprenticeship EEO regulation, you may use any method to select apprentices, so long as that method meets all three of the following conditions (29 CFR § 30.10):

⚘ Is "facially neutral" in terms of race, color, religion, national origin, sex, sexual orientation, age (40 or older), genetic information, and disability;

⚘ Is applied to all applicants and apprentices uniformly and consistently; and

⚘ Does not have a disparate impact on a race, sex, or ethnic group or screen out or tend to screen out individuals with disabilities, unless it is job-related for the position in question and is consistent with business necessity.

For this purpose, the definition of "selection procedures" (29 CFR § 30.2.) is very broad. It covers everything connected with the decisions you make when you decide which applicants you will admit to your program as well as when you decide whether and when apprentices should progress through and complete your program, including the criteria for admissions, progression to each level, and completion; application forms; hiring or pre-employment tests; interview protocols; and scoring and ranking.

Here is more information on the three conditions that a selection method must meet in order to be considered non-discriminatory [Factors to consider to ensure that hiring tests are nondiscriminatory: **Clark-Hill Hiring Tests webinar**]:

1ST CONDITION: FACIAL NEUTRALITY. *Selection procedures must be* facially neutral *as to race, color, religion, national origin, sex, sexual orientation, age (40 or older), genetic information, and disability.*

Here, "facially" means "by its terms." A procedure that singles out or otherwise explicitly distinguishes a protected group is not facially neutral. For example, a company policy against hiring women who have children under school age distinguishes women *by its terms* – so it is not facially neutral. On the other hand, a requirement that apprentices "must have reliable transportation" is facially neutral.

Before Title VII was enacted in 1964, selection criteria that explicitly singled out protected groups were common. For example, most newspapers ran separate want-ads for men and women; "no colored need apply" signs abounded, especially in the South. Today, you may be more likely to find facial distinctions based on age ("seeking bright, young, go-getters"), disability ("must be able to access non-ADA compliant building"), or pregnancy (no or limited health insurance for pregnancy and childbirth).

2ND CONDITION: UNIFORM AND CONSISTENT USE. *Selection procedures must be* used uniformly and consistently *for all applicants and apprentices.*

For example, you cannot have a general requirement that applicants have a "clean" criminal record if you make exceptions for white applicants who have misdemeanor convictions but not for Black applicants who have such convictions. You cannot require women to demonstrate facility with certain tools if you do not require *all* applicants to demonstrate their facility.

3RD CONDITION: NO UNJUSTIFIED DISPARATE IMPACT. *Selection procedures* may have a disparate impact on the basis of race, sex, ethnicity, or disability if the procedures are justified by being job-related and consistent with business necessity [The third condition derives from Supreme Court precedent and a long-established joint regulation of DOL, EEOC, and the U.S. Department of Justice known as the **"Uniform Guidelines on Employee Selection"** (UGESP)].

A selection procedure (or other employment practice) may be facially neutral but have a "disparate impact" on one group of people who have a particular protected characteristic. A procedure has a disparate impact if it adversely affects one such group more than another. For example, a requirement that a prospective apprentice must be able to lift 50 pounds is facially neutral. But it likely has a disparate impact on women, who are statistically less likely to be able to meet the requirement, and on persons who are older and might have diminished strength. It might also tend to screen out IWDs.

If a selection procedure or device has a disparate impact on a protected group, it is considered discrimination unless it is related to apprentices' performance in the apprenticeship program ("job-related"); it is consistent with business necessity; and no alternative procedure for selecting apprentices, which has less of a disparate impact but still serves the sponsor's need of making sure only qualified individuals are admitted or completed, is available. Under UGESP, selection procedures – including eligibility criteria, tests, and interview scoring – are not considered related to apprentices' performance in the program unless they are validated as being correlated with apprentice success [**EEOC Q&As on UGESP**].

1. **Avoid Discriminatory Practices When You Select Applicants to Admit to Your Program**

   As you think about your selection process overall, consider the following questions (suggested by the Center on its Assessments webpage):

   - Are those involved in assessment and selection provided and trained on guidelines to assure objectivity, inclusiveness, and standardization and eliminate implicit bias?

   - Do any components of the selection process (e.g., requiring an intent-to-hire letter as a condition of entry into a RAP ("sponsorship") or a direct-entry program for veterans) disproportionately disadvantage applicants from a protected group?

   - What percentage of female applicants are successful in gaining acceptance to the apprenticeship program? African American applicants? Hispanic applicants? Do these percentages differ from general acceptance rates?

   - If the acceptance rate of one of the protected groups is significantly lower than that of whites or males, are all the elements of the selection process job-related and consistent with business necessity?

- Are there other selection processes that could be used that have less of a disparate impact?

- Is there a significant disparity between men and women's performance on tests, interviews, etc.? How about between the performance of whites and of any racial or ethnic group?

- If there is such a disparity, what evidence exists to support a correlation between apprentice success and initial test/interview scores?

Below are some common types of discrimination that could occur when you select apprentices for admission into your program and tips for avoiding them. Of course, this list is not exhaustive – it couldn't possibly be – but it can help you avoid some pitfalls and give you some ideas of things to think about. We will return to some of these elements when we discuss affirmative actions to take in outreach and recruitment, in later

Sections of this Toolkit [More ideas on nondiscriminatory processes for assessing and selecting apprentice candidates: **CWIT Equity Center webpage on Assessment**].

i. *Eligibility Criteria*

PITFALL: A hiring manager who waives eligibility criteria to be sure his relatives can get into the program – resulting in a disproportionate number of apprentices who are of the manager's race or ethnicity.

- **How to respond:** Be sure all your staff know that they must apply your eligibility criteria consistently to all applicants.

PITFALL: Outdated eligibility criteria that might have a disparate impact on women and IWDs but are no longer really necessary.

  Example: A RAP that trains warehouse stockers still requires participants to be able to meet weight-lifting requirements, even though shelf stocking and unloading are now done entirely via automation.

- **How to respond:** *Regularly review any eligibility criteria that might have a disparate impact to see if they really are related to the job and required by your business needs. Just because an eligibility criterion is in your Standards doesn't mean that it can't be changed.*

PITFALL: Overly broad exclusions of people with past criminal convictions that might have a disparate impact on people of color [**EEOC Enforcement Guidance on "Consideration of Arrest and Conviction Records in Employment Decisions"**].

  Example: A RAP that trainings heavy-equipment operators and laborers screens out applicants who have had any criminal convictions within the past 5 years, including misdemeanor drug convictions.

- **How to respond:**

  - Review any exclusions of people with past criminal convictions to ensure that they effectively link specific criminal conduct, and its dangers, with the risks inherent in the duties of the particular position(s) and the time elapsed since the criminal conduct occurred.

  A policy excluding people with prior drug convictions might be appropriate for the heavy-equipment operators program but not for the laborers program.

o   Provide an opportunity for an individualized assessment for people excluded by the screen to determine whether the policy as applied is job-related and consistent with business necessity.

PITFALL: A direct-entry program designed to target African Americans that has a disparate impact on Asians.

o   **How to respond:** *Combine the direct-entry mechanism with other selection mechanisms to result in a less homogenous apprenticeship pool.*

ii.   *Recruitment Area*

PITFALL: A limited definition of the internal recruitment pool.

Example: For its apprenticeship program open to a RAP's incumbent workforce, notices of openings in the program are only distributed to employees in its machine and welding shops, where the vast majority of the employees are male – resulting in a disproportionate number of apprentices who are men.

o   **How to respond:** *Distribute notices of all openings in the apprenticeship program to all departments in the company, including administrative/corporate support, sales, and purchasing.*

iii.   *Job Announcements*

PITFALL: A RAP's job announcements that recycle some explicit discriminatory language from old, outdated announcements.

Example: "Applications Being Accepted for Union Local #XYZ Carpentry Apprenticeship Program. Great Opportunity for Motivated Young Men."

IMAGES AND WORDS ARE POWERFUL

GENDER-SPECIFIC JOB TITLE	GENDER-NEUTRAL REPLACEMENT
Craftsman	Skilled Worker/Artisan
Fireman	Firefighter
Foreman	Supervisor/Manager
Man Hours	Work Hours
Manpower	Workers
Manning	Staffing
Salesman	Salesperson
Workmen's Compensation	Workers' Compensation

- o **How to respond:**

  - o Scrub your job announcements to remove explicit outdated stereotypes (like "young" and "men" in this example).

  - o Use gender-neutral job titles. While technically, gender-specific job titles – such as "lineman" and "foreman" – are allowed in advertisements if they are clearly used as terms of art rather than as means for deterring applicants on the basis of sex, avoiding them is a best practice if there is a gender-neutral alternative. And there is almost always a gender-neutral alternative.

PITFALL : Upper age limits on program eligibility.

- o **How to respond:** *Remove upper age limits from your job announcements (you may use lower ones).*

  - o *Permissible*: "Must be 16 or older when program begins"

  - o *Not permissible*: "Program open to 18–24-year-olds"

  Exception: In general, programs may have upper age limits if they receive funding under federal contracts or grants designed exclusively to provide employment for or encourage the employment of youth . An example might be out-of-school youth apprenticeships funded under WIOA.

  - ➢ Consult your Registration Agency or your program's attorney if you have questions about whether this exception applies to your program.

iv. *Application Forms*

PITFALL: Application forms that are not available in alternative formats such as Braille, large print, and electronically for an applicant with a visual impairment who asks for this as a reasonable accommodation.

- o **How to respond:** Make your application materials available electronically and screenreader-friendly [More info on screenreaders: **www.askjan.org**].

  Screenreader software is a form of assistive technology that reads a screen's display aloud to the user. It can be especially useful for people who have visual or motor impairments.

PITFALL: An application form that contains spaces for applicants to enter their age and any disability they have.

- o **How to respond:**

  #### You may not ask:

  - • *Specific disability* ("what is your disability?"). You may not ask individuals to identify their specific disability information on application forms. (But you may ask applicants' disability status -- that is, whether they self-identify as an IWD – if you are required to develop an AAP.)

Better not to ask:

- *Specific age/birthdate* ("what is your age?"). It does not technically violate the Apprenticeship EEO Regulations or ADEA to ask an apprentice's age. But doing so could open you up unnecessarily to suspicions of age discrimination and deter older individuals from applying. (There is an exception for certain programs that allows them to have an upper age limit.)

  Note: Once an apprentice is hired as an employee, they will need to disclose their birthdate on their Apprenticeship Agreement (Section II of the Employment and Training Administration (ETA) Form 671) and I-9 form and perhaps for insurance documentation.

You may ask:

- *Whether an applicant meets a minimum age* that is required by law or by the program.

You must ask *(if you have to develop an AAP)***:**

- *Disability* status ("do you self-identify as an IWD?"), using DOL's Voluntary Disability Disclosure form.

> **QUESTIONS ABOUT AGE**
>
> *Discouraged:*
>
> Age: ____ *or*
>
> Date of birth: _____
>
> *Preferred:*
>
> Are you 16 or older?
>
>   [ ] Yes [ ] No
>
>   *or*
>
> Will you be 16 years old or older on_____(the date the apprenticeship begins)?
>
>   [ ] Yes [ ] No

If you are asking for demographic purposes, you may also ask applicants to identify their race, sex, and national origin . In fact, the Apprenticeship EEO regulation on sponsor identification of record, 29 CFR § 30.12(b), *encourages* you to do this.

An applicant's self-identification is the preferred method for identifying a person's race, sex, and ethnicity.

BEST PRACTICE

> ➢ *If you do request race, sex, and ethnicity information on your application form, guard against discriminatory selection by using a mechanism such as "tear-off" sheets that allows you to separate this information from the information used to decide whether to admit the applicant to your program.*

v. *The Application Process*

PITFALL: A configuration of desks and tables that makes it impossible for program applicants in wheelchairs to take the performance tests that are part of the application process. An applicant who uses a wheelchair has asked for an accommodation [Job Accommodation Network **JAN accommodation search (SOAR)**].

- **How to respond:** *Install an adjustable workstation that elevates to permit a wheelchair to fit under it.*

Businesses accommodating people with disabilities may qualify for a disabled-access tax credit and/or a barrier-removal tax deduction [**IRS accessibility tax credit and deduction information**].

PITFALL: Inconsistently applied waivers.

Example: A sheetmetal-worker RAP's normal application and selection process is for applicants who meet its eligibility criteria (having a high school diploma or GED and reliable transportation) to take paper-and-pencil math and reading tests; the RAP selects from the pool of individuals who pass those tests in the order in which they applied. However, the RAP waives the paper-and-pencil test requirements for individuals based on a subjective evaluation of their "suitability" for the program. In practice, the tests are waived for a higher percentage of white and male applicants than of minority and female applicants, respectively. The (predictable) result? --the apprentice workforce is predominantly white and male.

- **How to respond:** *Stop the practice of waiving testing based on the subjective suitability judgment. Selection procedures must be applied uniformly and consistently. It is too easy to apply subjective criteria like this inconsistently, allowing unconscious bias to creep in.*

PITFALL: Application process information is spread only by word-of-mouth.

Example: A boilermaker RAP only publicizes openings in its apprenticeship program by word-of-mouth. Most of the people who initially hear about the openings are current union members (journeyworker and apprentices), who are predominantly white. Through word-of-mouth, current union members' relatives and friends become aware of the openings as well. The (again predictable) result? --most applicants are predominantly white, as is each new class of apprentices.

While word-of-mouth recruiting is facially neutral on the basis of race, sex, national origin, and the other protected characteristics, it appears in this case to have a disparate impact on non-whites, without being related to an individual's ability to perform successfully as an apprentice boilermaker.

- **How to respond:** *Publicize openings not just by word-of-mouth, but by posting notices online; sending notices to all potential sources of candidates; bulletin-board postings in neighborhoods where people of color live; and running Public Service Announcements or paid ads in media that are read by women and people of color.*

Note: The Apprenticeship EEO regulations (29 CFR § 30.3(b)(3)) require all sponsors to send notices of openings to recruitment sources that will generate referrals from all demographic groups within their recruitment areas, without regard to race, sex, ethnicity, or disability (see Section II-D(1)).

PITFALL: Key elements of the application process that take place only at locations that are difficult for protected populations to get to.

Example: Applications for an apprenticeship program are accepted only at union headquarters. The headquarters are located in a historically white neighborhood that still has a very small African American population and that was long viewed as racist and even dangerous for Blacks to set foot in. Today, this location may not be as objectively dangerous to African Americans, but making application to

the RAP contingent on an in-person visits there may well deter many African Americans from applying. Even if such deterrence is not intended, the requirement of physical appearance in this neighborhood sends a psychological signal that African Americans are not welcome in the program.

o **How to respond:** *Expand the ways in which applications may be delivered:*

   o Allow application drop-off at several locations around the city;

   o Allow applications to be submitted by U.S. mail; and

   o Go online with your application process.

   Caveat: If your application process is *only* online, it may have a disparate impact on people of color, women, and IWDs, who are more likely to be low-income and therefore less likely to have reliable Internet access, have electronic copies of their documents, or have experience uploading documents.

   BEST PRACTICE

   ➢ *Use multiple application-delivery methods (in-person, mail, and online) to minimize any disparate impact that any one of them might have.*

PITFALL: Applicant logs that do not contain consistent records for all applicants.

o **How to respond:** *Train everyone who is involved in selection to your program to use the applicant logs consistently. (Although applicant logs are not required, logs with applicants missing suggest that the missing applicants were treated differently.)*

vi. Oral Interviews

PITFALL: In-person interviews of applicants which may include questions that might be discriminatory – such as whether an applicant is pregnant or planning to become pregnant; applicants' genetic information; the nature or severity of applicants' disabilities; whether an applicant needs a reasonable accommodation to perform the job.

o **How to respond:** *Create a standardized list of questions to ask at oral interviews and train each staffer who conducts interviews on how to use it. This helps eliminate any implicit bias that might creep into some interviewers' questions or be offensive to some applicants.*

PITFALL: Varying criteria to score interview performance are used by the different individuals who interview different applicants. Because each of the interviewers has their own implicit biases, this results in inconsistent assessments of candidates.

o **How to respond:**

   o Develop a standard interview score sheet.

   o Ensure that the various individuals or teams who conduct interviews use this score sheet uniformly and consistently.

   o Train interviewers to recognize and combat their implicit biases.

   o Use panel interviews, so that no one individual's biases do not control the process.

PITFALL: Interviewees are rated on subjective criteria like "enthusiasm," "confidence," "firm handshake," and "makes eye contact" that are often evaluated differently for women or people of color or that have a disparate impact on women or people of color without necessarily being related to the job.

Examples:

o Women generally have – or are perceived to have – weaker handshakes than men. But a firm handshake has not, as a rule, been validated as related to the ability to perform many jobs. While a firm handshake may be necessary for a sales job, how is it related to being able to wire a light?

o People interviewing for jobs in which their population group is underrepresented may be, understandably, nervous and less likely to display traits associated with "confidence" or "enthusiasm." But they may be confident once they master basic job skills. Confidence and enthusiasm *at the job interview* have not, as a rule, been validated as related to the ability to perform many jobs.

o People from non-Western cultures may be trained that direct eye contact is rude – so their failure to make direct eye contact has nothing to do with their ability to actually perform the job.

o **How to respond:** *review the subjective criteria that you rely on in evaluating candidates and give critical consideration to whether they are actually job-related. If not, train interviewers not to use these criteria, and substitute criteria that are job-related.*

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QUESTIONS YOU MAY ASK IN JOB INTERVIEWS

• Whether an applicant can perform any or all job functions.

• Whether an applicant has tested positive for or has symptoms of COVID-19 or other disease caused by a pandemic virus.

• If you reasonably believe that an applicant will not be able to perform a job function because of a known disability without a reasonable accommodation, a description or demonstration of how the applicant would perform a job function or what accommodation they would need to do so (see EEOC Guidance on Pre-employment Disability-Related Questions).

• Whether an applicant meets a minimum age (< 40) that is required by law or by the program.

• If you qualify as a religious organization, what an applicant's religion is or whether they adhere to your religious precepts.

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vii. Testing, Scoring, and Ranking

PITFALL: Inconsistent application of admissions requirements (such as physical tests).

Example: As part of its pre-employment testing, a RAP for plumbers requires applicants to lift a 75-pound weight up to shelf that is 5 feet high. But because they assume that men will be able to meet the requirement easily, the people administering the test ask only women applicants to demonstrate this ability.

- **How to respond:**

  - Watch out for assumptions – that's how discriminatory stereotyping or implicit bias creeps in. Make sure your staff know that they have to use the same tests (and scoring mechanisms) for all.

  - If possible, in the context of the qualifications you are seeking, consider using blind auditioning as part of your selection procedure. In blind auditioning , employers administer skills tests "blind-ly" – that is, without knowing the sex, race, ethnicity, and other demographic characteristics of the applicants. [Background on blind auditioning: **Business Insider, "Why Companies Are Using 'Blind Auditions' to Hire Top Talent,"** (2015). Note: there is software that strips job applications of identifying information that can reveal sex, race, ethnicity, or age (like name, graduation year, and address), and has job seekers anonymously solve skills-based challenges that show whether they are qualified to do the job they're applying for.]

PITFALL: A screening test that has disparate impact.

> **Example:** A ship fitter RAP uses a written "personality inventory test" to screen applicants. But the test has a clear-cut disparate impact on Asian Americans: 60% of white applicants, but only 30% of Asian American applicants, get satisfactory scores on it. The RAP never had this test validated to confirm that satisfactory scores on it are related to successful performance as a ship fitter apprentice.

- **How to respond:**

  - Have the test validated; [Dozens if not hundreds of companies offer and validate pre-employment tests. Here are samples: **Criteria Pre-Employment Testing** and **"Information to Consider When Creating or Purchasing an Employment Test"** (Society for Industrial and Organizational Psychology)]

    or

  - Stop using the unvalidated test and instead use one that is validated for job-relatedness.

PITFALL: Selection procedure based strictly on rank order of test scores.

> **Example:** A RAP that trains machine-tool maintenance mechanics selects applicants on the basis of their test scores' rank order on an online pre-hire test for industrial machinery mechanics. The test, which was validated, measures cognitive ability, including analytical thinking, attention to detail, and mechanical aptitude; behavioral history, including performance and tenure; and personality, including adaptability, drive, integrity, and teamwork. After several cycles, the RAP sees that although most fe-male applicants receive satisfactory scores on the test, they tend not to be among the *highest*-ranked scorers. The result: while 50% percent of male applicants are admitted into the program, only 30% of female applicants are. This constitutes disparate impact.

- **How to respond:** *While the pre-hire test has been validated – meaning that a satisfactory score on the test is validly related to job performance -- the RAP's practice of selecting the top scorers has not.*

  - Determine whether it is job related and consistent with business necessity to choose the top scor-ers. If not, you can simply choose applicants randomly from the pool of those who earn satisfactory scores on the test, rather than in rank order.

o   Or supplement your selection process by awarding points or providing direct entry to graduates of pre-apprenticeship programs that serve women and people of color.

o   Even if choosing the top scorers is job related and consistent with business necessity, consider whether choosing them randomly from the satisfactory scorers serves your needs just as well. If so, substitute that selection procedure, which has a less discriminatory impact.

2. **Avoid Discriminatory Practices as Apprentices Progress to Completion and Attain Journey Level**

Decisions about apprentices are made throughout apprenticeship programs. These include decisions about which apprentices to select:

- To progress or be promoted from one level of the program to the next;

- For acceleration or delay of progress through the program;

- To award interim credentials to;

- To discipline or, in extreme cases, to terminate from the program; and

- To approve for completion of the program and promotion to journey level.

Several of the methods that are used for selecting apprentices to admit to programs are used for making these selection decisions as well. For example, RAPs rely on the assessments of journeyworkers who supervise apprentices' progress on the job. They use formal proficiency assessments, including manual performance tests, paper-and-pencil tests, and work observations to evaluate apprentices' skills acquisition and knowledge gained in related instruction. They may also use drug tests to assess apprentices' continuing compliance with program rules.

Like selection procedures used at initial admission into a RAP, procedures used for selections as apprentices progress through and complete the program must –

- Be "facially neutral" in terms of race, color, religion, national origin, sex, sexual orientation, age (40 or older), genetic information, and disability;

- Be applied to all applicants and apprentices uniformly and consistently; and

- Not have a disparate impact on a race, sex, or ethnic group or screen out or tend to screen out individuals with disabilities, unless they are job-related for the position in question and are consistent with business necessity.

So be sure to:

✓   Apply the criteria or qualifications for determining eligibility for progression or completion (e.g., hours of related instruction completed) uniformly to every apprentice [Resources to help identify and interrupt bias in performance evaluations: WorkLifeLaw, **Bias Interrupters: Tools for Tech**; Association for Talent Development, **"How to Become a Bias Interrupter at Work"**].

✓   Train your evaluators not to – intentionally or otherwise – make women, people of color, and IWDs "prove it again" -- groups stereotyped as less competent often have to prove themselves over and over.

✓ If you use formal tests for progression to any level, use the same tests and standardized scoring mechanisms (scoring sheets, calculations, curves) for all.

✓ If you conduct oral assessments of performance for progression to any level, ask the same questions at all the assessments and use the same scoring criteria and calculations for all.

✓ Use formal tests and oral assessments that measure the skills and knowledge that apprentices need to have for successful performance at the next stage or as a journey-level worker.

✓ If your formal tests or oral assessments screen out a disproportionate number of women, minorities, or IWDs, use alternative tests or assessments that have less of a disparate impact but still measure the skills and knowledge you need to measure.

✓ If you administer drug tests, do so for all similarly situated apprentices and apply the results in the same way.

✓ Apply your disciplinary standards in the same way to all your apprentices. And if your disciplinary standards screen out a disproportionate number of women, minorities, or IWDs, make sure they are related to the requirements of the program.

➢ *Best practices for formally evaluating apprentices' performance as they progress through the program:*

➢ Conduct performance evaluations in a respectful environment where both the evaluator and employee can talk without interruption.

➢ When possible, get second opinions on performance evaluations.

➢ Make sure evaluations are done by individuals who have direct knowledge of apprentices' performance and reflect their actual experience.

➢ Share evaluations directly with apprentices so that they can attempt to make improvements and be sure that the information is specific enough that they know what to do to improve.

➢ Give a reasonable opportunity for behavior or skills to change.

➢ Do not avoid evaluating female apprentices or apprentices of color because you are reluctant to communicate problems.

C. *Focus*: Discrimination Involving Harassment and Hostile Work Environments

After selection procedures, perhaps the next most important aspect to focus on to foster equity, inclusion, and diversity is to prevent and eliminate harassment and hostile work environments. This is especially true for gender diversity, because harassment has too often been a major reason that women are deterred from applying for and remaining in apprenticeships. Harassment ranges from repeated microinequities, through humiliating sexist and racist remarks, through bullying, hazing, and intimidation, to targeted, malevolent, criminal rape and violence. Sexual harassment happens in all worksites but can be especially pervasive in a male-dominated environment.

Harassment violates EEO laws, including the Apprenticeship EEO Regulations , if it is unwelcome conduct and is based on one of the protected characteristics (sex, race, color, national origin, religion, age (40+), disability, sexual orientation, and genetic information). Two types of harassment are recognized [**EEOC guidance on unlawful harassment**.]**:**

• Where admission, promotion, or other apprenticeship-related benefit is denied because of an apprentice's refusal to comply with or endure the offensive conduct (often called *quid pro quo* harassment); and

• Where the conduct is so severe or pervasive that it creates a work environment that a reasonable person would consider intimidating, hostile, or abusive (often called hostile-environment harassment). A pattern of actions or words that make an apprentice or group of apprentices feel uncomfortable, belittled, offended, threatened, or intimidated can arise to a hostile work environment. So can offensive or crude language and disparaging comments, especially if they are based on sex, race, or other protected characteristic.

The Apprenticeship EEO regulations require RAPs to do two things specifically targeted at eliminating and preventing both types of harassment: to provide anti-harassment compliance training to apprentices and other individuals who work regularly with their apprentices; and to establish internal procedures for handling and resolving complaints about harassment and intimidation. We will return to the requirements for each of these, along with suggestions for boosting their effectiveness, when we discuss these sections of the applicable regulations.

To be really effective at eliminating and preventing harassment throughout your program, however, you need to foster an overall culture that is intolerant of harassment – indeed, of discrimination in general. The required anti-harassment training and complaints procedures are part of this culture, but only a part. Other ways to foster such a culture include:

➢ Adopt and communicate a strong, explicit anti-harassment policy; this can be folded into your broader EEO policy .

➢ Immediately remove any discriminatory graffiti, signs, or other material in your apprentices' workplaces and related-instruction sites (including bathrooms, changing rooms, and worker sheds or shanties).

➢ Respond to instances of harassment with swift, effective, and proportionate action.

➢ Make sure that every entity in your program that interacts with your apprentices – employers, unions, schools, CBOs – has a clear policy prohibiting harassment of your apprentices.

➤ Support anti-harassment policies with necessary personnel and resources.

and <u>MOST IMPORTANT</u> –

➤ Be sure your leaders do not engage in harassment themselves and model respectful behavior.

> *"The importance of leadership cannot be overstated – effective harassment prevention efforts, and workplace culture in which harassment is not tolerated, must start with and involve the highest level of management."* [Report of EEOC's SELECT TASK FORCE ON THE STUDY OF HARASSMENT IN THE WORKPLACE *(June 2016), (referred to in this Toolkit as "EEOC Harassment Study"), p. v.*]

D. *Focus*: Sex Discrimination Involving Bathrooms and Changing Facilities

Because questions on this topic often come up, here we include some information about what RAPs need to do to avoid sex <u>discrimination</u> with regard to restrooms, changing facilities, showers, and similar facilities.

The absence of readily accessible or sanitary restroom facilities is a major health concern for tradeswomen. Unclean facilities can result urinary tract infection (because women delay urinating rather than using such facilities) and communicable diseases. A related problem is insufficient bathroom breaks – some employers' way of dealing with workers' needs is to require them just to urinate off the back of the crane! [Findings of the report of the Occupational Safety and Health Administration's Health and Safety of Women in Construction (HASWIC) workgroup included: Temporary facilities on worksites were usually unisex, often without privacy; facilities were generally not well maintained; sometimes there were no sanitary facilities available for women to use at all. **"Women in the Construction Workplace: Providing Equitable Safety and Health Protection"** (1999)].

Courts have held an employer liable for sex <u>discrimination</u> for inadequate bathroom breaks and for failing to furnish adequate and sanitary facilities to female workers who had certain identifiable health risks. Moreover, the Occupational Safety and Health Administration (OSHA) "requires employers to provide accessible sanitary facilities for ALL personnel and to ensure that these facilities are maintained in an appropriately clean and sanitary condition." The OSHA standard also requires (at § 1926.51(f)(3)(ii)-(iv)) hand-washing facilities that have hot-and-cold or tepid running water, hand soap or similar cleansing agents, and "individual hand towels or sections thereof, of cloth or paper, air blowers or clean individual sections of continuous cloth toweling, convenient to the lavatories" *[OSHA regulatory interpretation of its Construction Sanitation Standard,* 29 CFR 1926.51*].*

Minimum required:

✓ Provide the same *access* to bathrooms and similar facilities to women as you do to men. Women should not have to leave the jobsite to go to the bathroom if men do not.

✓ Where you provide bathrooms or similar facilities, use separate or single-user facilities to assure privacy between the sexes (29 CFR § 30.3(b)(4)(ii)).

✓ Keep bathrooms clean, sanitary, and in good repair.

✓ Bathrooms must have sinks with running water that is at least tepid, cleansing agents, and conveniently located air blowers or individual hand towels.

✓ Give apprentices bathroom breaks that are frequent enough to prevent medical complications.

✓ If your bathrooms or similar facilities are not single user, allow apprentices to use the facilities that correspond to their gender identities.

Best practices—recommended by OSHA, the HASWIC report, and/or OFCCP:

✓ Provide gender-separate, enclosed, externally and internally locking sanitary and changing facilities.

✓ Provide keys for gender-appropriate facilities and maintain locks in working condition.

✓ Provide clean toilet paper within reach of the toilet,

✓ Locate hand-washing facilities separate from men's facilities if necessary to maintain safety.

✓ If the work is at night, maintain restroom facilities in an open, well illuminated area.

✓ Allow bathroom breaks *as needed*.

✓ Designate single-user restrooms and similar facilities as sex-neutral [**OFCCP Sex Discrimination Guidelines Appendix to Part 60-20**, §2].

SECTION III: **FIVE ACTIONS THAT ALL REGISTERED APPRENTICESHIP PROGRAMS HAVE TO TAKE**

The Apprenticeship EEO Regulations require programs to do more than just not discriminate. *All* RAPs must undertake five specified actions that promote EEO. These actions are:

A. **Identifying and empowering someone in the program to have responsibility for EEO,**

B. **Posting EEO Pledges and information about filing EEO complaints;**

C. **Training apprentices and those who work with them on anti-harassment and EEO policy;**

D. **Broadly reaching out to sources that can identify potential apprentices and recruiting from all of them; and**

E. **Keeping required records.**

These actions are covered in subsections A-E of this Section (Section III) of the Toolkit.

A. Identify and Empower an Individual with Responsibility for EEO

✓ First, identify an individual to be responsible and accountable for overseeing your commitment to equal opportunity. The role can likely be fulfilled by an individual who is already providing oversight for the program, such as the named apprenticeship coordinator (29 CFR § 30.3(b)(1)).

This individual will be responsible for:

• Monitoring program activity to ensure compliance;

• Maintaining records;

• Generating and submitting any required reports to the Registration Agency; and

• Developing and implementing your AAP (if you are required to do one).

For this individual to be effective, *empower* them –

• With the authority necessary to accomplish the job;

• With the resources necessary to accomplish the job; and

• With the support of and access to your leadership.

✓ One of the things this individual should do right away is to establish internal procedures for how your program will handle and resolve complaints about discrimination. Apprentices or applicants to the program who think they have suffered discrimination can file a complaint of discrimination *externally*, with their Registration Agency or the local EEOC or Fair Employment Practices agency. The Apprenticeship EEO Regulations require you also to have *internal* procedures for two particular kinds of complaints: complaints of harassment and intimidation (based on the one of the protected characteristics), and complaints of retaliation for filing a charge of discrimination or otherwise participating in the process of enforcing apprentices' and applicants' rights to be free of discrimination [Sheet Metal, Air, Rail, and Transportation (SMART) Local Union No. 28's Guidelines for Ensuring Equal Employment Opportunities in the Workplace and Reporting Discrimination – download from: **https://www. smart28.org/office-of-court-compliance.html (bottom of page)**] (29 CFR § 30.3(b)(4)(iii)).

➢ *Best practice:* Make your internal procedure available for all types of discrimination (not just harassment and retaliation). This can be a way for apprentices to let you know about potential discrimination directly – to nip problem behavior in the bud early before it metastasizes into a federal case (to mix metaphors).

B. Disseminate Your Equal Opportunity Pledge and EEO Complaints Information Internally

✓ Second, communicate your program's commitment to EEO to your apprentices and others within your program (See Section III-D, Reach Out and Recruit). To do this, you will adopt an EEO Pledge that contains the language specified in the Apprenticeship EEO Regulations ; communicate that Pledge in your Apprenticeship Standards and appropriate publications; post your Pledge physically and electronically so that it is accessible to all apprentices and applicants for apprenticeship; and conduct orientation and periodic information sessions to inform and remind individuals connected with your program's operation of your EEO policy.

Since the Pledge is central to the first three of these steps, we address it in this Section (Section III-B) of the Toolkit. We will cover the last of these steps, the EEO-policy information sessions, in Section III-C , on harassment-prevention training. That is because, as a practical matter, it is more convenient to hold the EEO-policy information sessions and anti-harassment trainings simultaneously.

1. Adopt the Equal Opportunity Pledge

✓ Adopt the Equal Opportunity Pledge. The language of the Pledge is prescribed in the regulations. You may add to the list of protected characteristics, but you may not exclude any of the bases in the Pledge [Exact **Language of the Pledge** (from 29 CFR §30.3(c)(1)): [Name of sponsor] will not discriminate against apprenticeship applicants or apprentices based on race, color, religion, national origin, sex (including pregnancy and gender identity), sexual orientation, genetic information, or because they are an individual with a disability or a person 40 years old or older. [Name of sponsor] will take affirmative action to provide equal opportunity in apprenticeship and will operate the apprenticeship program as required under Title 29 of the Code of Federal Regulations, part 30].

For example, some state and local laws prohibit discrimination against anyone on the basis of age (not just against people who are 40 and older); some prohibit discrimination on the basis of marital status. In those locations, add those protected characteristics to your Pledge [Justia, **Employment Discrimination Laws: 50-State Survey**].

➢ *Best Practice: add broader language to the EEO Pledge. CWIT suggests including something like the following at the end of the required language:*

"We pledge to foster a safe and supportive environment than embraces our diverse and unique community and to create a space free from the biases faced by marginalized groups including, but not limited to, women, people of color, immigrants, LGBT+ individuals, people with disabilities, and older people.

We unapologetically embrace our diversity. We are stronger because of it!"

2. Communicate Your Pledge

✓ Include your Pledge in your Apprenticeship Standards.

✓ If your existing Standards do not include the Pledge, adopt the EEO Pledge Update Addendum (found in the Appendix to **OA Circular 2017-02** [downloadable at https://www.apprenticeship.gov/about-us/legislation-regulations-guidance/circulars] and add it to your Standards.

> *Best practice:* Date your EO Pledge Addendum, to show that it supersedes the version of the Pledge found in earlier-adopted Standards.

> If you adopt the Addendum, you do not need to submit your revised Standards to OA for approval. The next time you amend the body of your Standards, substitute the updated EEO Pledge language and remove the Addendum.

✓ Publish your EEO Pledge in appropriate publications, such as apprentice and employee handbooks, policy manuals, program newsletters, or other documents you post or give out.

This includes both hard and electronic copies of these publications.

3. Post Your Pledge

✓ Also communicate your Pledge by posting it both physically and electronically. Postings must be accessible, both physically and in the sense of accessible to individuals with disabilities.
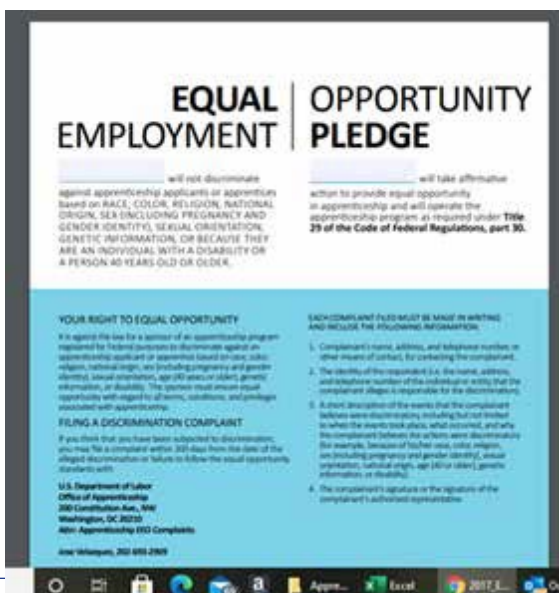
There is a slight wrinkle here. The Apprenticeship EEO Regulations (29 CFR § 30.14(b)) require you to physically post a second notice as well – one telling apprentices and applicants how they can file a complaint of discrimination. So, it might be easier to combine both notices into one poster.

For your convenience, OA provides a nice downloadable poster that does exactly that – it combines these two posts into one. The poster is offered in both letter size (8½" x 11") and poster size (11" x 17").

Using the OA poster is optional. If you prefer not to use it, you can copy the specific EEO pledge language and Complaints Information language into the documents you display, in order to meet

the regulatory requirements.

i. *Customize the Poster*

✓ Follow the instructions for customizing the poster with your name and other required information that are on OA's webpage. For your convenience, we walk you through those instructions here:

For the top (Pledge) portion of the poster, all you do is fill in the name of your program.

You have to do a little more to customize the bottom portion of the poster (the Complaints Information), because you have to give information about two different avenues for filing EEO complaints:

o With the apprenticeship registration agency;

and

o With the applicable agency that processes employment-discrimination complaints.

Avenue 1: Your apprenticeship registration agency. This refers to the apprenticeship agency you are registered with (*i.e.*, OA or your SAA).

If it's OA, use the information already on the poster (in the column on the left).

If you're registered with an SAA, you can find your SAA contact information at https://www.dol.gov/agencies/eta/apprenticeship/contact/state-agencies.

Avenue 2: The applicable federal, state, local, or tribal agency that processes employment-discrimination complaints and that has jurisdiction over your geographic area. This is the EEOC, a state or local Fair Employment Practices Agency (FEPA), or a Tribal Employment Rights Office (TERO) within an Indian nation's jurisdiction. (The EEOC defers its processing to these local FEPAs or TEROs in most places where they exist.)

To identify the applicable agency and contact information to enter on your poster (or in your other notice):

1. Go to www.eeoc.gov/field.

2. Select your EEOC District Office.

3. A navigation bar will display on the left side of your screen. Click on the "State and Local Agencies" link.

4. Scroll through the listed FEPAs and TEROs to see if there is one in your geographic area. If so, list FEPA or TERO on your poster.

5. If there are several FEPAs that might apply, enter the one that is part of the smallest unit of government.

For example, there is a Nebraska Equal Employment Commission, which covers the state of Nebraska, and an Omaha Human Relations Department – which covers the City of Omaha. RAPs located in Omaha should list the Omaha Human Relations Department on their posters, because a city is a smaller unit of government than a state.

6. If there is no FEPA that covers your area, list the EEOC District Office on your poster.

ii. *Post Physical Posters Where They Are Accessible*

✓ Display your physical poster in a prominent, publicly available location where all applicants to your program and all apprentices who are in your program will see it.

This means not in a dark corner where no one ever goes.

It also means that you may have to post in more than one location.

√ To be sure that applicants will see the poster, locate one in the office or worksite where applicants drop off their applications and are evaluated. For a youth program, locate a poster in the guidance counselor's office.

√ If the apprentices in your program are dispersed at a number of worksites, locate a poster at the classroom site where related instruction takes place.

√ Use common sense. You don't have to post at all these places, but you do have to post in enough places that all apprentices and applicants will see the posters.

✓ If you get a request from an individual with a visual impairment who can't read the poster, make it available in alternative formats, such as in large print, Braille, or electronically with a screen reader. It may be satisfactory simply have someone read it to the individual [Resource for finding reasonable accommodations: JAN's **Searchable Online Accommodation Resource** (SOAR) system.].

iii. *Post Electronic Posters*

✓ Be sure the poster is prominently featured on your program website.

✓ Don't overlook other electronic postings.

✓ Make electronic information accessible to IWDs upon request.

4. Include (at least) the Complaints Information in your application forms

✓ Per the Apprenticeship EEO regulations (29 CFR § 30.14(b)), include information about the right to file complaints directly in the application for your apprenticeship program.

You may incorporate only the Complaints Information or use the Pledge Poster, which includes your Pledge as well as the Complaints Information.

➢ *Best practice for youth programs:* Include the Complaints Information or poster with the package of forms for parents and student/apprentices to sign.

✓ If you allow individuals to apply for your apprenticeship program online, be sure to incorporate the Complaints Information into the electronic version of your application.

C. Conduct EEO Information Sessions and Anti-Harassment Training

The third major action you need to undertake is to *train* apprentices and those who regularly interact with them on your EEO policy generally and on harassment prevention specifically. Providing anti-harassment training is one of the minimum requirements specified in 29 CFR § 30.3(b)(4)) "[t]o promote an environment in which all apprentices feel safe, welcomed, and treated fairly" [The other minimum § 30.3(b)(4) requirements for promoting safe, welcoming, and fair environments are establishing internal complaint procedures and making your facilities available without regard to any protected characteristic (except for separate bathrooms for men and women to preserve privacy)].

You may train on both EEO policy and harassment prevention at the same time. Or you may hold the EEO information sessions and anti-harassment training separately. You also have the option of making either or both of these trainings part of communications or training sessions that you already hold, such as briefings on safety and health procedures.

Logistically, it is likely to be easier for you to combine the EEO policy and harassment-prevention trainings – at least if you are holding these sessions in person -- because the audience you need to reach with the two kinds of information is the same. In this Toolkit, we assume that you hold the EEO information sessions and anti-harassment training together.

1. Audience

- ✓ For both the EEO information sessions and the anti-harassment trainings, train "all individuals connected with the administration or operation of [your] apprenticeship program, including all apprentices and journeyworkers who regularly work with apprentices."

  This means:

  - o All the apprentices in your program

    and

  - o All those who work regularly with the apprentices:

    - o Journeyworkers/mentors

    - o Foremen and supervisors

    - o Hiring officials

    - o Teachers/instructors

    - o Guidance counselors

    - o Administrators

2. Logistics

- ✓ Reach your audience in person, virtually, or through a combination of the two (29 CFR § 30.3(b)(4)(i), explicitly contemplates online antiharassment training).

The requirement of training all the individuals connected with the administration or operation of the apprenticeship program who interact with apprentices presents a bit of a logistical challenge for joint apprenticeship programs, which by definition involve several entities – the sponsor and the participating employer or employers and sometimes another entity, like a community college, that provides the related instruction. The people who regularly work with the apprentices, and therefore need to receive the training, are employees of these various entities. Because there is no single company that can simply hold a training session for all its relevant employees, you have to coordinate sessions across the various entities or be sure that each of them provides the sessions to their own employees.

Any teacher will tell you that in-person sessions are more effective for most learning. That is particularly true of anti-harassment training, which often raises concepts and emotions best explored in small groups that allow free-flowing dialogue [This is why EEOC's Harassment Study recommends (at p. 52 [emphasis in original]) that – [Anti-harassment t]raining … be conducted by qualified, live, and interactive trainers. Live trainers who are dynamic, engaging, and have full command of the subject matter are the most likely to deliver effective training. Since one of the goals of compliance training is to provide employees information about the type of conduct the employer finds unacceptable in the workplace, it is important for a trainer to provide examples of such conduct, or have individuals portray scenarios of such conduct, and then be able to answer questions. In addition, compliance training teaches supervisors and managers how to respond to a report or observance of harassment. These can be difficult situations and a live trainer is most suited to work through questions with the participants.].

But virtual training, via webinar, virtual meeting platform, or self-directed independent learning, may be the only way you can reach all the employees who interact with your apprentices, whoever they work for. And you may *have* to "go virtual": during the COVID-19 pandemic, online was the only way that programs that were shut down could provide this training as well as their related instruction.

✓ If you provide anti-harassment training virtually, tailor it to your specific program and be sure it includes active engagement by participants (this is what is recommended by the EEOC).

➢ *Best practice:* When training online, develop a mechanism that all the relevant entities can use to verify that the trainees actually completed the training.

✓ Make sure that all the participating entities know that they are expected to have their employees who work with the apprentices participate in EEO information sessions and anti-harassment trainings, and how they are expected to do that.

➢ *Best practices:*
  ➢ Use the employer acceptance agreements that you enter into with your participating employers for this purpose.

  If you hold the sessions/trainings yourself (for both in-person and virtual sessions) –
  ➢ Obligate participating employers to require their employees to participate in your training as part of your agreements with them.

If each entity holds the sessions/trainings for its own employees –

➢ Obligate participating employers to hold sessions/trainings that at least comply with the regulations. You can also specify the frequency, content, and format of the sessions/trainings.

If you hold the sessions virtually –

➢ Obligate the participating employers to require their employees to use your mechanism to verify that the trainees actually completed the training.

➢ Include such provisions in your written agreements with any other participating entities as well.

3. Format and Content

i. *Content of EEO information sessions*

EEO information sessions *inform* and *remind* individuals connected with the administration or operation of the apprenticeship program of the sponsor's EEO policy [The purpose of the EEO sessions is to — "underscore the sponsor's commitment to equal opportunity and its affirmation action obligations[;] ... institutionalize a sponsor's EEO policies and practices[;] provid[e] a mechanism by which the sponsor may inform everyone connected with the apprenticeship program of the sponsor's obligations under part 30[;] and ensure that all individuals involved in the program understand these obligations and the policies instituted to implement them." **Final Rule Preamble**, 81 FR at 92089.].

✓ *Inform* new participants of your EEO policy at *initial orientation* information sessions.

✓ *Remind* participants in the program of the policy at *periodic* information sessions.

✓ At a minimum, inform and remind participants of your general statement of nondiscrimination and compliance with 29 CFR part 30, which is contained in your EO Pledge (*i.e.*, your EEO policy).

➢ *Best practices. To be most effective, your EEO policy – and what you inform and remind participants of -- should go further. It should --*

➢ Make crystal clear that neither discrimination nor retaliation for reporting or complaining about discrimination is tolerated in your program.

➢ Explicitly include harassment and intimidation as forms of prohibited discrimination;

➢ Clearly define the conduct that is prohibited, with examples, and the consequences of such conduct.

➢ Spell out a clear complaint process that provides multiple, accessible avenues of complaint and prompt, thorough, and impartial investigations.

➢ Assure your apprentices that you will protect the confidentiality of their EEO complaints to the extent possible.

> ➤ Contain assurances that those who make complaints, provide information related to complaints, act as witnesses in investigations, or otherwise participate in investigations will be protected from retaliation.

> ➤ Explain that you will take immediate and pro-portionate corrective action when you de-termine, after investigation, that harassment, discrimination, or retaliation has occurred.

> ➤ Explain that you will respond appropriately to behavior which may not be legally action-able "harassment" but which, left unchecked, may lead to such harassment *(Adapted from EEOC Harassment Study, p. 38)*.

> ➤ Summarize your AAP (if you have one).

> ➤ State explicitly that the policy comes from the program's leadership and reflects the leadership's priorities.

> "[E]mployees must believe that the leadership is serious about preventing harassment in the workplace. Training alone is not sufficient to establish the cred-ibility of the leadership in this regard – but compliance training provides a moment at which the focus is on achieving this goal and thus, leadership should take advantage of that moment. The strongest expression of support is for a senior leader to open the training session and attend the entire training session."
>
> —EEOC Harassment Study, p. 52.

ii. *Format of anti-harassment training*

Per 29 CFR § 30.3(b)(4)), design your anti-harassment training to involve some kind of *active participation* by trainees. Examples of *active participation* are attending the training in person or completing a knowledge check online.

> ➤ *Best practice:* Boost the effectiveness of your anti-harassment training significantly by having a senior leader of your program open the session and attend the entire thing. This would demon-strate your program leadership's strong commitment to ensuring a harassment-free culture. At a minimum, send a memo from leadership prior to the training and show a video of a senior leader at the beginning of the training.

iii. *Content of anti-harassment training* The required anti-harassment training is compliance training, de-fined as "training that helps employers comply with the legal requirements of employment nondiscrim-ination laws by educating employees about what forms of conduct are not acceptable in the workplace and about which they have the right to complain" *(EEOC Harassment Study, p. 50)*.

✓ At a minimum, cover the following three required specific topics in your anti-harassment training:

- A clear statement that you will not tolerate harassing conduct;

- The definition and examples of harassment; and

- How an individual can file a harassment complaint with your Registration Agency (OA or an SAA).

✓ Be sure to address unlawful harassment based on race, national origin, disability, age, and the other protected characteristics as well as sex. The required anti-harassment training is not just about sexual harassment.

✓ If anti-harassment trainings that you are already using are limited to sexual harassment or do not contain all three of the minimum components, change them so that they comply with the regulations. Existing anti-harassment trainings are not automatically "grandparented" in.

OA has developed an Anti-Harassment Training Program that offers two options – one for in-person training and one for online training – for meeting the regulatory requirements. OA's suite of training materials includes:

• A guide for customizing and using the Training Program;

• A Power Point presentation that includes a variety of real-world scenarios and related discussion questions and that you can tailor to your environment;

• A short video and web-based knowledge-assessment quiz that you can either combine with the PowerPoint slides or use independently [The knowledge-assessment quiz is designed to meet the requirement that the anti-harassment training include participation by trainees.];

• A summary "tip sheet" for apprentices that highlights the contents of the Training Program, to be customized with information on whom to contact to report harassment;

• A fact sheet for journeyworkers, forepersons, front-line supervisors and others who manage, train and mentor apprentices, outlining their responsibilities in addressing workplace harassment and giving tips for creating a safe and inclusive workplace; and

• FAQs about what sponsors must do to provide anti-harassment training.

CWIT has developed a curriculum for training trainers on presenting anti-sexual harassment prevention training: "How to Identify, Address and Prevent Sexual Harassment—Train the Trainer." Its 3 modules cover:

UNDERSTANDING SEXUAL HARASSMENT
1.1 Introduction and Overview

1.2 Myths and Facts

1.3 Sexual Harassment in the Trades

1.4 Sexual Harassment in the News

1.5 Sexual Harassment Law

1.6 Understanding Types of Sexual Harassment

1.7 Responsibility and Enforcement

1.8 History of Sexual Harassment Awareness and Law

1.9 Identifying Sexual Harassment

1.10 Impact of Sexual Harassment

ADDRESSING AND PREVENTING SEXUAL HARASSMENT

RESPONDING TO SEXUAL HARASSMENT

➢ *Best practices. Boost the effectiveness of your anti-harassment training further by offering more than the required minimum compliance training.*

  ➢ First, train middle-management and first-line supervisors on how to respond effectively to harassment – not only to harassment that is reported to them but also to harassment that they witness ["[M]anagers and supervisors need additional training if the employer wants to address conduct before it rises to the level of illegal harassment and wants to ensure compliance with employment nondiscrimination laws." —**EEOC Harassment Study**, p. 51].

  ➢ Second, expand beyond compliance training to training designed to change workplace culture and to *prevent* harassment. These categories are not mutually exclusive, and often a single training will include elements of several of them.

   o The EEOC has found that *workplace civility* and *bystander intervention* training are two types of training that show "significant promise for preventing harassment in the workplace." EEOC itself provides Harassment Prevention and Respectful Workplaces Training ["We know from the research that organizational culture is one of the key drivers of harassment. We therefore explored trainings that might have an impact on shaping organizational cultures in a way that would prevent harassment in a workplace." —**EEOC Harassment Study**, p. 54.].

   o *Workplace civility* training (sometimes referred to as "anti-bullying training") focuses on promoting general respect and civility in the workplace. "[I]ncivility is often an antecedent to workplace harassment, as it creates a climate of 'general derision and disrespect' in which harassing behaviors are tolerated" [**Example** of workplace civility training: **ELI Civil Treatment Training Program**, **Workplace Civility Tutorial**] (EEOC Harassment Study, *p. 55*).

   o Originally developed to reduce sexual assault, domestic violence, and stalking, *bystander intervention* training focuses on empowering individuals who are not themselves the targets of the harassing conduct to intervene to prevent and reduce harm to those who are the targets [**Examples** of bystander intervention training: Hollaback! offers virtual, interactive workplace harassment prevention & bystander intervention trainings:; The Prevention Innovations Research Center at the University of New Hampshire tailors its

"**Bringing in the Bystander" training courses** for workplaces; The **Green Dot Violence Prevention Strategy**, a bystander intervention program developed for schools, has been adapted to address bullying, harassment, hazing, and other forms of aggression in the construction trades. OTI is piloting Green Dot for the Trades in Hoffman Construction's Multnomah County Courthouse project in Portland, Oregon.].

o *Cultural competency* training. Even when apprenticeship personnel are willing to adhere to EEO policies, they may not have the experience or training necessary to act in a culturally competent manner. Training on cultural competency complements EEO policies by providing personnel and apprentices a set of tools, knowledge, and skills to take into the classroom and the worksite [**Examples** of cultural competency training: **Adding A Gender Lens Curriculum**: Pink to Green Toolkit: Building Cultural Competency and Respect for Diversity: MOD-1-A-GENDER-Cultural-Competency-Facilitator-Guide (download from **http://womensequitycenter.org/apprenticeship-programs/assessment/**); **RISE Up (Respect, Inclusion, Safety and Equity in the Construction Trades) -- a Respectful Workplace** Campaign designed for apprenticeship training programs, unions, and construction companies (among others) to shift the culture of construction to be more inclusive of a diverse workforce.].

o Training in *being an ally*. Tradeswomen often say most of the problems they encounter are caused by just a few individuals, but the silence of the many tacitly supports those individuals' behavior. CWIT/the Center have found that for this reason, women in the workplace greatly benefit from male allies, who understand the issues and can effectively work to change attitudes that are detrimental to women's acceptance in the industry. Allies are active bystanders and more – they actively support culture change and support underrepresented groups. Training in being an ally helps potential allies understand their important role in changing the culture and provides them with the tools to do so [**Examples** of resources and training on being an ally: The Center's **Being a Male Ally**; **The ReadySetAlly Skills Workshop**; **Ally Skills Workshop**.].

> **Strategies used in bystander intervention training**
> (from EEOC Harassment Study, p. 57):
>
> • Create awareness - enable bystanders to recognize potentially problematic behaviors.
>
> • Create a sense of collective responsibility - motivate bystanders to step in and take action when they observe problematic behaviors.
>
> • Create a sense of empowerment - conduct skills-building exercises to provide bystanders with the skills and confidence to intervene as appropriate.
>
> • Provide resources - provide bystanders with resources they can call upon and that support their intervention.

> "An ally is any person that actively promotes and aspires to advance the culture of inclusion through intentional, positive and conscious efforts that benefit people as a whole."
>
> — Sheree Atcheson, "Allyship - The Key to Unlocking the Power of Diversity," *Forbes* (November 30, 2018).

4. Frequency

i. EEO information sessions

✓ Hold "orientation" EEO information sessions – to orient new apprentices, journeyworkers, and others who work with them to your EEO policy -- at or near the time when they are onboarded. ("these must be periodic 29 CFR § 30.3(b)(2)(iii)."

✓ Repeat these EEO information sessions for existing staff periodically.

ii. Anti-harassment training

✓ Be sure *each* "individual connected with the administration or operation of the apprenticeship program" receives anti-harassment training.

✓ To be sure that the above requirements are met, combine the information sessions and anti-harassment training, and provide the combined session frequently enough to ensure that all new apprentices, journeyworkers, and other personnel receive it soon after they on-board, and again on a regular basis.

   ➢ *Best practice:* Since there's always staff turnover, hold these sessions at least whenever there is a new class of apprentices, a critical mass of new staff, or twice a year, whichever is more often.

> Once a year is not enough to be effective. EEOC found (EEOC Harassment Study, p. 52; emphasis in original):
>
> *Training should be conducted and reinforced on a regular basis for all employees*….If anti-harassment trainings are held once a year (or once every other year), employees will not believe that preventing harassment is a high priority for the employer. Conversely, if anti-harassment trainings are regularly scheduled events in which key information is reinforced, that will send the message that the goal of the training is important… [Anti-harassment training] is one area where, in general, repetition is a good thing.

D. Reach Out and Recruit

1. Create and Use a List of Recruitment Sources

The fourth major action you need to undertake is to create and use a list of sources for recruiting apprentices to ensure that your outreach and recruitment efforts extend to all persons available for your apprenticeship within your recruitment area, without regard to race, sex, ethnicity, or disability (called "universal outreach and recruitment" in the regulations CFR § 30.3(b)(3),). The requirements for this are quite specific, but luckily, OA provides an online tool that makes doing it pretty easy.

✓ Develop a list of current recruitment sources that will generate referrals from all demographic groups within your recruitment area (see definition of "recruitment area" in Definitions Section of this Toolkit) by using OA's Universal Outreach Tool (UOT) . These organizations may be able to publicize your apprenticeship openings and refer potential candidates to you [**Instructions for using the UOT**, **Tutorial for using the UOT**].

THE UNIVERSAL OUTREACH TOOL

The UOT allows you to search for sources in your community either within a geographic area (your state or county, for example) or by distance from your program.

The UOT draws from national lists of American Job Centers, community colleges, state and local governments, unions, pre-apprenticeship/ apprenticeship readiness programs, nonprofit community organizations such as YWCAs and Goodwill centers, and others that work with local communities. Some of these organizations focus on specific populations, such as women, persons of color, or individuals with disabilities, while others serve the general public. The UOT does not necessarily produce an exhaustive list of all recruitment sources that generate referrals in a community.

✓ Supplement the list that the UOT supplies with other local sources that you have worked with successfully and with community organizations that may specialize in outreach to women, people of color, or IWDs.

➢ *Best practices:*

  ➢ Be sure to include unions in your trade and in related trades and their hiring halls on your list. Women and people of color who are working in non-apprentice positions in these unions might be interested in your program.

  ➢ Also include unions' Women's Committees, Minority Caucuses, and other support or affinity groups. Women's Committees actively recruit women to their trades, attending career fairs and participating in training and other community events. Similarly, the International Brotherhood of Electrical Workers (IBEW) has an active Electrical Workers Minority Committee [Best Practices Brief from CWIT and the Center: "**Women's Committees – A Key to Recruiting and Retaining Women**"; **Sisters in the Brotherhood**, the official women's committee of the United Brotherhood of Carpenters; **Painters' and Allied Craftworkers District Council #14 Women's Committee on Organizing**].

  ➢ Be sure that pre-apprenticeship programs (also called "apprenticeship readiness programs") in your area are on your list. Pre-apprenticeship programs are specifically designed to help individuals prepare and qualify for apprenticeship. Some pre-apprenticeship programs are geared toward particular populations, such as women or people of color. You want to include these programs in your recruitment efforts because people who have completed a pre-apprenticeship program are more likely to be successful in apprenticeship ["**Pre-Apprenticeship: Pathways for Women into High-Wage Careers**," DOL's guide to pre-apprenticeship for community-based organizations and workforce providers] [**Examples**: CWIT's Technical Opportunities Program, Oregon Tradeswomen's (OTI) Trades and Apprenticeship Career Class, and Nontraditional Employment for Women's Blue Collar Prep, which are designed for women; the Urban Technology Project's Digital Service Fellows pre-apprenticeship program in information technology, which is designed for recent Philadelphia high school graduates, the vast majority of whom are individuals of color; and Constructing Hope's construction pre-apprenticeship program, which serves people of color, people coming from incarceration, and low-income adults in Portland, OR].

➢ Align your job tasks with other professional or recreational activities and include organizations of individuals who participate in those activities on your recruitment list. For example, organized and extreme women's sport teams, outdoor recreational clubs like rock climbing and rowing, and female veterans' groups are potential sources of referrals of women who enjoy physical challenges and can be a great fit for many trades [Seattle-based Apprenticeship & Nontraditional Employment for Women's (ANEW) Resource Guide, Recruitment and Retention of **Womxn in Washington Apprenticeships, contains these and many other good suggestions for recruiting women (see, e.g., pp. 8-9)**].

➢ Include Facebook pages, Twitter accounts, LinkedIn listings, and online job-search sites that are likely to generate referrals or expressions of interest from individuals in your recruitment area, especially women, people of color, and IWDs ["Womxn in Gen X and millennial generations use platforms like Facebook, Twitter, LinkedIn as launch pads for finding jobs, referring work, and building professional peer groups. They read blogs and online reviews of the best – and worst – companies." (**Recruitment and Retention of Womxn in Washington Apprenticeships, p 10)**].

➢ Be sure to include OA's site, www.apprenticeship.gov, which has an Apprenticeship Finder tool.

✓ For each recruitment source on the list, confirm a contact person, mailing address, telephone number, and e-mail address. You can find contact information for recruitment sources within the UOT or *via* online searches or telephone calls.

➢ *Best practices:*

➢ Telephone the recruitment sources as you are developing the list to introduce your program, confirm the accuracy of the information about them, initiate relationships with their contact people, and assess how well they can help generate referrals to your program.

➢ Keep in touch with your contacts at the recruitment sources to remind them of your program and keep the information you have for them current.

✓ Update your list at least once a year:

√ Add new recruitment sources that you have identified and delete those that have not generated referrals.

√ Correct inaccuracies in contact information.

✓ Provide advance notice (preferably 30 days) of your apprenticeship openings to all the recruitment sources on your list. Do this by email, text, snail mail, social media, and/or phone calls [The purpose of this advance notice is "so that the recruitment sources can notify and refer candidates" to your program. **29 CFR § 30.3(b) (3(iii)]**.

➢ *Best practices:*

➢ Avoid using sex-referent language or job qualifications that have an unjustified disparate impact on a protected group in your job announcements.

➢ Don't just send out a mass email when you have openings. *Call* the recruitment sources that are likely to refer diverse applicants and let them know when and how you'll be accepting applications.

➢ Announce your openings and application process at meetings of unions in related trades where there might be individuals, especially women or people of color, who are working in non-apprentice positions who may be interested in your program.

➢ Run ads in area newspapers and magazines and send out public service announcements to media outlets when you have openings. Be sure to include publications and media outlets directed at communities of color.

➢ Using the openings in your program as a "news hook," seek coverage by local media (print, broadcast, and online).

➢ Post flyers in venues frequented by women (schools, gyms, women's sports teams, child-care centers), IWDs (schools, independent-living centers), and people of color (community centers, church bulletin boards, schools, gyms, and shops in African American, Hispanic, Asian, and Native American communities; tribal offices).

➢ Advertise your program on paper bus tickets, inside buses and subways using panel ads or internal television systems, on bus exteriors, and on bus shelters.

➢ Use social media such as Facebook and other online job services to reach individuals who are not connected to any service provider.

✓ Remember to include your EO Pledge on every notice of openings you send out.

2. *Focus:* **On-Going Outreach -- Reaching Out to Identify and Engage Sources of Diverse Applicants**

Your outreach will be much more effective at attracting diverse applicants if you do more than just send notices of openings when you have them.

This is particularly true for women. While many sponsors and contractors attribute low female participation in their workforce to lack of interest – and many women do enjoy teaching or caring for others and choose to work in these fields – given the knowledge and opportunity, there are also many women who would choose to work in the construction trades or other traditionally male occupations, enjoying physical work, technical challenges and the pride and satisfaction of using hard-won skills. But many barriers reduce women's participation in non-traditional occupations, like those, described in the text box on the next page, that keep women from working in the construction trades.

Perhaps the single greatest reason that women are underrepresented in traditionally male careers like the construction trades is lack of awareness and belief that they can be successful candidates. For apprenticeship programs, this means that if you want to attract greater numbers of female applicants to your program, you will have to put extra, and specifically targeted effort, into both outreach and career education.

➤ *Best practices* for making diverse populations of prospective apprentices aware of your registered apprenticeship opportunities [Resources on these and other strategies: Center website, "**Outreach and Career Education**"; **"Best Practices in Nontraditional Outreach and Recruitment" webinar**]:

➤ Develop direct-entry admission mechanisms with pre-apprenticeship programs that serve underrepresented groups and that follow OA's quality framework for pre-apprenticeship programs *(ETA Training and Employment Notice No. 13-12, "***Defining a Quality Pre-Apprenticeship Program and Related Tools and Resources***" (November 30, 2012)).*

➤ Meet with community organizations, public agencies (unemployment offices, one-stops, etc.), and social-service agencies to help them understand the benefits of your apprenticeship (and apprenticeship in general) and the opportunities it provides for women and other underrepresented groups.

➤ Hold apprenticeship information sessions or career-education workshops at your facilities [Here is a sampling of the many recruitment and education videos available for showing at these workshops: CWIT's **Construction Career Education Video for Women** (16 min 38 sec); **How Apprenticeship Works for Recruits** (DOL Office of Disability Employment Policy) (4 min 27 sec); **Building A Career in the Trades Recruitment Video** (Sheet Metal Workers Local 24 and Plumbers and Pipefitters JATC in Columbus OH); **Introduction to Apprenticeship for Women** ("Apprenticeship 101 Video") (6 min 40 sec); **"We Heard the Call" Recruitment Video** (5 min 15 sec); There's even a **Tradeswomen Video Library** of videos about career and apprenticeship opportunities for women in construction and other industries—"from tradeswomen who love their jobs!"].

➤ Partner with a tradeswomen's organization, pre-apprenticeship program, workforce board, community organization, or city officials to co-host such sessions at high schools, community colleges, community centers, or employment-service providers.

➤ Host field trips to your facility or other programs , led by instructors and tradeswomen, to introduce prospective apprentices to your program. Give attendees the opportunity to work with the tools, to hear from women, people of color, and IWDs who are in or have graduated from your program, and to develop a comfort level with returning to the facility to complete an application [**Example:** The National Electrical Contractors Association/IBEW Local 48 in Portland, OR, has organized **"Wire A Light" workshops**, targeted at African American women and men, that have had success in increasing apprentice diversity].

BARRIERS TO RECRUITING WOMEN TO THE TRADES

• Limited exposure to and information about trades' careers including benefits or entry routes to apprenticeship, and their potential eligibility.

• Less likely to have vocational education or work experience related to these occupations or even informal skill building through friends or family members.

• Careers are not marketed to women and there are very few visible tradeswomen demonstrating that women can have successful careers in the industry.

• Lack of confidence that they are prepared to succeed and will be welcome in the industry.

➢ Be sure your invitations to these career-education events go to all prospective applicants, including women, people of color, and IWDs.

➢ Publicize your career-education events in all the ways suggested above for advertising program openings: ads in newspapers and magazines, local media coverage, public-service announcements, flyers distributed on the street and posted in community venues, mass transit postings, and social media.

➢ Participate in job fairs, especially job fairs in specific communities or neighborhoods.

➢ Participate in other high-visibility community events, such as parades.

➢ Develop easy-to-read print materials that describe your program, appeal to diverse audiences, and direct people to your website for distribution at career-education workshops, field trips, job fairs, and similar events. Be sure you have ample supplies for each event [Examples: Sisters in the Brotherhood's "**palm card**"; International Union of Operating Engineers **flyer**].

➢ Make sure your website welcomes people who might be interested in your program from all populations. Prospective apprentices may well decide whether to apply based on what they see on your website [**Example:** "**You Can Do It! A Woman's Guide to Careers in the Trades**," CWIT's guide to careers in the construction trades (You can customize this guide for your region; contact CWIT for more information.)].

➢ Follow up individually with people you meet at career-education workshops, field trips, job fairs, and similar events who seem as if they might be interested in your program.

➢ Sponsor a local amateur sports team (and don't forget the women's teams).

➢ Involve and support your apprentices and graduates of your program – especially women, people of color, and IWDs -- in recruiting through their personal networks.

3. *Focus*: **Know Your Audience -- Appealing to Diverse Applicants**

Your outreach will also be much more effective at attracting diverse applicants if the messages you give – including your job announcements/notices of openings, promotional materials, and website – communicate that your program is for *them*.

➢ *Best practices:*

➢ Feature images of women, people of color, and IWDs on all your materials: **"You can't be what you can't see!"** [The **Tradeswomen Image Library** at the Western Resources Center for Women in Apprenticeship has thousands of images of real-life tradeswomen across all skilled trades that you can use at no cost; **Mobility International USA** provides images that include IWDs] [**Example**: CWIT/the Center's **customizable sample flyer promoting a career-education workshop**].

➢ Showcase your Equal Opportunity Pledge on your materials.

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➢ Use inclusive language that is designed to appeal to a wide audience [**Textio's augmented writing program** is designed to reveal hidden gender bias and identify "key phrases that are statistically likely to change the gender balance of your talent pool." According to Textio, "[g]ender-neutral jobs not only draw a broader applicant pool, they also fill three weeks faster on average than jobs that are biased at either end of the spectrum."].

➢ Address the concerns that potential apprentices are likely to have as part of your promotional materials. For example, many potential apprentices are likely to be concerned about their earnings during your apprenticeship and whether you can provide them with any financial support for childcare, uniforms, work-related tools, and related-instruction costs. Let your audience know if you have family-friendly policies or other attractive benefits.

➢ Make sure that female apprentices and graduates participate in your career-education and mentoring activities with girls and women; African American apprentices and graduates in such activities with African Americans; Hispanic apprentices and graduates in such activities with Hispanics; etc. [**Example:** the Tradeswomen Ambassador Program is designed to increase the army of tradeswomen available to recruit women to RAPs and serve as ambassadors to the trades at career fairs and community events].

E. Keep Required Records

1. **Records to Be Kept** [In general, RAPs "must collect such data and maintain such records as … necessary [for the Registration Agency] to determine whether [they have] complied or [are] complying with" their EEO obligations under 29 CFR part 30 (**29 CFR § 30.12(a))**].

   i. For all RAPs—

   ✓ Keep records relating to each applicant's selection or rejection for apprenticeship, including applications, tests and test results, interview notes, and bases for decision.

   ➢ *Best practice:* Use an applicant log. Logs can be helpful as you are reviewing the applications to make selection decisions.

   ✓ Keep records relating to each apprentice's treatment in the program, including:
   o Their job assignments
   o The on-the-job training they received (how much, in what, any assessments)
   o Promotions, demotions, transfers
   o Layoffs
   o Termination
   o Rates of pay and other forms of compensation
   o Conditions of work
   o Hours of work
   o Related instruction they received (how much, in what, any assessments)
   o Their requests for reasonable accommodation
   o Any EEO complaints they filed or were involved in

- ✓ Keep records relating to administration of the EEO obligations, including:
  - o Assignment of EEO responsibility
  - o Internal dissemination of EEO policy
  - o EEO Pledge
  - o EEO information sessions
  - o Anti-harassment training
  - o Universal outreach and recruitment.

ii. *For RAPs that have five or more apprentices and are required to develop AAPs—*

- ✓ For each apprentice and applicant, keep records relating to the invitations to self-identify as an IWD (and the response to those invitations).

- ✓ Keep records relating to the development, on-going operation, and updating of your AAP.

2. **Demographic Identification** ["For any record the sponsor maintains…, the sponsor must be able to identify the race, sex, ethnicity (Hispanic or Latino/non-Hispanic or Latino), and … disability status …, where possible … of each applicant to apprenticeship" (the "sponsor identification of record" provision) **(29 CFR § 30.12(b)).**]

- ✓ Be able to identify the following characteristics of each apprentice and, where known, of each applicant to your program:
  - o Sex
    - o Female
    - o Male
  - o Census-defined race:
    - o African American
    - o Asian
    - o American Indian/Native American
    - o Native Hawaiian/Pacific Islander
    - o White
  - o Census-defined ethnicity:
    - o Hispanic
    - o Non-Hispanic
  - o Disability status (when known):
    - o Identifies as having a disability
    - o Does not identify as having a disability

i. *Race, ethnicity, and sex data*

- For apprentices:

  - ✓ Get apprentices' race, ethnicity, and sex data from their Apprenticeship Agreements, Section II of ETA Form 671, ETA Form 671 Section II., Program Registration and Apprenticeship Agreement (OMB 1205-0223): OA prefers self-identification as the most reliable method for obtaining information about a person's gender, race and ethnicity, and sponsors are strongly encouraged to rely on apprentices' and applicants' self-identification for this purpose].

    Section II is the Apprenticeship Agreement part of Form 671, which is the form RAPs use to formally register their programs and apprentices. Apprentices fill out Part A; they may designate their sex, race, and ethnicity in Questions # 3 and #4.

  - ✓ Where an apprentice does not designate their sex, race, or ethnicity on this form, you may use visual observation to identify their demographic data. But don't guess or assume – if you're not sure, just consider the information "unknown."

- For applicants

  - ✓ You may include a question asking race, ethnicity, and sex, on the application form.

  - ✓ Otherwise, obtain applicants' sex, race, or ethnicity data by visual observation.

  - ✓ Whatever mechanism you use, separate the demographic information from the information you use to decide whether to admit the applicant to your program.

ii. *Disability-status data*

If you have five or more apprentices and are required to develop an AAP, you may have received apprentices' and applicants' disability status information from their Voluntary Disability Disclosure form (which is an addendum to Section II of Form 671). If they choose to, apprentices and applicants can indicate on this form if they do or do not identify as having a disability. (The requirement to invite apprentices and appli- cants to voluntarily disclose whether they have a disability on this form is covered in more detail in Section IV-B(1)(ii) ("Ensure IWDs are included").

- ✓ Where an apprentice or applicant does not complete the Voluntary Disability Disclosure form or indicates that they "don't wish to answer" it, you may:

  - o use visual observation to identify obvious disabilities; or

  - o rely on the disclosures that the apprentice or applicant made for reasonable accommodation.

  In the absence of any of the above, consider the individual's disability status to be "unknown."

3. Records Maintenance

- ✓ Keep these records for 5 years.

4. Medical Information

✓ Collect and record any information that you receive regarding the medical condition or history of an applicant or apprentice on separate forms and in separate medical files.

✓ Treat all such information as a confidential medical record.

5. Records Submission

✓ Make these records available to your Registration Agency upon request.

There is no regular submission requirement under the Apprenticeship EEO Regulations -- you do not need to submit these records to your Registration Agency until they are requested.

✓ Grant your Registration Agency physical access to view the records on your premises if it is conducting an on-site EEO compliance review and or complaint investigation.

SECTION IV: **AFFIRMATIVE ACTION PROGRAMS**

Affirmative Action Programs are perhaps the least understood aspects of RAPs' EEO obligations. To clarify the concept of affirmative action and the specific Affirmative Action Program and Plan requirements of the regulations, OA has posted a guide about AAPs. Here we review the definitions of these terms [OA Guide for AAPs: **https://www.apprenticeship.gov/sites/default/files/developing-affirmative-action-programs-and-plans-guide.pdf**; **https://www.apprenticeship.gov/eeo/sponsors/create-your-plan**].

"Affirmative action" is a general term referring to any positive actions taken to promote equity and inclusion. The term contrasts with "mere passive nondiscrimination." As explained in Section III of this Toolkit, all RAPs must take certain "affirmative actions":   identifying and empowering an individual with responsibility for EEO; disseminating their Equal Opportunity Pledge and EEO Complaints information internally; conducting EEO information sessions and anti-harassment training; universal outreach and recruiting; and record-keeping. Other RAPs – those that have 5 or more apprentices and are not otherwise exempt – must develop full-fledged, formal *Affirmative Action Programs* that contain the components listed below.

"Affirmative Action Programs" are more specific and encompass a number of components. The regulatory section introducing Affirmative Action Programs, 29 CFR § 30.4(a)(1), characterizes them as the affirmative steps that RAPs take "to encourage and promote equal opportunity, to create an environment free from discrimination, and to address any barriers to equal opportunity in apprenticeship." They include "those policies, practices, and procedures, including self-analyses, that the sponsor implements to ensure that all qualified applicants and apprentices are receiving an equal opportunity for recruitment, selection, advancement, retention and every other term and privilege associated with apprenticeship [and] …should be a part of the way the sponsor regularly conducts its apprenticeship program." It is through their AAPs that RAPs may well be most effective at reaching individuals who would otherwise be unlikely to benefit from apprenticeship.

The specific components of an *Affirmative Action Program* are:

- Workforce analyses (measurements of the percentage participation of women, people of color (disaggregated by race and ethnicity), and IWDs,) for each occupation and each major occupation group in the apprenticeship;

- Availability analyses (determining the percentage representation of women and people of color (disaggregated by race and ethnicity) in the geographic area or other population from which the RAP recruits, who meet the eligibility criteria for the apprenticeship);

- Determining if goals need to be set for race, sex, or ethnicity, or if there are impediments to IWDs' participation in the program;

- Targeted outreach, recruitment, and retention if needed;

- Extending invitations to self-identify as an IWD to applicants and apprentices;

- Annual self-assessment of all a RAP's personnel processes to ensure nondiscrimination.

These components are sponsors' tools for detecting, diagnosing, and correcting barriers to equal opportunity for women, people of color, and IWDs.

RAPs are responsible for all these AAP components. However, as explained below, the timing for when RAPs must complete these components varies, and some of them only have to be completed when a RAP has the assistance of its Registration Agency.

Affirmative Action Plans are simply the written documents in which RAPs memorialize their Affirmative Action Programs. Written Affirmative Action Plans are key because to write down your overall Affirmative Action Program, you have to be thoughtful and deliberate, to assess your situation and set goals, and to plan and prioritize – in other words, you have to be *intentional.* And intentionality is what is needed to open opportunities in programs to more diverse populations.

In this Toolkit, we use the abbreviation AAP to refer to "Affirmative Action Program" and the term "written AAP" to refer to an "Affirmative Action Plan."

Note that the Affirmative Action Programs referred to in these regulations are quite different from the explicitly race-based "affirmative action" college admissions programs that the Supreme Court said were unlawful in the cases of *Students for Fair Admissions vs. Harvard and the University of North Carolina* in 2023. In the admissions cases, the universities explicitly took race into account in making admissions decisions. In contrast, under the apprenticeship AAP rules, RAPs measure the participation of a particular racial group in their program against that group's prevalence in the area from which the RAPs recruit simply in order to gauge whether it makes sense for them to target outreach, recruitment, and retention efforts at that group. But RAPs are explicitly *prohibited* from doing what Harvard and UNC did – that taking race into account in making hiring (or any other) decisions.

A. Determine If and When Your Program Has to Develop an Affirmative Action Program

1. Determine *If* Your Program Has to Develop an AAP

✓ Develop an AAP that covers your apprenticeship program unless you are exempt. You are exempt—

EITHER

• Because you have fewer than five apprentices (based on the number of apprentices in your program, not the number employed by any participating employer);

OR

• Because you are subject to, and comply with, an AAP that has been approved as meeting the requirements of either (a) Title VII of the 1964 Civil Rights Act or (b) Executive Order 11246 and Section 503 of the Rehabilitation Act.

Note that non-exempt RAPs (that is, those that meet neither of these conditions) must develop AAPs even if their participating employers maintain AAPs.

The bar for qualifying for the exemption for RAPs that comply with approved AAPs is pretty high:

⚙ First, the AAP to which the sponsor is subject has to cover apprentices, and the goals that are used

have to be likely to be equal to or greater than the goals that would be required if they were *not* exempt.

⊛ Second, RAPs must submit "satisfactory evidence" of compliance with the AAP to their Registration Agency.

⊛ If a RAP claims exemption for an AAP approved under Title VII, it also must agree to extend its AAP to IWDs (since Title VII does not apply to disability).

✵   Finally, the regulations do not define the term "approved as meeting the requirements of," and there is no ordinary procedure whereby an agency reviews and approves AAPs. While Title VII, which covers all employers that have 15 or more employees, permits employers to develop AAPs, it does not require them to do so, and the agency that administers Title VII does not ordinarily review and approve any AAPs that private employers do develop. Similarly, while Executive Order 11246 and Section 503, which apply to federal contractors and subcontractors, do require those with at least $50,000 in federal contracts and 50 employees to develop AAPs, the agency that administers those laws only reviews and approves those AAPs for a very small fraction of contractors (less than one percent each year).

➢   *Best practice: Assume this exemption does not apply to you unless you have approval from your Registration Agency.*

2. **Determine** *When* **Your Program Has to Develop an AAP**

Under the Apprenticeship EEO Regulations, different components of your AAP must be accomplished at different times. Below is a timeline for which components need to be completed by when (this is an overview of all the components; each will be explained in detail in the remainder of this Section).

By your two-year registration anniversary:
✓   Complete your initial workforce analyses for each occupational title by race/sex/ethnicity/ disability status;

✓   Invite your current apprentices to self-identify as IWDs;

✓   Begin to invite everyone who applies to your program to self-identify as IWDs, and continue to invite applicants to do so whenever they apply; and

✓   Complete your first annual self-review of your personnel processes.

Annually thereafter:
✓   Remind apprentices that they can self-identify as IWDs; and

✓   Conduct the annual self-review of your personnel processes.

As part of the first EEO compliance review by your Registration Agency that occurs after your two-year registration anniversary, and in conjunction with staff from the Registration Agency [The reason that you do not have to perform these steps until your first EEO compliance review is that OA does not expect sponsors to do this on their own. Rather, OA expects that sponsors will receive technical assistance to complete these steps as part of their EEO compliance reviews.]:

✓ Conduct utilization analyses for each major occupation group and availability analyses, by race/sex/ethnicity; if you find underutilization, set utilization goals for race/sex/ethnicity; and

✓ Conduct utilization analyses for each major occupation group by disability status; if utilization is less than 7%, determine if impediments to EEO for IWDs exist.

Based on the results of these analyses --

✓ Plan targeted outreach, recruitment, and retention activities:

√ For any race, sex, or ethnicity group for which you are underutilized; and

√ For IWDs if you found that impediments exist.

At each subsequent compliance review, and every 3 years if there is no intervening compliance review:

✓ Conduct workforce analyses for each occupational title by race/sex/ethnicity/disability status; and

✓ Update your written AAP.

At each subsequent compliance review, in conjunction with staff from the Registration Agency:

⚙ Update your workforce analyses for each major occupation group and availability analyses by race/sex/ethnicity, and update your utilization goals based on the updated analyses; and

⚙ Update your workforce analysis for each major occupation group by disability status, and if utilization is less than 7%, determine if impediments to EEO for IWDs exist.

Based on the results of these analyses --

✓ Revise your plan for targeted outreach, recruitment, and retention activities:

√ For any race, sex, or ethnicity group for which you are underutilized; and

√ For IWDs if you found that impediments exist.

B. Develop Your AAP

*This section of the Toolkit (Section IV-B) only applies to RAPs that are required to develop AAPs. Even if you don't have to develop an AAP, you may find some useful ideas in the part of this section devoted to Targeted Outreach, Recruitment, and Retention Activities (*Section IV-B(2)*).*

1. Measure for Inclusion and Set Goals

If you have to develop an AAP, a major aspect of it is measuring the levels of participation of women, people of color, and IWDs in your program, and then seeing how these levels measure up against the levels that would be expected based on their availability in the area you recruit from.

The reason for measuring is simple and universal: "If you cannot measure it, you cannot improve it" *(attributed to William Thomson, Lord Kelvin, "perhaps the most important physicist of the 19th century." Physics World, "*In Praise of Lord Kelvin*.").* That is why measurement is the heart of AAPs. Without it, you have no way of assessing whether your outreach, recruitment, and retention efforts are making a difference. Nor do you have any way of knowing when you have reached your goal.

The Apprenticeship EEO Regulations are based on the premise that "absent discrimination, over time a sponsor's apprenticeship program, generally, will reflect the sex, race, ethnicity, and disability profile of the labor pools from which the sponsor recruits and selects" (29 CFR § 30.6(a)(2)). Thus, AAPs measure sponsors' progress toward achieving inclusion of these groups in their programs at the *levels that would be expected absent discrimination.*

If women or individuals from a particular minority group are not being admitted or retained into a RAP at a rate to be expected given their availability in the relevant recruitment area, the RAP's Affirmative Action Program must include specific, practical steps designed to address any barriers to equal opportunity that may be contributing to this underutilization (29 CFR § 30.4(a)(2)).

*The following section of the Toolkit (*Section IV(B)(1)(i)*) explains the steps for determining whether the participation of women and people of color in your program measure up to the nondiscrimination standard and how to set goals for their participation, if needed. The subsequent section (*Section IV(B)(1)(ii)*) explains the similar steps for determining whether the participation of IWDs in your program measure up to the national goal that the Apprenticeship EEO Regulations set for IWDs. Apologies in advance*—this is going to get technical [OA's webinar, **Equal Employment Opportunity Regulations for Apprenticeships: Demographic Utilization Analyses**, demonstrates how to do these demographic analyses and explains which sponsors need to conduct such analyses, the analyses components, how to find the information necessary to conduct the analyses; and how to evaluate their results].

i. *Ensure women and people of color (by race and national origin) are included*
    You can (and are required to) take some of the steps to measure the participation by women and people of color in your program on your own. You will then take other steps with the help of your Registration Agency during your regularly scheduled EEO compliance review.

    a. On your own

        1) Apprentice workforce analysis by sex, race, and national origin for each occupational title

            ✓ Determine the levels of current participation by women and people of color (by race and national origin) for each occupational title in your apprentice workforce [RAPs can locate the O*NET code associated with their registered occupations from the Program Occupation tab in their RAPIDS accounts].

            ✓ Conduct this workforce analysis at the occupation level by your two-year registration anniversary and at each compliance review, and every 3 years if there is no intervening compliance review.

        This step is really just a matter of counting and simple math. Just complete a table that looks like this, with a row for every occupational title in your program:

TABLE 1 – APPRENTICE WORKFORCE ANALYSIS BY SEX/RACE/NATIONAL ORIGIN FOR OCCUPATIONS

OCCUPATIONAL TITLE	TOTAL # APPRENTICES	% FEMALE	% HISP	% B/AA	% ASIAN	% AI/NA	% NH/PI

Example. Youge Electric Construction Co. (YECCo), an electrical construction contractor based in Montgomery, Alabama, operates a RAP that trains apprentices in four occupations -- three types of electricians and fire alarm installer.

For all of the occupations for which it trains apprentices, YECCo requires a high school degree or equivalency and a minimum age of 18. For its three electrician apprenticeships, it also requires applicants to have taken high-school calculus.

- Of YECCo's 15 installation electrician apprentices, 1 is a Hispanic woman, 2 are Hispanic men, 2 are Black men, and 10 are white men.

- Of its 5 solar photovoltaic electrician apprentices, 1 is a Native Hawaiian male and 4 are white men.

- Of its 10 instrumentation electrician apprentices, 1 is a Black man, 1 is a Korean man, and 8 are white men.

- Of its 20 fire alarm installer apprentices, 2 are white women, 1 is a Pakistani woman, 1 is a Black woman, 2 are Hispanic men, 2 are Black men, 1 is a Vietnamese man, and 11 are white men.

So YECCo's Apprentice Workforce Analysis by Sex/Race/National Origin for Occupations looks like this:

TABLE 1-EX – YECCO'S APPRENTICE WORKFORCE ANALYSIS BY SEX/RACE/NATIONAL ORIGIN FOR OCCUPATIONS

OCCUPATIONAL TITLE	TOTAL # APPRENTICES	#/% FEMALE	#/% HISP	#/% B/AA	#/% ASIAN	#/% AI/NA	#/% NH/PI
Installation electrician	15	1/ 7%	3/ 20%	2/ 13%	0	0	0
Solar photovoltaic electrician	5	0	0	0	0	0	1/ 20%
Instrumentation electrician	10	0	0	1/ 10%	1/ 10%	0	0
Fire alarm installer	20	4/ 20%	2/ 10%	3/ 15%	2/ 10%	0	0
TOTAL	50	5/ 10%	5/ 10%	6/ 12%	3/ 6%	0	1/ 2%

b. With the help of your Registration Agency

✓ Conduct the following steps during your regularly scheduled EEO compliance reviews, with the help of the Apprenticeship Training Representative (ATR) or other staff from your Registration Agency:

1) Apprentice workforce analysis by sex, race, and national origin for each major occupation group

    ✓ Determine the level of current participation by women and people of color (by race and national origin) for each major occupation group in your apprentice workforce.

        √ To accomplish this step, first combine your occupational titles into major occupation groups.

        Example. YECCo would classify its occupational titles into two major occupation groups, as follows:

TABLE 2-EX – YECCO'S OCCUPATIONAL TITLES AND MAJOR OCCUPATION GROUPS

SOC/O*NET CODE	MAJOR OCCUPATION GROUP	SOC/O*NET CODE	OCCUPATIONAL TITLE
47	Construction and Extraction Occupations	47-2111	Installation Electrician
		47-2111	Solar Photovoltaic Electrician
		47-2111	Instrumentation Electrician
49	Installation, Maintenance, and Repair Occupations	49-2098	Fire Alarm Installer

    ✓ Then, calculate the percentage of apprentices in each major occupation group who are women, Hispanic/Latinx, Black/African American, Asian, American Indian/Native Alaskan, and Native Hawaiian/Pacific Islander:

TABLE 3 – APPRENTICE WORKFORCE ANALYSIS BY SEX/RACE/NATIONAL ORIGIN FOR MAJOR OCCUPATION GROUPS

MAJOR OCCUPATION GROUP	TOTAL # APPRENTICES	% FEMALE	% HISP	% B/AA	% ASIAN	% AI/NA	% NH/PI
Major occupation group 1							
Major occupation group 2							
Major occupation group 3							

    Example. YECCo's Apprentice Workforce Analysis by Sex/Race/National Origin for Major

Occupation Groups thus looks like this:

TABLE 3-EX – YECCO'S APPRENTICE WORKFORCE ANALYSIS BY SEX/RACE/NATIONAL ORIGIN FOR MAJOR OCCUPATION GROUPS

MAJOR OCCUPATION GROUP	TOTAL # APPRENTICES	#/ % FEMALE	#/ % HISP	#/ % B/AA	#/ % ASIAN	#/ % AI/NA	#/ % NH/PI
Construction/ Extraction Occupations	30	1/ 3%	3/ 10%	3/ 10%	1/ 3%	0	1/ 3%
Installation/Maintenance/ Repair Occupations	20	4/ 20%	2/ 10%	3/ 15%	2/ 10%	0	0

2) Availability analysis

The "availability" of each demographic group means its share of people in the recruitment area who meet the eligibility criteria for the apprenticeship.

(i) "Recruitment area" definition

Before you can complete your availability analysis, you need to identify your recruitment area. Recall that the definition of your recruitment area depends on where you recruit *from*.

- If you recruit only *internally* – that is, from your incumbent workforce – your recruitment area is that incumbent workforce or the division(s) of that incumbent workforce from which you accept or reasonably could accept apprenticeship applications ("internal" recruitment—and beware of the pitfall of defining your internal recruitment area in a way that has an unjustified disparate impact on a protected group).

- If you recruit only *externally* – that is, from individuals in your surrounding community who are not your current employees – your recruitment area is the geographical area from which you usually seek or reasonably could seek apprentices ("community" or "external" recruitment).

- If you recruit both internally and externally, your recruitment definition should reflect the percentage of your incoming apprentice classes that come from your incumbent work-force vs. from the community.

- If you are an in-school youth apprenticeship, your recruitment area is the school(s) and class(es) from which you accept or reasonably could accept apprenticeship applications.

✓ Identify your recruitment area and record it in your written AAP.

✓ Include a brief rationale for how and why you drew your recruitment area as you did.

✓ Be careful not to define your recruitment area "in such a way as to have the effect of excluding individuals based on race, sex, or ethnicity from consideration" (29 CFR § 30.5(c)(4)).

(ii) Calculation of availability in recruitment area by sex, race, and national origin

The calculation of the availability of each demographic group must be based on "the most current and discrete demographic information available." The examples of such information given in the regulations (29 CFR § 30.5(c)(5)) are Census data, data from local job service offices, and data from colleges or other training institutions.

Below are the steps for calculating availability for programs that use internal and external recruitment areas, as well as for programs that recruit *both* internally and externally.

✓ Calculate the "availability" of eligible apprenticeship candidates in your recruitment area by sex, race, and national origin.

Internal recruitment. If you recruit only internally, your availability analysis is, again, a relatively straightforward exercise in counting and calculating simple percentages. In this case, *you* are the source of the most current and discrete demographic information available, since you know the demographic data for your workforce and whether they meet the eligibility requirements for your apprenticeship program.

✓ Complete a table like the following for your total workforce (excluding current apprentices):

TABLE 4 – AVAILABILITY ANALYSIS BY SEX/RACE/NATIONAL ORIGIN FOR ELIGIBLE INCUMBENT WORKFORCE (INTERNAL RECRUITMENT)

MAJOR OCCUPATION GROUP	TOTAL # EMPLOYEES ELIGIBLE FOR APPRENTICESHIP	% FEMALE	% HISP	% B/AA	% ASIAN	% AI/NA	% NH/PI
Construction/ Extraction Occupations							
Installation/Maintenance/ Repair Occupations							

Example. For purposes of this example, YECCo recruits apprentices entirely from its employees who work in non-supervisory positions in its Alabama facilities. For incumbent employees, it waives the calculus requirement for its electrician apprenticeship programs.

Of the 150 non-supervisory employees in YECCo's incumbent workforce in Alabama, 100 of them have a high-school degree/GED and are 18 or older:

- 8 Black women;
- 5 Hispanic women;
- 23 white women;
- 2 Asian women;
- 15 Black men;

- 12 Hispanic men;
- 5 Asian men;
- 2 American Indian men; and
- 28 white men.

Plugging in these numbers, for this incumbent workforce, YECCo's Availability Analysis for its incumbent workforce looks like this:

TABLE 4-EX – YECCO'S AVAILABILITY ANALYSIS BY SEX/RACE/NATIONAL ORIGIN FOR ELIGIBLE INCUMBENT WORKFORCE (INTERNAL RECRUITMENT)

MAJOR OCCUPATION GROUP	TOTAL # EMPLOYEES ELIGIBLE FOR APPRENTICESHIP	% FEMALE	% HISP	% B/AA	% ASIAN	% AI/NA	% NH/PI
Construction/ Extraction Occupations	100	38%	17%	23%	8%	2%	0
Installation/Maintenance/ Repair Occupations	100	38%	17%	23%	8%	2%	0

BACKGROUND

The educational attainment levels that Census reports are:

- Not high school graduate
- High school graduate (including equivalency, e.g., GED)
- Some college or associate degree
- Bachelor's degree
- Master's degree
- Doctoral or professional degree.

External recruitment. If you recruit externally your source for the "most current and discrete demographic information available" is likely to be the Census Bureau. The Census Bureau publishes "EEO Tabs" (tabulations) showing the race, sex, and ethnicity of people with different educational attainments by geographic location. These tables show the numbers and percentages of people in the civilian labor force who have achieved any of the educational attainments who fall into any of the Census-defined demographic groups by geographic location, using the most recent available Census data.

These tables are not very easy for a layperson to use, however. That is because they report the percentages of each race, sex, and ethnicity who have reached each educational-attainment level separately by age group. So to derive the percent of the people in any geographic area who meet your education criterion and who are Black from these tables, you'd have to sum the total numbers of people who have your minimum educational attainment and all the educational attainments above that for each age group in each geographic area that you recruit from, and then do the same for the numbers of people who have your minimum educational attainment and all the educational attainments above that for each age group in each geographic area that you recruit from, who are Black. Then you would divide the Black total by the total for everyone. This fraction would represent the availability of eligible Blacks in your recruitment area. But you wouldn't be finished -- you would have to do the same

calculations

for females, Hispanics/Latinxs, Asians, American Indians/Alaska Natives, and Native Hawaiians/Pacific Islanders. That's a lot of calculation! It would be time-consuming, not to mention tedious.

Luckily, you don't have to do these calculations yourself – availability analysis is one of the things that you only have to do in conjunction with an EEO compliance review and with the assistance of the Registration Agency ATR. Even better, as part of the Affirmative Action Plan Builder, OA has developed an automated tool to use when helping sponsors develop and update their AAPs. The Tool pulls all the relevant data from the Census site and makes the calculations. All you have to do is to tell your ATR what your recruitment area and eligibility criteria are; they will plug the information into the Tool, and you will have your availability analysis in a couple of keystrokes.

This works for programs that the tool is designed for – programs that only use age and educational attainment as eligibility criteria. If you use other eligibility criteria, such as having experience or coursework in certain fields, in addition to or instead of educational attainment, you cannot use the tool alone to calculate availability. That is because these other criteria are not tracked by Census, so Census does not have data on the demographics of people who meet those criteria – and the tool draws from Census data.

✓ If you recruit entirely externally and use eligibility criteria that are tracked by Census, work with your ATR to produce a table like the following from the tool:

TABLE 5 – AVAILABILITY ANALYSIS BY SEX/RACE/NATIONAL ORIGIN FOR ELIGIBLE CIVILIAN LABOR FORCE IN EXTERNAL RECRUITMENT AREA

MAJOR OCCUPATION GROUP	TOTAL # INDIVIDUALS IN CIVILIAN LABOR FORCE IN GEOGRAPHIC RECRUITMENT AREA WHO ARE ELIGIBLE FOR APPRENTICESHIP	% FEMALE	% HISP	% B/AA	% ASIAN	% AI/NA	% NH/PI
Major occupation group 1							
Major occupation group 2							
Major occupation group 3							

Example. In this example, assume YECCo recruits apprentices entirely from people who live in Alabama. (In the real world, a RAP located in Montgomery, Alabama, would probably not recruit from the entire state, but from the Montgomery metropolitan

area or perhaps from anywhere within an hour's commute, or within a radius of 50 or 75 miles, of Montgomery. But here we'll keep it simple and use the entire state.)

For purpose of this example, YECCo's eligibility criteria for both its construction-occupation apprenticeships (installation electrician, solar photovoltaic electrician, and 10 instrumentation electrician) and its installation/maintenance/ repair-occupation apprenticeship (fire alarm installer) are the same: having a high school degree or equivalent and being at least 18 years old.

To determine the availability of females, Hispanics/Latinxs, Blacks/African Americans, Asians, American Indians/Native Alaskans, and Native Hawaiians/Pacific Islanders, YECCo worked with its Registration Agency, which used the AAP Builder tool to produce the following demographic breakdown for individuals in Alabama who have a high school degree or GED (including those who also have some college and a college or graduate degree):

TABLE 5-EX – YECCO'S AVAILABILITY ANALYSIS BY SEX/RACE/NATIONAL ORIGIN FOR ELIGIBLE CIVILIAN LABOR FORCE IN EXTERNAL RECRUITMENT AREA (ELIGIBILITY = HIGH SCHOOL/GED/18+)

MAJOR OCCUPATION GROUP	TOTAL # INDIVIDUALS IN CIVILIAN LABOR FORCE IN ALABAMA WHO HAVE HIGH-SCHOOL DEGREE/ GED/18+	% FEMALE	% HISP	% B/AA	% ASIAN	% AI/NA	% NH/PI
Construction/ Extraction Occupations	1,451,450	48%	2%	22%	1%	< 1%	< 1%
Installation/Maintenance/ Repair Occupations	1,451,450	48%	2%	22%	1%	< 1%	< 1%

Even if some or all of your eligibility criteria are not tracked by Census, though, it makes sense to begin your analysis with the availability figures generated by the AAP Builder tool and then adapt those figures to account for your additional criteria. You may be able to find participation data from other sources, such as a vocational education association, that you can layer onto the tool-generated availability results. Your ATR should be able to help you do this.

✓ If you recruit entirely externally and use eligibility criteria that are *not* tracked by Census, work with your ATR–

  √ To produce a table like the above from the tool;

  √ To find sources of discrete data reflecting the demographics of your eligibility criteria;

  √ To modify the AAP Builder tool–produced results to account for your additional criteria.

Example. For this example, assume that the eligibility criteria for YECCo's three electrician apprenticeship programs are having taken high-school calculus as well as having a high school degree or equivalency. The National Science Board published data on high-school science- and math-course takers in 2018, reproduced below:

HIGHEST-LEVEL MATHEMATICS COURSE ENROLLMENT OF HIGH SCHOOL COMPLETERS, BY STUDENT AND FAMILY CHARACTERISTICS: 2013

STUDENT AND FAMILY CHARACTERISTIC	ALGEBRA 1 OR LOWER	GEOMETRY	ALGEBRA 2	TRIGONOMETRY OR OTHER	PRE-CALCULUS	CALCULUS OR HIGHER
All students	2.9	7.8	24.4	23.8	21.8	19.3
SEX						
Male	3.7	9.1	23.7	23.7	20.4	19.5
Female	2.2	6.5	25.1	24.0	23.2	19.2
RACE OR ETHNICITY						
White	3.2	6.6	22.2	22.2	23.9	22.0
Black	2.3	4.9	28.8	34.6	20.4	9.0
Hispanic	3.0	13.2	26.8	23.5	18.9	14.6
Asian	0.7	2.4	10.3	13.6	22.7	50.3
Other	2.8	10.7	43.8	15.7	12.6	14.3
Two or more races	3.1	8.1	30.8	25.1	17.8	15.1

Although this is not state-by-state data and is from 2013, it is the most current and discrete demographic information about high-school calculus takers that we could find.

From the above table, we know that 19.2% of women, 9% of Blacks, 15% of Hispanics, and 50% of Asians took calculus. YECCo multiplies these percentages by the percentage of high-school graduates in Alabama to arrive at each of these groups' share of high-school completers who took calculus:

MAJOR OCCUPATION GROUP	CIVILIAN LABOR FORCE IN ALABAMA	% FEMALE	% HISP	% B/AA	% ASIAN	% AI/NA	% NH/PI
Construction/Extraction Occupations	% Who Have High-School Degree/GED/18+	48%	2%	22%	1%	< 1%	< 1%
	% who took calculus	19%	15%	9%	50%	no data	no data
	% with high school degree *and* who took calculus (*i.e,* who meet all eligibility requirements)	9%	0.4%	2%	0.7%	< 1%	< 1%
Installation/Maintenance/ Repair Occupations	% Who Have High-School Degree/GED/18+ (*i.e.,* who meet all eligibility requirements	48%	2%	22%	1%	< 1%	< 1%

Internal and external recruitment combined. If you recruit both internally and externally, you will need to calculate availability based on the proportions of your apprentice workforce that is to come from internal vs. external recruitment. This will involve taking a weighted average, as follows:

✓ Identify the proportions of your apprentice workforce that you expect will come from internal (vs. external) recruitment in the coming year.

o Some RAPs set the proportions of apprentices whom they will accept from internal and external recruitment by policy. In other words, they have decided in advance the proportions of apprentices they will take from their incumbent workforces and from their communities each year. If this is your case, you will enter the percentage you have determined you will take from your incumbent workforce in row B of the table below (Table 6 – Calculation of Availability by Sex/Race/National Origin for Internal and External Recruitment Combined).

- For other RAPs, this is a more *ad hoc* process – that is, the number of apprentices they take from their incumbent workforce vs. from the community varies from year to year according to circumstances. If this is your case, choose one of the following ways to predict the internal/external proportions in the coming year and enter the result in row B:

  √ Use the actual proportions who came from your incumbent workforce and from the community in your current apprentice workforce;

  √ If your most recent apprentice class is large enough to meaningfully reflect what actually happens, use the actual proportions who came from your incumbent workforce and from the community in that class;

  OR

  √ If your most recent apprentice class is too small, combine your apprentice admissions over the last several years or classes and use the proportions who came from your incumbent workforce and from the community in the combined group.

✓ Conduct availability analyses for both internal and external recruitment, following the steps outlined above for Tables 4 and 5 above and enter the results from in rows A and D, respectively.

✓ For each major occupation group, calculate the weighted average of the results of the two availability analyses as follows:

TABLE 6 – CALCULATION OF AVAILABILITY BY SEX/RACE/NATIONAL ORIGIN FOR INTERNAL AND EXTERNAL RECRUITMENT COMBINED

	1	2	3	4	5	6	7
	Percentage of	Female	Hisp	B/AA	Asian	AI/AN	NH/PI
A	% of incumbent workforce that meets the minimum requirements [taken from Table 4]						
B	% of new apprentices to be selected from incumbent workforce [this figure will be the same across all columns]						
C	Row A x row B						
D	% of external workforce that meets the minimum requirements [taken from Table 5]						
E	% of new apprentices to be selected from external recruitment [100 minus row B above] [this figure will be the same across all columns]						
F	Row D x row E						
G	Row C + row F, expressed as a %						

Example. For this example, assume that YECCo uses the eligibility criteria of having a high-school degree or equivalence and taken calculus for its construction-occupation programs. Assume further that it admits 25% of its apprentices from its incumbent workforce and 75% from its external recruitment area in both its construction-occupation and installation/maintenance/repair-occupation programs.

TABLE 6-EX – YECCO'S AVAILABILITY ANALYSIS BY SEX/RACE/NATIONAL ORIGIN FOR INTERNAL AND EXTERNAL RECRUITMENT COMBINED

	1	2	3	4	5	6	7
	Percentage of	Female	Hisp	B/AA	Asian	AI/AN	NH/PI
	Construction/Extraction Occupations						
A	% of incumbent workforce that meets the minimum requirements [taken from Table 4-Ex]	38%	17%	23%	8%	2%	0%
B	% of new apprentices to be selected from incumbent workforce [this figure will be the same across all columns]	25%	25%	25%	25%	25%	25%
C	Row A x row B	10%	4%	6%	2%	1%	0%
D	% of external workforce that meets the minimum requirements [taken from Table 5-Ex]	9%	0.4%	2%	0.7%	0%	0%
E	% of new apprentices to be selected from external recruitment [100 minus row B above] [this figure will be the same across all columns]	75%	75%	75%	75%	75%	75%
F	Row D x row E	7%	0%	2%	1%	0%	0%
G	Row C + row F, expressed as a %	16%	5%	7%	3%	1%	0%
	Installation/Maintenance/Repair Occupations						
A	% of incumbent workforce that meets the minimum requirements [taken from Table 4-Ex]	38%	17%	23%	8%	2%	0%
B	% of new apprentices to be selected from incumbent workforce [this figure will be the same across all columns]	25%	25%	25%	25%	25%	25%
C	Row A x row B	10%	4%	6%	2%	1%	0%
D	% of external workforce that meets the minimum requirements [taken from Table 5-Ex]	48%	2%	22%	1%	0%	0%
E	% of new apprentices to be selected from external recruitment [100 minus row B above] [this figure will be the same across all columns]	75%	75%	75%	75%	75%	75%
F	Row D x row E	36%	2%	17%	1%	0%	0%
G	Row C + row F, expressed as a %	46%	6%	23%	3%	1%	0%

3) Determining if there is "underutilization" that your program has to address

✓ Compare the share of each demographic group in your apprentice workforce with that demographic group's availability in your recruitment area(s).

✓ If it is lower, determine if it is significantly lower.

Once you have calculated availability for each major occupation group by race, sex, and ethnicity, you need to determine, for each major occupation group, whether the share of each demographic group in your apprentice workforce reflects that demographic group's availability in your recruitment area(s). And if there is a demographic group whose share is significantly lower, you are "underutilized" for that group, and you need to address the underutilization.

Remember that you do not need to figure this out on your own; this is a step that the Registration Agency is supposed to assist you with it.

The term "significantly lower" here has a specific, and mathematically defined, meaning. A demographic group's representation in your apprentice workforce is "significantly lower" than its availability if –

✿ Representation is less than 80% of availability; or

✿ The difference between representation and availability is greater than two standard deviations.

This requirement ensures that only small differences between availability and representation – differences that could be random -- do not result in you having to take any action. The requirement also standardizes the way "small" is measured from program to program, ATR to ATR, and Registration Agency to Registration Agency.

Your ATR should help you figure out if representation of any demographic group in your program is "significantly less" than its availability. In fact, the AAP Builder tool automatically calculates whether any difference between them is larger than 80% and, for larger groups, is greater than two standard deviations. (The standard-deviations test is generally used only for comparisons of larger groups (for example, where there are at least 30 apprentices in a RAP's program).)

> **Example:** Here is an illustration of the 80% method in action for our hypothetical RAP YECCo. The bottom line for each major occupation group is shaded:

TABLE 7-EX: COMPARISON OF DEMOGRAPHIC GROUPS' PARTICIPATION IN YECCO'S APPRENTICE WORKFORCE WITH THEIR AVAILABILITY

MAJOR OCCUPATION GROUP	% FEMALE	% HISP	% B/AA	%ASIAN	% AI/NA	% NH/PI
Construction/Extraction Occupations						
Apprentice Workforce Analysis *(from Table 3-Ex)*	3%	10%	10%	3%	0%	3%
Availability Analysis *(from Table 6-Ex, row)*	16%	5%	7%	3%	1%	0%
% of Workforce to Availability	**19%**	200%	143%	100%	**0%**	n.a.
Installation/Maintenance/Repair Occupations						
Apprentice Workforce Analysis *(from Table 3-Ex)*	20%	10%	15%	10%	0%	0%
Availability Analysis *(from Table 6-Ex)*	46%	6%	23%	3%	1%	0%
% of Workforce to Availability	**43%**	167%	**65%**	333%	**0%**	n.a.

As you can see, for the construction/extraction occupations, there are two demographic groups who are underutilized – that is, whose participation in YECCo's workforce is less than 80% of their availability: females and American Indians/Native Americans. For those groups, YECCo will have to address the underutilization by setting a goal and undertaking targeted outreach, recruitment, and retention activities.

For the installation/maintenance/repair occupations, there are three demographic groups whose participation in YECCo's workforce is less than 80% of their availability: females, Blacks/ African Americans, and American Indians/Native Americans – which means that YECCo will have to address these groups' underutilization.

4) Setting goals if needed

(i) When and how to set goals

The steps for setting goals based on race, sex, and ethnicity are pretty straightforward:

✓ Set goals for any demographic group's participation in your program for all major occupation groups for which they are underutilized.

✓ Set goals that are at least equal to the demographic group's availability, as determined in your availability analysis.

Example. Based on the results in Table 7-Ex, here are YECCo's participation goals:

TABLE 8-EX: YECCO'S PARTICIPATION GOALS

MAJOR OCCUPATION GROUP	FEMALES	B/AA	AI/NA
Construction/Extraction Occupations	16%	n.a.	1%
Installation/Maintenance/Repair Occupations	47%	27%	1%

(ii) What goals are

Per the Apprenticeship EEO Regulations (29 CFR § 30.6(c)), utilization goals are "objectives or targets" to be used for measuring "the effectiveness of the sponsor's outreach, recruitment, and retention efforts." If a sponsor uses "every good faith effort to make all aspects of [its] entire Affirmative Action Program work," the goals should be "reasonably attainable."

In other words, the utilization goals are the way you measure the impact of your efforts to diversify your apprentice workforce. And indeed, they are one of the most effective tools at your disposal. You will not be held accountable if you do not actually reach the goals, but you *are* accountable for making "every good faith effort" to do so.

(iii) What goals are not

(a) Goals are not quotas

If goals were quotas, meeting them would be required. But it is not. The Apprenticeship EEO Regulations are explicit on this point. They state (29 CFR § 30.6):

- Goals "may not be rigid and inflexible quotas which must be met."

- Goals may not be used "as a ceiling or a floor for the selection of particular groups as apprentices."

- Goals "do not create set-asides for specific groups."

- Goals are not "intended to achieve proportional representation or equal results."

Most important, your Registration Agency may not impose any sort of penalty on your program if you do not meet a goal.

(b) Goals do not require the hiring or admission of unqualified individuals

Again here, the Apprenticeship EEO Regulations are explicit:

- Goals may not be used to justify "extend[ing] a preference to any individual, select[ing] an individual, or adversely affect[ing] an individual's status as an apprentice, on the basis of that person's race, sex, or ethnicity."

- "Goals do not supersede or suspend eligibility requirements and qualifications for apprenticeship."

(c) Goals are not findings of discrimination

- Adopting a goal is not an admission that you have discriminated.

- And a finding by your Registration Agency that you need to set a goal does not mean that it believes that you have discriminated.

(d) Goals do not permit discrimination:

- "The commitments contained in an Affirmative Action Program …must not be used to discriminate against any qualified applicant or apprentice on the basis of race, color, religion, national origin, sex, sexual orientation, age (40 or older), genetic information, or disability" (29 CFR § 30.4(a)(5)).

ii. *Ensure IWDs are included*

As is true for the initial steps for inclusion of women and people of color, you can (and are required to) begin to measure the participation of IWDs in your program on your own. You will then take other steps with the help of your Registration Agency during your regularly scheduled EEO compliance reviews.

a. On your own

1) Extend invitations to identify as an IWD to apprentices and applicants

The reason for requiring RAPs to invite their apprentices and applicants to their programs to self-identify whether they have a disability is to get data. If you don't know how many IWDs are in your program, how can you tell if you are measuring up to the standard?

✓ For all of the disability self-identification invitations, use the standard Voluntary Disability Disclosure form (which is a tear-off addendum to Section II of Form 671).

  o This form does not ask applicants or apprentices to identify any particular disability that they might have. All it asks is whether they do or do not identify as having a disability.

✓ Start by inviting all your current apprentices to complete the Voluntary Disability Disclosure form. This one-time invitation needs to be made *by* your two-year anniversary date.

✓ Starting *at* your two-year anniversary date and going forward, ask all applicants for apprenticeship to complete the Voluntary Disability Disclosure form—

- First, when they apply; and

- Then again, if and when they have been offered an apprenticeship position.

✓ Invite all apprentices to update their status annually.

2) Workforce analysis for IWDs for each occupational title. The workforce analyses for occupational titles for disability are very similar to the same workforce analyses for race, sex, and ethnicity (described at Section IV-B(1)(i)(a)1)).

✓ Take the data from the most recent Voluntary Disability Disclosure form that each apprentice filled out.

✓ Where an apprentice has not completed this form or has indicated that they "don't wish to answer" it, use visual observation to identify obvious disabilities or rely on the disclosures that the apprentice made as part of a request for reasonable accommodation.

✓ Complete a table that looks like this, with a row for every occupational title in your program:

TABLE 9 – WORKFORCE ANALYSIS BY DISABILITY FOR OCCUPATIONS

OCCUPATIONAL TITLE	TOTAL # APPRENTICES	% IWDS

✓ As you do for your race/sex/ethnicity workforce analysis for occupations, conduct this workforce analysis at the occupation level by your two-year registration anniversary and at each compliance review, and every 3 years if there is no intervening compliance review.

Example. Returning to our hypothetical RAP YECCo:

- Of YECCo's 15 installation electrician apprentices, none are IWDs.

- Of its 5 solar photovoltaic electrician apprentices, none are IWDs.

- Of its 10 instrumentation electrician apprentices, 1 is an IWD.

- Of its 20 fire alarm installer apprentices, 2 are IWDs.

So YECCo's Workforce Analysis by Disability for Occupations looks like this:

TABLE 9-EX – YECCO'S WORKFORCE ANALYSIS BY DISABILITY FOR OCCUPATIONS

OCCUPATIONAL TITLE	TOTAL # APPRENTICES	# IWDS	% IWDS
Installation electrician	15	0	0%
Solar photovoltaic electrician	5	0	0%
Instrumentation electrician	10	1	10%
Fire alarm installer	20	2	10%
Total	50	3	6%

b. With the help of your Registration Agency

You will conduct the following steps during your regularly scheduled EEO compliance reviews, with the help of the Apprenticeship Training Representative (ATR) or other staff from your Registration Agency:

1) Workforce analysis by disability for each major occupation group. The workforce analysis for major occupation groups for disability is very similar to the same workforce analyses for race, sex, and ethnicity described above in Section IV-B(1)(i)(b)1).

✓ Determine the level of current participation by IWDs in each major occupation group in your apprentice workforce.

√ Use the same major occupation groups that you developed for your workforce analyses by sex, race, and national origin. See Table 2, above.

Example. As shown in Table 2-Ex above, YECCO's 4 occupational titles are categorized into two major occupation groups: installation electrician, solar photovoltaic electrician, and instrumentation electrician all fall into "Construction and Extraction Occupations," but fire alarm installer falls into "Installation, Maintenance, and Repair Occupations."

✓ Calculate the percentage of apprentices in each major occupation group who are IWDs:

TABLE 10 – WORKFORCE ANALYSIS BY DISABILITY FOR MAJOR OCCUPATION GROUPS

MAJOR OCCUPATION GROUP	TOTAL # APPRENTICES	# IWDS	% IWDS
Major occupation group 1			
Major occupation group 2			
Major occupation group 3			

Example. YECCo's Workforce Analysis by Disability for Major Occupation Groups thus looks like this:

TABLE 10-EX – YECCO'S WORKFORCE ANALYSIS BY DISABILITY FOR MAJOR OCCUPATION GROUPS

MAJOR OCCUPATION GROUP	TOTAL # APPRENTICES	# IWDS	% IWDS
Construction/Extraction Occupations	30	1	3%
Installation/Maintenance/Repair Occupations	20	2	10%

2) If your IWD participation is less than 7%, identify any impediments to EEO for IWDs

✓ Determine if your IWD participation in any major occupation group is less than 7%.

Unlike the steps for race, sex, and ethnicity, *you do not need to do availability analyses* to determine the goal against which you measure the participation of IWDs in your apprentice workforce. That's because OA has established a single nationwide goal of 7% for IWDs in RAPs, 29 CFR § 30.7. In other words, all RAPs that are required to develop AAPs have the same goal: that 7% of the apprentices in each of their major occupation groups be IWDs (*Background on how OA derived the 7% figure:* Final Rule Preamble, *81 FR at 92060-61*).

So, all you need to do is compare the demographics of your apprentice workforce for each major occupation group (shown in Table 10) with the number 7%.

Example. As you can see in Table 10-Ex, YECCo is not underutilized in its "Installation, Maintenance, and Repair Occupations," where IWDs are 10% of its apprentices. But it *is* underutilized in its "Construction and Extraction Occupations," where IWDs are only 3% of its apprentices.

✓ For any major occupation group in which IWDs are less than 7% of the apprentices, identify any impediments to EEO for IWDs.

Impediments to EEO "are any practices that prevent individuals from realizing an equal opportunity to apply for and participate in apprenticeship programs" (*Background on impediments to EEO:* Final Rule Preamble, *81 FR 92052*).

✓ To identify such impediments, review the following practices:

√ The outreach you conduct. Does it ensure that IWDs are aware of apprenticeship opportunities?

√ Your application process. Is it accessible to IWDs, or if not, do you let applicants with disabilities know that they can request reasonable accommodations for the application process?

√ The criteria for admission to your program and procedures you follow for selecting your apprentices. Do they tend to disfavor IWDs? If so, are they job-related?

√ Your physical set-up. Does it contain physical barriers that make it inaccessible to individuals who use wheelchairs or other IWDs?

√ The attitudes and treatment toward your apprentices. Are they hostile or otherwise unwelcoming to IWDs?

√ The way you assign and distribute training opportunities and work assignments. Do apprentices with IWDs get such opportunities and assignments without regard to their disability?

√ Your responses to requests for reasonable accommodation. Do you grant reasonable accommodations fairly?

√ The way you promote apprentices from level to level in your program and determine if they are ready for completion. Are IWDs evaluated using the same criteria that you use to evaluate other apprentices?

2. Plan and Undertake Targeted Outreach, Recruitment, and Retention Activities

i. Minimum required

As covered in Section III-D, all RAPs undertake *universal* outreach and recruitment. But RAPs that have developed AAPs also have to undertake *targeted* outreach and recruitment, as well as targeted retention activities, in either of two circumstances:

• If they are underutilized for a race, sex, or ethnicity; or

• If they are underutilized for IWDs and identified impediments to EEO for IWDs.

In either of these two circumstances—

✓ Disseminate information to organizations serving each underutilized group or IWDs, as applicable, regarding the nature of your apprenticeship, the requirements for selection, the availability of opportunities, and your equal opportunity pledge.

✓ Advertise all openings for your program in appropriate media that have wide circulation in your recruitment areas. Appropriate media includes social media and job search engines as well as media that specifically serve or target the underutilized populations.

✓ Establish relationships with pre-apprenticeship programs, local schools, or vocational education systems to prepare targeted populations to meet the requirements for entry into your program.

✓ Establish or strengthen linkage agreements or partnerships enlisting the assistance of pre-apprenticeship programs, community-based organizations, advocacy organizations, or other organizations, to recruit qualified individuals for your program.

✓ Evaluate, refine, and document the results and overall effectiveness of targeted outreach, recruitment, and retention activities after every selection cycle.

✓ Amend your written AAP to include these activities and keep records of them.

ii. *Focus:* **Boost the effectiveness of your outreach and recruitment activities**

> *Best practices:*

> Enlist journeyworkers from the underutilized group(s) to assist with targeted outreach and recruitment.

> Engage in the Outreach and Recruitment Activities highlighted in the *Focus* Sections on "On-going Outreach—Reaching Out to Identify and Engage Sources of Diverse Applicants" and "Know Your Audience—Appealing to Diverse Applicants."

iii. *Focus:* **Boost the effectiveness of your retention activities**

In 1992, CWIT surveyed over 200 tradeswomen to identify the challenges they faced in remaining in the construction trades. Entitled Breaking New Ground: Worksite 2000, it remains one of the most in-depth quantitative studies of women's retention in the industry. The experience of CWIT and our partners and subsequent research show that unfortunately, the challenges that limited women's participation and advancement in the industry in 1992 remain prevalent today *(Hegewisch and O'Farrell,* "Women in the Construction Trades: Earnings, Workplace Discrimination, and the Promise of Green Jobs -- Findings from the IWPR Tradeswomen Survey," *Institute for Women's Policy Research (2015).).*

The tradeswomen surveyed, 18% of whom were apprentices, reported having experienced the following treatment on the job (percentages are the percentage of respondents who reported the specific treatment):

88% pictures of naked or partially dressed women

83% unwelcome sexual remarks

80% no toilets or dirty toilets

60% being given the heaviest or dirtiest assignments

57% unwanted touching or being asked for sex

54% not being given proper on-the-job training

49% remarks about race or ethnicity

44% unfair layoff practices

38% not being hired because of being female

36% remarks about being a lesbian

26% lack of steady work

23% unions withholding job referrals

22% gender isolation – never working with another woman

Another of the tradeswomen's concerns was lack of family supports – 10% of respondents left a job to have a baby, 3% because of child-care problems, and 3% to care for an ill family member.

Below is a list of what you can do to address these concerns – not just for women, but for people of color and IWDs as well. The list provides a roadmap to retaining apprentices from underrepresented groups:

a. Prepare candidates to succeed in apprenticeship (pre-apprenticeship programs).

b. Change the culture to prevent harassment and microinequities.

c. Ensure equitable practices for classroom and on-the-job training.

d. Ensure equitable practices in hiring, employment, and layoffs.

e. Address isolation and lack of support.

f. Ensure opportunity for advancement and leadership.

g. Make your program family-friendly.

h. Regularly assess your retention strategies.

Specific *best practices* for addressing each of these concerns follow [**Recruitment and Retention of Womxn in Washington Apprenticeships** (pp. 23-24) distills strategies that CWIT and its partners have found effective for retaining women in apprenticeship programs. These strategies are not just for women, though – they will boost effectiveness of your retention activities for any underrepresented group].

a. Prepare candidates to succeed in apprenticeship (pre-apprenticeship programs)

Being prepared to succeed as an apprentice means understanding what a prospective apprentice has signed up for -- the industry, work conditions, occupation, tasks, and routine, and how apprenticeship works. It also means having the technical skills needed to succeed. Pre-Apprenticeship training provides this preparation to prospective apprentices, as well as preparing trainees to become com- petitive candidates for entering apprenticeship [Best Practices Briefs on pre-apprenticeship programs from CWIT and the Center: "**Growing the Numbers of Women in the Trades: Building Equity and Inclusion Through Pre-Apprenticeship Programs**"; "**Bridging the Gender Gap: Creating A National Pre-Apprenticeship Program to Prepare Women for the Ironworking Industry**"; "**Powerful Words, Powerful Women: Book Groups and the Trades**"; "**Strategies for Meeting the Demand for Advanced Manufacturing and Ship-Building Workers: Wom- en-Only Pre-Apprenticeship Programs in Mississippi and West Virginia**"; "**Women-Only Pre-Apprenticeship Programs: Meeting Skills Needs and Creating Pathways to Good Jobs for Women**"].

A typical pre-apprenticeship training curriculum for the trades covers:

• Math

• Spatial and mechanical aptitude

• Basic construction skills and hands on training

• Physical conditioning

• Workplace readiness

For women, pre-apprenticeship preparation may require more. Most women grew up steeped in gender-based stereotypes about what kind of work women do and what kind of work men do. And of course, in that paradigm, skilled construction trades, advanced manufacturing, transportation engineering – most jobs that involve working with tools or machinery or heavy lifting – are jobs that *men* do and that women *cannot* do.

Like so many people, even women who want to work in such jobs have internalized those gender stereotypes. They may experience "stereotype threat," a psychological phenomenon where people are afraid their performance is going to confirm negative stereotypes about their group – and this worry, in turn, affects their performance. According to the National Institutes of Health, "[s]tereotype threat significantly undermines the standardized test performance of women and African-Americans" [this NIH webpage contains several resources about interventions that reduce stereotype threat].

Similarly, women commonly are subject to "imposter syndrome," defined in *Psychology Today* as "a pattern of behavior where people doubt their accomplishments and have a persistent, often internalized fear of being exposed as a fraud…despite having adequate external evidence of accomplishments." Imposter syndrome also affects people of color and IWDs because, as psychologist Emily Hu explains, people are "more likely to experience imposter syndrome if [they] don't see many examples of people who look like [them] or share [their] background who are clearly succeeding in [their] field" *(The Psychology Today article quoted is M. Dalla-Camina, "The Reality of Imposter Syndrome," Psychology Today (September 3, 2018)) (The quote from Emily Hu comes from S. Nance-Nash, "Why Imposter Syndrome Hits Women and Women of Colour Harder," BBC (July 27, 2020)).*

To overcome these attitudes, underrepresented groups often need a safe and supportive place to build confidence in their skills, and information to help them navigate an unfamiliar and, for many, intimidating work environment. Pre-apprenticeship programs geared to those groups provide just that.

For example, the pre-apprenticeship programs that CWIT and its partners offer generally include a curriculum, like CWIT's Gender Lens Curriculum, that covers:

- Tools for success: surviving and thriving in a male-dominated environment
- Health and safety for women in construction
- Cultural competency
- Sexual harassment prevention
- Successful interviewing and communication skills.

Moreover, pre-apprenticeship training geared to women often takes into account that women applying to apprenticeship are not often typical candidates (young people who have the financial support of their parents). For them, the lack of wages during unpaid pre-apprenticeship programs, unavailability of childcare, the cost of transportation, program fees, and other direct costs can be an insurmountable barrier that puts the trade out of their reach. To help trainees overcome the hardship involved in attending a lengthy, full-time, unpaid pre-apprenticeship program, women-focused pre-apprenticeship programs often hold classes part-time in the evenings to allow participants to do paid work during the day; provide stipends; reimburse childcare, transportation, or other direct costs; or waive participant fees.

- If you offer or link with pre-apprenticeship training to prepare your apprentices to succeed—

  o Hold classes part-time in the evenings;

  o Provide a stipend or wage that is sufficient to allow pre-apprentices to meet their financial obligations and focus on their training.

  o Or waive or subsidize program fees.

b. Change the culture to prevent harassment and microinequities

This Toolkit discusses harassment and microinequities in several places because the topic is so fundamental. It is fundamental to providing non-discriminatory apprenticeships (which is why we discussed it in Section II-D , "*Focus:* Avoiding Discrimination Involving Harassment and Hostile Work Environments"). It is fundamental to complying with the affirmative requirements of the Apprenticeship EEO regulations (which is why we discussed it in Section III-C , "Conduct EEO Information Sessions and Anti-Harassment Training"). And it is fundamental to retaining apprentices from underrepresented groups, which is why we return to the topic in this section.

To retain female apprentices and others from underrepresented groups who are subject to harassment and microinequities, culture change – major shifts in behavior and practices -- are required. In a culture that permits or encourages exclusion, the safety of some "is sacrificed and minimized to allow others to be comfortable in maintaining dehumanizing views" – putting the excluded groups under "constant threat of erasure." Instead, you want a culture of inclusiveness and belonging.

Here is a round-up of all the steps that this Toolkit has recommended to help with the shifts needed to create a culture of inclusiveness and belonging *(This definition of exclusion is from C. Lwali, "Plugging the Leaky Bucket," presentation at ANEW's 2020 Inclusion and Diversity Summit :* https://youtu.be/UanByu5DwX0 *(at minute 11:20), quoting D. Stewart, "*Language of Appeasement*," Inside HigherEd (March 30, 2017))*:

Policy

- Adopt and communicate a strong, explicit nondiscrimination policy that includes harassment and intimidation. The policy should:

  - Make crystal clear that harassment, intimidation, discrimination, and retaliation for reporting or complaining about those matters is absolutely not tolerated in your program.

  - State explicitly that the policy comes from the program's leadership and reflects the leadership's priorities.

  - Clearly define the harassing conduct that is prohibited, with examples.

  - Spell out the consequences for anyone who engages in prohibited harassing conduct.

  - Describe your internal complaint process.

  - Include assurances that complaints will be confidential to the extent possible and that complainants are protected from retaliation.

➢ Explain that you will respond to instances of harassment and to behavior that may lead to harassment with swift, effective, and proportionate action.

➢ *Make sure that every entity in your program that interacts with your apprentices – employers, unions, schools, CBOs – has a clear policy prohibiting harassment of your apprentices.*

Leadership and operations.

➢ Be sure your leaders do not engage in harassment themselves and model respectful behavior

➢ Support your anti-harassment policy with necessary personnel and resources.

➢ Take immediate and proportionate corrective action when you determine, after investigation, that harassment, discrimination, or retaliation has occurred.

➢ Respond not only to behavior that is legally actionable "harassment" but also behavior that, left unchecked, may lead to such harassment.

➢ Remove discriminatory graffiti, signs, or other material in your apprentices' workplaces and related-instruction sites (including bathrooms, changing rooms, and worker sheds or shanties) as soon as possible after it appears.

Training. Integrate harassment prevention in all your training – and make it effective [For more information and resources: **http://womensequitycenter.org/apprenticeship-programs/training-and-retention/**].

➢ Have a senior leader of your program open anti-harassment trainings and attend the entire thing.

➢ Be sure your anti-harassment compliance training reaches not only your apprentices, but everyone who works with them regularly.

➢ Address unlawful harassment based on race, national origin, disability, age, and the other protected characteristics as well as sex.

➢ Obligate your participating employers to require their employees to participate in anti-harassment trainings as part of your agreements with them.

➢ Supplement your anti-harassment compliance training with training in workplace civility, bystander intervention, cultural competence, and becoming an ally.

➢ Hold trainings at least whenever there is a new class of apprentices, a critical mass of new staff, or twice a year, whichever is more often.

➢ Train middle-management and first-line supervisors on how to respond effectively to harassment – not only to harassment this is reported to them but also to harassment that they witness [See CWIT's **Sexual Harassment Prevention—Train-the-Trainer PowerPoint**].

➢ Inaugurate a Respectful Workplaces campaign [such as ANEW's **RISE Up (Respect, Inclusion, Safety and Equity in the Construction Trades) -- a Respectful Workplace Campaign**, designed for apprenticeship training programs, unions, and construction companies].

➢ Establish a clear internal complaint process that provides multiple, accessible avenues of complaint and prompt, thorough, and impartial investigations.

➢ Assure your apprentices that you will protect the confidentiality of their EEO complaints to the extent possible.

➢ Assure your apprentices that if they make complaints of harassment, provide information related to complaints, act as witnesses in investigations of complaints, or otherwise participate in investigations, they will be protected from retaliation.

➢ Be sure that the individuals to whom harassment complaints are to be made are people whom apprentices feel comfortable with and safe approaching – such as the apprenticeship coordinator, an apprentice liaison, apprenticeship instructors, a job steward, or someone in an employee assistance or mentorship program. Women, people of color, and IWDs experiencing challenges on the job site are, for a variety of reasons, often reluctant to call attention to themselves or don't want to rock the boat by complaining to apprenticeship program staff or supervisors.

➢ Train the individuals to whom harassment complaints are to be made on how to respond to complaints, apprentices' options for addressing the harassment, and techniques for providing a safe space for apprentices to air their concerns and explore solutions.

c. Ensure equitable practices for classroom and on-the-job training

Classroom instruction. The culture in both classroom instruction and on-the-job training (OJT) is an important factor in retaining apprentices from underrepresented groups. Gender, race, national origin, and disability all affect learning and communication. For example, research has shown *gender differences in learning and communications styles*. Women, people of color, and IWDs may be impacted by lack of confidence, low self-esteem, stereotype threat, *or* imposter syndrome.

To provide equitable opportunity for all students to build the skills they need to succeed, be sure your classroom instructors:

➢ Provide equal attention, feedback, criticism, and praise to all students.

➢ Counter negative views and assumptions by emphasizing that ability is expandable, effort and process matter, and learning comes from mistakes.

➢ Provide opportunities for male and female apprentices, white apprentices and apprentices of color, and apprentices with and without disabilities to work together on (and to lead) small group projects.

➢ Are consistent in grading, dress-code application, discipline, and expectations for achievement, behavior, and responsibilities.

➢ Do not overlook capable but quiet students.

➢ Include a variety of lesson models that support different learning styles.

➢ Increase wait time to allow students to formulate answers.

➢ Encourage apprentices to ask questions and to ask that instructions be repeated.

➢ Do not ask apprentices from a protected group to perform activities they would not request of students not from that group or vice versa.

On-the-Job Training. How often have you driven past a road crew where the flagger is the only woman or person of color on the crew? Perhaps that's because it's their first day on the job; but perhaps it's because of inequitable OJT assignments. Female apprentices, apprentices of color, and apprentices with disabilities report that they are often relegated to the least skilled tasks (cleaning, organizing, material handling, etc.) and may encounter resistance to requests for more relevant training. Setting standards for OJT and carefully monitoring apprentices' work assignments and attainment of competencies is essential to developing the skills workers need.

To provide equitable opportunity for all apprentices to build the skills they need *(these recommendations on neutral OJT practices are, in general, adapted from* Recruitment and Retention of Womxn in Washington Apprenticeships*, pp. 13-20)* —

➢ Make sure all apprentices get equal access to OJT opportunities.

➢ Set standards for OJT and carefully monitor apprentices' work assignments and attainment of competencies.

➢ Assign a single person who is recognized as having responsibility for each apprentice's learning.

➢ For each apprentice, use a training-achievement record that maps out progress on achieving performance indicators.

Gender differences in learning. Females disproportionately prefer learning experiences that:

• They help design

• Are learner-centered and engage them in the group

• Include structured opportunities for feedback on drafts, not just the final product; Focus on the process; and

• De-emphasize competition.

Gender differences in communication styles. Female students are more likely than male students

• To give their statements less loudly, and at less length

• To present their statements in a more hesitant, indirect, or "polite" manner

• To use "I" statements ("I guess…" "I was wondering if…")

• To qualify their statements ("sort of" "I guess")

• To add "tag" questions ("isn't it?" "don't you think?")

• To ask questions rather than give statements

• To use intonations that turn statements into questions

• To accompany their statements with smiles or averted eyes rather than more assertive gestures such as pointing

• To apologize for their statements ("I may be wrong, but…")

Students exhibiting these female-gendered traits are perceived as less rigorous in their ability to think critically, less informed and lacking in intellectual sophistication.

—Center website, "Equitable Practices for Classroom and OJT Training."

➢ Set aside time for the persons responsible for apprentices' on-the-job learning to complete the training-achievement records.

➢ Make sure that both your apprentices and the journeyworkers who teach and supervise them understand their assignments, timelines, and roles.

➢ Communicate your expectations from day one – and repeat, repeat, repeat.

➢ Make sure that journeyworkers and supervisors have the tools *they* need to be successful, including training on mentoring, giving useful day-to-day feedback, conducting formal performance evaluations, and inclusive and neutral teaching practices.

➢ Check in with all your apprentices regularly. Ask if they are assigned to opportunities for all the training they need, and if there is someone onsite whom they can ask for help.

d. Ensure equitable practices in work assignments, hiring, and layoffs

Lack of consistent employment is one of the primary reasons why underrepresented groups fail to remain in and graduate from apprenticeship. Imagine deciding to change your life and learn a trade; finding childcare so that you can attend a pre-apprenticeship program at night; studying for and passing the apprenticeship admissions test; getting into the program; scraping together the cash for the fees, work-clothes, and tools you need; quitting your job; and starting your apprenticeship – only to find that there are no jobs for you. It is not surprising that people are discouraged and drop out!

Even if an apprentice sticks with the program, if it is difficult for them to keep stable employment, it will impact their skill attainment and take them longer to accrue the hours needed to meet apprenticeship requirements.

Often the reason apprentices have trouble getting work assignments is because of implicit or explicit bias . Even on jobs with federal contractors that seek to hire underrepresented groups to meet their affirmative-action goals, women often report that they not hired once the goals have been met or are laid off once a publicly funded project is completed.

To prevent this situation—

➢ Make sure you have work before you hire an apprentice.

➢ If a job is short-term, link apprentices to a range of projects and employers so that they maintain employment.

➢ Regularly review apprentices' work assignments to ensure that available assignments are being distributed without discrimination to all apprentices. Watch for disparity in hiring and lay-off practices.

➢ Proactively work with your participating employers to raise awareness of the issue and help them create equitable worksites.

e. Address isolation and lack of support

By definition, apprentices are new to an industry and trade. Most face unfamiliar work environments, still have limited skills and understanding of industry expectations and norms and have few established relationships. These challenges are made more difficult by isolation and lack of support. Yet many women report that they are the only woman on a job, feel isolated, and do not get support from male coworkers. People of color and IWDs have similar experiences.

Promote an inclusive and welcoming work environment by [CWIT's report, *Breaking New Ground*, offers recommendations for employers, unions and apprenticeship programs on establishing workplace environments that promote respect and inclusion]—

➤ Training your staff on how to foster and support a workplace that is culturally competent, respectful, and inclusive -- raising awareness of how beliefs about and treatment of protected groups impact retention and providing a set of tools, knowledge, and skills to take into the classroom and onto the worksite.

➤ Establishing formal mentorship programs, job coaches, and regular opportunities to check in with an apprenticeship director or instructor [mentoring is critical to facilitate relationship building and help apprentices navigate their careers, build skills, develop coping strategies, and solve issues as they arise. Mentorship can and should take many forms, including assignment to a journey-level worker on the job and connection to other women or people of color in the apprenticeship program, union, or relevant union membership committee] [Resources on mentoring: **Berger-Marks Mentoring Handbook; Berger-Marks Mentoring Worksheet; Jobs for the Future's Diversity, Equity, Inclusion, and Accessibility in Mentorship for Registered Apprenticeship]**.

➤ Enlisting journeyworkers from the underutilized group(s) to mentor apprentices -- and training them on *how* to mentor apprentices.

➤ Promoting informal networking with peers and journeyworkers.

➤ Creating or connecting apprentices to support groups such as Women's Committees, which offer peer support and opportunities for concerted action to promote best practices as well as openings to develop leadership skills. Virtual or in-person support groups can range from totally informal to formally constituted committees [Best Practices Brief from CWIT and the Center: "**Women's Committees: A Key to Recruiting and Retaining Women Apprentices**"; J. LaTour, "**A Guide to Organizing Women's Committees: Everything You Need to Know to Make a Difference!**" (2015)].

f. Ensure opportunities for advancement and leadership

Women, people of color, and IWDs want and need to have the same opportunities that white males without disabilities have for advancement, including moving into leadership positions on the job, in the union, and in the apprenticeship program. Mentorship, coaching, and leadership development activities and trainings not only serve the purpose of combatting isolation but promote career pathways and encourage advancement and leadership.

Promote and encourage apprentices' career advancement and leadership by—

➤ Supporting apprentices' attendance at conferences and training institutes, especially those geared toward their peer group. Such convenings offer apprentices the chance to learn survival and success skills from their peers in a safe environment [see these examples: Annual tradeswomen's conference, **Women Build Nations**; Electrical Workers Minority Caucus's **Breakthrough Leadership Training Institute; Sisters in the Brotherhood conferences**].

➤ Supporting mentoring and career coaching for apprentices.

➤ Encouraging participating employers to hire women, people of color, and IWDs in leader- ship positions, as project superintendents, engineers, supervisors, and crew leaders.

g. Make your program family-friendly

Work in the trades and many other occupations that are predominantly male has traditionally been the opposite of "family-friendly." Such work has been characterized by unpredictable or erratic work hours, very early-morning starts, or other schedules that are difficult to mesh with child-care and school hours, and by limited opportunities to take leave or get accommodations for the range of needs that family caregivers experience routinely, from parental leave to breast-milk pumping to parent-teacher conferences. It is not surprising, then, that conflicts with family needs are one of the reasons that women apprentices do not complete their programs.

So, adopting family-friendly policies is a no-brainer best practice to improve retention of women in your program. And while such policies are seen as primarily benefitting women, they also can have disproportionate positive impact on people of color, who tend to need some family-friendly benefits more than whites. Men increasingly use these benefits as well – for example, taking family leave to care for their seriously ill parents and paternity leave when their babies are born. Thus, creating family-friendly apprenticeship programs and worksites can make your apprenticeship program attractive to all workers, especially those with primary caretaking responsibility for children or sick and aging relatives.

To make your program more family-friendly—

1) Provide accommodations to apprentices who are unable to work their regular jobs in the usual way due to pregnancy and related medical conditions

Many pregnant tradeswomen may be able to work through much of their pregnancy, but others may require temporary accommodations to protect their health and safety on the job. This is particularly true for pregnant workers in physically demanding, inflexible, or hazardous jobs. The federal Pregnant Workers' Fairness Act of 2022 requires employers that are subject to Title VII of the Civil Rights Act [EEOC, **"Summary of Key Provisions of EEOC's Final Rule to Implement the Pregnant Workers Fairness Act (PWFA)"**] –

> to make reasonable accommodations to a qualified employee's or applicant's known limitations related to, affected by, or arising out of pregnancy, childbirth, or related medical conditions, absent undue hardship on the operation of the business of the covered entity.

The following things may be required to accommodate pregnant apprentices who need them because of their medical conditions (depending on the occupation and workplace) [Resources on pregnancy discrimination: National Women's Law Center and A Better Balance, "**It Shouldn't Be a Heavy Lift: Fairness for Pregnant Workers**" (2013); Society for Human Resources Management, "**How to Recognize – and Avoid – Caregiver Discrimination**" (2018)]:

✓ Provide stools or other places for pregnant apprentices to sit down (even if they are usually required to stand);

✓ Allow more frequent food and/or bathroom breaks;

✓ Give temporary assignments or transfers to light-duty positions;

✓ Allow them to carry a water bottle, to prevent dehydration;

✓ Temporarily waive lifting requirements or permit assistance with lifting;

✓ Give paid leave for prenatal medical appointments;

✓ Reduce their hours;

✓ Make changes in their start or quit times;

✓ Reassign them to shorter or less stressful shifts;

✓ Allow them to work indoors in particularly harsh weather;

✓ Limit how much they need to climb stairs; or

✓ Provide a modified uniform.

2) Provide, or make sure your participating employers provide, your apprentices with generous job-guaranteed family and medical leave

Life happens. People have babies; they get ill or have serious accidents; their children and aging parents get ill or have serious accidents. Or their spouses or adult children return from military service with serious injuries. In all these situations, it may not be possible for apprentices to continue to work and attend related instruction while they are caring for their babies or family members or recovering their own health.

This is not to say that men don't need and use family and medical leave frequently. In the year prior to a 2012 survey, 15% of women and 11% of men took family or medical leave. Abt Associates, "**Family and Medical Leave in 2012: Technical Report**," Exhibit 4.1.5, p. 64. In a more recent nationally representative survey, 48% of working fathers reported having taken some leave to care for a new child, and 25% of working men reported having taken some leave to care for an ill or disabled family member. 34% of Black workers and 35% or Hispanic/Latinx workers reported ever having taken leave to care for an elderly, ill, or disabled adult or ill or disabled child. A. Lenhart, H. Swenson, and B. Schulte, "**Lifting the Barriers to Paid Family and Medical Leave for Men in the United States**," New America (2019) ("New America Survey"), pp 44-46.

While these life events happen pretty much equally to men and women, women generally need and want more time off when babies are born than men. And because of stereotyped gender roles, women are more likely to need to take more time off, or *any* time off, to care for seriously ill family members than men. Also, Black and Hispanic/Latinx workers are more likely to need time off to care for family members than whites.

Depending on their size and state law, RAPs and the employers that participate with them may be required to guarantee apprentices their jobs when they need it for such family/medical reasons and may be required to pay them during their leave or to participate in a state paid-leave insurance system. The various federal and state laws are summarized below. But even if a RAP is not covered by any of these laws, reinstating apprentices who have been on family or medical leave and placing them back into jobs with participating employers is a key way of improving retention of women apprentices. Indeed, several unions have begun offering paid leave to their members [Resource: CWIT's report, **Pregnancy and Maternity Leave in the Trades: Good Practices for Apprentices**].

UNION PAID-LEAVE PROGRAMS:

- Under the Ironworker Management Progressive Action Cooperative Trust's **Maternity Leave Program**, covered women iron workers get up to 6 months of paid leave for the birth of their children if they are not able to work due to physical limitations arising from their pregnancies. Leave is paid at 2/3 of their normal weekly earnings up to $800.

- International Brotherhood of Electrical Workers (IBEW) locals in Oregon offer a similar **maternity benefit** of $800 per week to their pregnant members, allowing for six months of paid leave, with 13 weeks available prior to the expected due date and 13 more available after, regardless of whether the woman is physically able to work.

RAPs can also help educate their participating employers on applicable family leave requirements and initiatives.

(i) The federal Family and Medical Leave Act. The federal Family and Medical Leave Act (FMLA) requires employers of 50 or more employees to provide their eligible employees (including their apprentices) with at least 12 weeks of unpaid leave per year to recover from their own serious health conditions; to care for a newborn or newly adopted child; to care for a spouse, child, or parent who has a serious health condition; or to handle any "qualifying exigency" arising from the foreign deployment of the employee's spouse, child, or parent with the Armed Forces; and up to 26 weeks per year to care for a covered servicemember with a serious injury or illness, when the employee is the spouse, child, parent, or next of kin of the servicemember [Resource on FMLA: DOL, Wage & Hour Division, Fact Sheet #28, "**The Family and Medical Leave Act**"]**.**

Qualifying exigencies for which an employee may take FMLA leave include making alternative

childcare arrangements for a child of the deployed military member, attending certain military ceremonies and briefings, or making financial or legal arrangements to address the military member's absence [Resource on military family leave: DOL, Wage & Hour Division, Fact Sheet #28M, "The Military Family Leave Provisions under the Family and Medical Leave Act"].

At the end of the period of leave, employers must reinstate their employees to the same or an equivalent position. Employers must continue their payments toward employees' health insurance during the period of leave.

(ii) State leave law (paid or unpaid). Some state leave laws have lower coverage thresholds, different eligibility requirements, or more expansive qualifying reasons for leave than the federal FMLA. In addition, some state laws provide for some compensation during leave (paid leave) [Resources on state leave laws: National Conference of State Legislatures, "**State Family and Medical Leave Laws**"; DOL, Wage & Hour Division, "**Federal vs. State Family and Medical Leave Laws**"; National Partnership for Women & Families, "**State Family and Medical Leave Insurance Laws**" (2019)].

Most of the state paid leave laws applicable to private employers are financed through an insurance system, such as a state's temporary disability insurance or unemployment compensation system and funded by payroll contributions or premium payments made by either the employer, the employee, or both.

Note: If your apprentices are covered by a CBA, the CBA should already comply with these legal requirements (at a minimum). In general, CBAs may not provide for leave and other benefits that are less generous to employees than what the law requires.

(iii) Family and medical leave that is paid or otherwise goes beyond applicable law

➢ *Paid leave. Paid family and medical leave is not common, and it is less common for women. For example, according to the New America Survey, 40% of women who took leave to care for a family member received no pay during their leave, compared with only 28% of men (p. 52).*

There is little doubt that provision of paid leave would improve sponsors' retention of female and other apprentices. Nearly 75% of U.S. adults in a Pew Research Center poll agreed that employers that provide paid leave are more likely to attract and keep good workers than those that don't. This was true of:

- 77% of Democrats;
- 71% of Republicans;
- 81% of those with a bachelor's degree;
- 74% of those with some college; and
- 69% of those with a high school education or less.

➢ *Job-guaranteed family or medical leave that goes beyond applicable law.*

  ➢ Provide leave even if you do not have the minimum number of employees that

requires you to do so.

> Provide leave to apprentices who don't meet the minimum eligibility requirements under applicable law – for example, who have not worked the minimum number of hours.

> Provide leave that is longer than the minimum number of weeks under applicable law.

> Provide paid sick leave for apprentices when they have minor illnesses like the common cold (not necessarily the serious health conditions covered by the FMLA and similar laws).

> Provide paid sick leave for apprentices when their kids have minor illnesses and have to stay home from school or allow apprentices to use their own accrued sick leave in those situations.

> Provide leave for apprentices to care for seriously ill family members who are not covered by applicable law – for example, parents-in-law, grandchildren, and adult children who do not have disabilities.

> Provide leave to deal with other kinds of apprentices' work/family conflicts, like to attend parent-teacher conferences and to get court orders to protect themselves and their children from domestic violence.

3) Accommodate nursing apprentices' need to pump breast milk at work

✓ Provide break time and a private place for nursing apprentices to pump breast milk.

Several federal laws require employers to provide a reasonable amount of break time for any employee to express breast milk for their nursing child "for one year after the child's birth each time such employee has need to express the milk." [Resource on protections for nursing employees: DOL, Wage & Hour Division, "**Break Time for Nursing Mothers**"].

Employers are also required to provide "a place, other than a bathroom, that is shielded from view and free from intrusion from coworkers and the public, which may be used by an employee to express breast milk."

If an employer already compensates employees for breaks, it must compensate employees for breaks to express milk in the same way that it compensates employees for breaks for other purposes.

Employers with fewer than 50 employees are not required to provide break time for nursing if doing so would impose an undue hardship.

State laws may provide greater protections to employees (for example, requiring that break time be compensated, be provided to exempt employees, or extend beyond 1 year after the child's birth).

4) Avoid discrimination against caregivers

Discrimination against caregivers occurs when employees with caregiving responsibilities are treated differently than those who do not have such responsibilities. For example, an apprentice with responsibility for her aging father may be docked pay for taking a morning off to take him to the doctor, while other apprentices are not similarly penalized for taking a similar amount of time off for attending a court date. Or an apprentice who leaves immediately at the end of his shift be-because he has childcare responsibilities may be considered less committed to the program, judged less favorably than his peers, and denied opportunities for choice assignments.

While there is no federal law that prohibits discrimination against employees who have care-giving responsibilities, such discrimination *is* unlawful in Alaska, Minnesota, New York City, New York State, New Jersey, Washington State, and Washington, D.C. And as discussed in Section II-A(4)(b) above, the EEOC has issued guidance explaining how relying on sex-based stereotypes about caregiver responsibilities may be unlawful discrimination on the basis of sex in certain situations.

Even if your state anti-discrimination law does not cover caregiver discrimination, it is a best prac-tice to avoid such discrimination whenever possible.

5) Adopt personnel policies that minimize conflicts between work and family/caregiver responsibilities

Many long-standing RAP personnel policies that apply to apprentices are based on the "male bread-winner model" – the assumption that family caregiving responsibilities are the domain of their stay-at-home wives. It is not uncommon, for example, for employers to require apprentices (and jour-neyworkers) to work additional overtime hours after their regularly scheduled shift is over. Another example: Many time-based RAPs are structured to require continuous participation in the program for an entire four- or five-year period, with no accommodation for apprentices who need to take leave from their programs to, say, have a baby. Many programs require apprentices to work all day and then attend related instruction at night. And, in general, attendance is a huge cultural value in the construction trades, and "perfect attendance" is often rewarded.

But women apprentices who have children or other family responsibilities are not likely to have someone at home who can take care of these things; to the contrary, they are the ones who have to pick up the children after their shift is over. And it is not only women who face these challenges: most men's lives don't conform to the male breadwinner model today either.

To address work/family/caregiver responsibilities in your personnel policies:

➢ Give as much advance notice as possible of overtime assignments and other schedule changes.

   Apprentices with young children may find it difficult to find childcare at the last minute; those with other family responsibilities may also find it difficult to adjust their schedules on short notice.

➢ Do not count it against an apprentice if she cannot always take on last-minute assignments or make last-minute schedule changes.

> ➢ Re-define "perfect attendance" in your policies to only penalize apprentices whose failure of attendance is due to reasons *other* than family caregiving.

> ➢ Reinstate people who have been on family/medical leave at the same place in their progression through your program that they were at before they went on leave.

> ➢ Increase the time allowed for promotion to the next level or for completion for apprentices who have been on family/medical leave.

> ➢ Standardize these practices by adopting them in your personnel policies, employee handbook, and CBAs.

> ➢ Offer sample contract or policy language for your participating employers to adopt.

h. Regularly assess your retention strategies

Regular assessment of your retention strategies is key.

> ➢ Conduct exit interviews with each apprentice who leaves the program prior to completion to understand why the apprentice was leaving – and make changes to your program accordingly.

> ➢ Regularly review the demographics of the apprentices who leave prior to completion to compare the percentage of women, people of color, and IWDs who leave with the percentage of males and whites who leave.

> You can do this as part of your annual self-review of your personnel practices.

> ➢ If disproportionate percentages of women, people of color, or IWDs leave the program, intensify your retention activities targeted to those groups.

3. Conduct Annual Self-Reviews of Personnel Practices

The final component of your AAP is your annual review of your personnel practices, required by 29 CFR § 30.9. The purpose of this review is "to ensure that [you are] operating an apprenticeship program free from discrimination based on race, color, religion, national origin, sex, sexual orientation, age (40 or older), genetic information, and disability." (If you are an employer that operates a RAP, note that this is a review of the practices specifically of your apprenticeship program, not of your overall employment practices.)

The annual self-review is required whether or not you are underutilized for any protected group. The review must be "careful, thorough, and systematic" and include "all aspects of the apprenticeship program at the program, industry and occupation level." Based on the review, you must modify your program and your written AAP if necessary to eliminate discriminatory practices.

✓ Complete your first annual self-review of your personnel practices by your two-year registration anniversary, and annually after that.

✓ As part of every annual self-review, evaluate the following and their impact on women, people of color,

and IWDs:

- ✓ the qualifications for your apprenticeship;

- ✓ your application and selection procedures;

- ✓ the wages you pay;

- ✓ your outreach and recruitment activities;

- ✓ the advancement opportunities available to apprentices;

- ✓ the promotions that your apprentices have gotten over the past year;

- ✓ the work assignments and rotations among the occupation's work processes that your apprentices have gotten over the past year and the way you assign work and rotations;

- ✓ apprentices' job performance and the way you evaluate it;

- ✓ the disciplinary actions that you have taken involving your apprentices over the past year;

- ✓ how you handled requests for reasonable accommodations;

- ✓ the program's accessibility to individuals with disabilities (including the use of information and communication technology).

✓ In your written AAP, include a description of your review and identify any modifications that you made or will make to the program as a result of your review.

i. *Focus: **Registered Apprenticeship Equity Survey***

A great place to start your self-review of personnel practices is with the Registered Apprenticeship Equity

Survey that the Center created to help RAPs assess gender equity in their programs and establish best practices for achieving diversity and inclusion. While the survey is focused on women, you can easily broaden it to include people of color and IWDs [If you or any of your participating employers is a contractor, you might also want to look at the **Contractor Equity Survey** that the Center has prepared for contractors.].

The survey covers practices in the following areas: outreach and recruitment; equitable application, assessment, and selection; retention and advancement; and planning and evaluation.

4. Make the AAP Yours—and Your Apprentices'

Your AAP incorporates your commitment to equality into every aspect of your program. In the words of the 29 CFR § 30.4(a)(1), it "should be a part of the way you regularly conduct [your] program."

i. *Incorporate related documents in your AAP and vice versa*

To make your AAP part of the way you regularly conduct your program, you must, at a minimum (as required by 29 CFR § 29.5(b)(21)):

- ✓ Include your EEO Pledge in your AAP.

- ✓ Include your selection procedures in your AAP.

- ✓ Include your AAP in your Standards.

ii. *Infuse your AAP throughout the DNA of your program*

- ➢ Include the designation of the position that has responsibility for EEO implementation and a list of those responsibilities in your AAP.

- ➢ If you use OA's (or another) AAP template for your AAP, there is nothing to stop you from personalizing it.

  - √ Add your identifying information throughout.

  - √ If the template is written in the third person ("the sponsor will…"), change it to the first person ("*we* will").

- ➢ Have your leadership review and sign the AAP.

- ➢ Make your AAP readable and understandable by apprentices and everyone in your program who needs to be part of implementing it.

  - √ Reword the legalese;

  - √ Remove the regulatory citations;

  - √ Break the long sentences up into shorter ones; banish unnecessary verbiage (why use many words when fewer will do?) and highfalutin language;

  - √ Define terms;

  - √ Use the active instead of the passive voice ("we review our personnel practices annually" rather than "personnel practices will be reviewed annually").

- Include your AAP in the orientation materials that your staff get when they begin working for you and review it with them as part of the on-boarding process.

- Include the steps outlined in your AAP in all the internal documents that lay out your day-to-day procedures, such as handbooks, manuals, and Standard Operating Procedures.

- Include the AAP responsibilities that each staff person has in their job descriptions.

- Review each staff person's performance of their AAP responsibilities as part of their annual performance evaluations.

iii. *Make your apprentices aware of your AAP commitments*

- Draft a brief summary of your AAP (no more than 2 pages) and include it in the orientation materials that apprentices get when they begin the program. Also include information about how apprentices can get a copy of the entire AAP if they would like to see it.

- Review this summary of your AAP during the EEO information sessions that you hold for apprentices and those who work with them.

CONCLUSION

Inclusion, diversity, equal opportunity, nondiscrimination – these are bedrock principles of fairness. They are crucial to implement at any time, but even more in times of economic distress. Implementation of these principles can, at least in part, spare women, people of color, and other marginalized or historically underrepresented populations disproportionate economic burdens – burdens they are the least able to withstand. And they can help prevent further entrenchment of economic inequality and institutionalized racism and sexism that occur during economic downturns.

Complying with the Apprenticeship EEO regulations can go a long way toward helping you implement principles of fairness in your apprenticeship programs. Doing more – adopting best practices that go beyond the bare regulatory requirements – can go even further. When you follow the steps for regulatory compliance and implement the best practices laid out in this Toolkit, your journey toward more inclusive and diverse programs begins. We hope you welcome the transformation!

APPENDIX 1: **ABBREVIATIONS AND ACRONYMS USED IN THIS TOOLKIT**

AAP   Affirmative Action Program

ACS   American Community Survey

ADA   Americans with Disabilities Act of 1990

ADEA   Age Discrimination in Employment Act of 1967

AI/NA   American Indian/Native American

ANEW   Apprenticeship and Nontraditional Employment for Women (in Seattle)

ATR   Apprenticeship Training Representative

B/AA   Black/African American

CBA   Collective bargaining agreement

Census   U.S. Census Bureau

CFR   Code of Federal Regulations

CWIT   Chicago Women in Trades

DAT   Demographic Analysis Tool

DOL   U.S. Department of Labor

EEO   Equal Employment Opportunity

EEOC   Equal Employment Opportunity Commission

ETA   Employment and Training Administration of the U.S. Department of Labor

FMLA   Family and Medical Leave Act of 1993

FR   Federal Register

FEPA   Fair Employment Practices Agency

GED   General Educational Development Test

GINA   Genetic Nondiscrimination Act of 2008

Hisp	Hispanic/Latinx
IWD	Individual with a disability
JAN	Job Accommodation Network
JATC	Joint Apprenticeship and Training Committee
LGBTQ	Lesbian, gay, bisexual, transgender, and queer/non-binary
NH/PI	Native Hawaiian/Pacific Islander
NEW	Nontraditional Employment for Women (New York)
OA	Office of Apprenticeship, part of the Employment and Training Administration in DOL
OJT	On-the-job training
O*NET	DOL's Occupational Information Network
OTI	Oregon Tradeswomen Inc.
Q&As	Questions & Answers
RAP	Registered Apprenticeship Program
RAPIDS	OA's Registered Apprenticeship Partners Information Data System
SAA	State Apprenticeship Agency
§	Section
SOC	U.S. Bureau of Labor Statistics' Standard Occupational Classification and Coding Structure
SHRM	Society for Human Resources Management
TERO	Tribal Employment Rights Office
Title VII	Title VII of the Civil Rights Act of 1964
UGESP	Uniform Guidelines on Employee Selection procedures (legal citation: 41 CFR part 60–3)
UOT	Universal Outreach Tool
WIOA	Workforce Innovation Opportunity Act of 2014
Written AAP	Written Affirmative Action Plan

APPENDIX 2: **DEFINITIONS OF TERMS USED IN THIS TOOLKIT**

AFFIRMATIVE ACTIONS are steps that the Apprenticeship EEO Regulations require RAPs to take, beyond simply not discriminating, to ensure equal treatment, inclusion, and diversity. All RAPs are required to take *some* affirmative actions. Others – those that have 5 or more apprentices and are not otherwise exempt – must develop full-fledged formal *Affirmative Action Programs* (see definition below).

An **AFFIRMATIVE ACTION PLAN** is the written memorialization of a RAP's Affirmative Action Program (see definition BELOW).

An **AFFIRMATIVE ACTION PROGRAM (AAP)** is a program required of certain RAPs that measures the participation of women and people of color in their programs and undertakes targeted outreach, recruitment, and retention if those populations are underutilized compared with the representation of eligible female or Hispanic individuals or individuals of one of five racial groups, as appropriate, in the geographic area or other population from which the program recruits. As part of their AAPs, RAPs must also invite applicants and apprentices to self-identify as an IWD and undertake targeted outreach, recruitment, and retention if fewer than 7% of their apprentices are IWDs and there are impediments to IWDs' participation in their program. AAPs also include an annual self-assessment of RAPs' personnel processes to ensure nondiscrimination. *In this Toolkit, we use the abbreviation AAP to refer to "Affirmative Action Program" and the term "written AAP" to refer to a "Affirmative Action Plan."*

APPRENTICESHIP EEO REGULATIONS refers to the regulations that OA adopted in December 2016, effective January 18, 2017, that govern what RAPs must do to provide Equal Employment Opportunity. The regulations can be found in part 30 of volume 29 of the Code of Federal Regulations (cited as 29 CFR part 30).

APPRENTICESHIP STANDARDS are the organized, written plan embodying the terms and conditions of employment, training, and supervision of apprentices in an occupation subscribed to by a sponsor (as defined in 29 CFR § 29.5(a)). The provisions required to be in the Standards are listed in 29 CFR § 29.5(b).

The **CENSUS-DEFINED ETHNICITIES** are Hispanic/Latinx and non-Hispanic/Latinx.

The **CENSUS-DEFINED RACES** are white, Black/African American, Asian, American Indian/Native American, and Native Hawaiian/Pacific Islander.

DISCRIMINATION means any difference in treatment for apprenticeship-related purposes that is because of one of the following protected characteristics: race, color, religion, national origin, sex, disability, age (40 or older), sexual orientation, and genetic information. (This is the way the term is used in the Apprenticeship EEO Regulations and other employment discrimination laws that apply to apprenticeship programs.) Discrimination is generally classified as either *disparate-treatment* or *disparate-impact* discrimination.

Discrimination because of membership in a protected group includes discrimination both against people who are *not* members of the group and discrimination against people who *are* members of the group. So, for example, discrimination against men is sex discrimination, just like discrimination against women.

DISPARATE-IMPACT DISCRIMINATION occurs when:

a. a neutral policy (such as a requirement of having taken "shop" or equivalent classes in high school) has a statistically disparate impact on individuals because of a protected characteristic;

b. that policy is not related to the job in question or otherwise justified by business necessity; and

c. there is no alternative policy that would serve the same purpose but have a lesser disparate impact.

DISPARATE-TREATMENT DISCRIMINATION occurs when an individual is treated differently because of their race, color, religion, national origin, sex, disability, age (40 or older), sexual orientation, or genetic information. The difference in treatment can arise from a written policy that by its terms ("on its face") treats members of a protected group differently (an example would be a program whose policy is to provide sick leave to all medical conditions except those arising from pregnancy and childbirth). Or it can arise from supervisors or others simply treating someone differently because of their protected characteristic (such as a training director who evaluates white apprentices as being ready to progress to the next level of their program more quickly than African American apprentices). In such a case, the reason for the disparate treatment may be stated explicitly ("in our part of the world we'll never get enough good quality Blacks") or may stem from implicit bias and be inferred from the conduct itself.

ELIGIBILITY CRITERIA are the minimum qualifications required by the sponsor for persons entering the apprenticeship program, including any physical, educational, and work experience requirements; geographic constraints; and other criteria, such as whether apprentices are recruited internally, from the incumbent (non-apprentice) workforce. Eligibility criteria must be included in RAPs' registered Standards. 29 CFR § 29.5(b)(10).

EQUAL EMPLOYMENT OPPORTUNITY (EEO) encompasses both nondiscrimination and affirmative action.

IMPLICIT BIAS [The following definition of implicit bias is taken from "**State of the Science: Implicit Bias Review 2015**," pp. 62, 63 (Kirwan Institute):]

> Implicit bias refers to the attitudes or stereotypes that affect our understanding, actions, and decisions in an unconscious manner. These biases, which encompass both favorable and unfavorable assessments, are activated involuntarily and without an individual's awareness or intentional control. ...

> The implicit associations we harbor in our subconscious cause us to have feelings and attitudes about other people based on characteristics such as race, ethnicity, age, and appearance. These associations develop over the course of a lifetime beginning at a very early age through exposure to direct and indirect messages. In addition to early life experiences, the media and news programming are often-cited origins of implicit associations. ...

> We generally tend to hold implicit biases that favor our own ingroup, though research has shown that we can still hold implicit biases against our own ingroup.

> Implicit biases are malleable; therefore, the implicit associations that we have formed can be gradually unlearned and replaced with new mental associations. Our brains are incredibly complex, and the implicit associations that we have formed can be gradually unlearned through a variety of debiasing techniques.

A **MAJOR OCCUPATION GROUP** is the highest-level classification in the U.S. Bureau of Labor Statistics' Standard Occupational Classification and Coding Structure (SOC), https://www.bls.gov/soc/ (designated by the two-digit SOC code and corresponding to the two-digit prefix in DOL's Occupational Information Network (O*NET), https://www.onetonline.org/. Related occupational titles (see definition below) are combined into 23 major occupation groups. Examples are:

- Construction and Extraction Occupations (code 47)
- Installation, Maintenance, and Repair Occupations (code 49)
- Production Occupations (code 51)
- Transportation and Material Moving Occupations (code 53)

MICROINEQUITIES are the behaviors, practices, statements, and/or actions that in many cases may be unintentional and without malice, and that, taken individually, might seem slight or minor, but can cumulatively constitute severe or pervasive harassment when they are a consistent part of the work environment. Also referred to as micro-aggressions, these behaviors may not rise to the level of overt discrimination or harassment but can still have a deleterious impact over time on underrepresented groups, causing them to feel excluded and unsupported on the worksite and discouraging them from continuing in the field.

NONDISCRIMINATION means, simply, not engaging in discrimination based on a protected characteristic.

An **OCCUPATIONAL TITLE** is a specific occupation that includes workers who perform similar job tasks based on work performed and, in some cases, on the skills, education and/or training needed to perform the work. Occupational titles are assigned an 8-digit "detailed occupation" code in the SOC and a corresponding 8-digit code in O*NET, https://www.onetonline.org/).

PROTECTED CHARACTERISTIC (sometimes called "protected basis") means a characteristic because of which discrimination is prohibited. The protected characteristics in the Apprenticeship EEO Regulations are race, color, national origin, religion, sex, sexual orientation, age (40 and older), disability, and genetic information.

Note: A number of characteristics that may be protected from discrimination by other laws are not protected by the Apprenticeship EEO Regulations, including veteran status; marital status; parental or family responsibilities; citizenship; and immigration status.

PROTECTED GROUP (sometimes called "protected class") is a group of people who have a protected characteristic and have historically been discriminated against because of it. The following groups are generally considered to be protected groups: women, African Americans, Hispanics, Asians, Native Americans, Pacific Islanders, people of color in the aggregate, LGBTQs, people who are 40 and older, and IWDs.

A **RECRUITMENT AREA** is:

- for RAPs that recruit only from their surrounding communities (external recruitment), the geographical area from which they usually seek or reasonably could seek apprentices;

- for RAPs that recruit only from their incumbent workforce (internal recruitment), their incumbent workforce or the division(s) of their incumbent workforce from which they accept or reasonably could accept apprenticeship applications;

- for RAPs that recruit both externally and internally, the geographical area from which they usually seek or reasonably could seek apprentices *and* their incumbent workforce or relevant division from which they accept or reasonably could accept apprenticeship applications;

- for youth apprenticeships, the school(s) and class(es) from which they accept or reasonably could accept apprenticeship applications.

A **REGISTERED APPRENTICESHIP PROGRAM (RAP)** is an apprenticeship program that OA or a recognized SAA has accepted and recorded as meeting the basic standards and requirements for approval for Federal purposes. Approval is evidenced by a Certificate of Registration or other written indicia. (This is the definition used in the applicable OA regulation, 29 CFR § 29.2.)

Used interchangeably with the term "sponsor" in this Toolkit.

SELECTION PROCEDURE means any measure, combination of measures, or procedure used as a basis for any decision in apprenticeship. Selection procedures include the full range of assessment techniques from traditional paper and pencil tests, performance tests, training programs, or probationary periods and physical, educational, and work experience requirements through informal or casual interviews and unscored application forms. (This is the definition used in the applicable OA regulation, CFR §30.2.)

Selection procedures are used both to choose apprentices for enrollment and to determine whether and when apprentices are ready to progress from level to level in, and to complete, apprenticeship programs.

Selection procedures at the initial, enrollment stage include:

- Eligibility criteria

- Geographic constraints (if any)

- Recruitment area (e.g., whether you recruit apprentices from your incumbent non-apprentice workforce)

- Announcements about program openings posted online and/or sent to recruitment sources

- Ads posted or placed to recruit applicants for program openings

- Process for applying – where? when? how?

- Application forms

- Questions asked during oral interviews

- Scoring and/or ranking of applications

- Scoring performance at interviews

- Performance tests (manual; paper-and-pencil tests)

- Drug tests

- Any other techniques used to assess applicants.

Selection procedures at later points in the program include decisions about:

- Promotion or progression from one level of the program to the next;
- Acceleration or delay of progress through the program;
- Awards of interim credentials (if any);
- Discipline or termination;
- Approval of completion of the program and promotion to journey level;
- Proficiency assessments (manual performance tests; paper-and-pencil tests; work observations; any other techniques used for assessment) for any of these decisions;
- Tests for assessing knowledge gained in related instruction;
- Drug tests;
- Disciplinary criteria and procedures.

The term "selection procedure" is used interchangeably with the terms "selection device," "selection method," and "selection process" in this Toolkit.

SPONSOR means any person, association, committee, educational institution, or organization that operates a RAP and in whose name the program is (or is to be) registered or approved. (This is the definition used in the applicable OA regulations, 29 CFR §§ 29.2 and 30.2.)

Used interchangeably with the term "RAP" in this Toolkit.

A sponsor's *two-year registration anniversary* is the date two years after it registers its program with OA or an SAA.

NATIONAL CENTER FOR WOMEN'S EQUITY
IN APPRENTICESHIP AND EMPLOYMENT