The U.S. Department of Labor in December released final regulations that create new nondiscrimination and affirmative action requirements for apprenticeship programs.

New Requirements Aim to Increase Apprenticeship Diversity

by Jennifer E. Germaine

Apprenticeship programs will need to revise their policies and procedures related to nondiscrimination, equal employment opportunity and affirmative action, following the issuance of final regulations by the Department of Labor (DOL) late last year.

The updates will require apprenticeship programs to update their nondiscrimination pledges, equal employment opportunity internal procedures and affirmative action plans. The regulations were issued in December and were effective January 18, 2017, but compliance deadlines differ and are set forth in the sections below. The regulations apply to all sponsors of apprenticeship programs registered with DOL or a state apprenticeship agency.

Why the Need for a Change?

The regulations were last revised in 1978. DOL analyzed participant demographics in apprenticeship programs in construction and nonconstruction industries and compared them with the demographics of the national labor force. The department concluded that women and minorities continue to face substantial barriers to entry into and completion of registered apprenticeships, despite their availability in industry sectors covered by apprenticeship programs. For instance, women make up 46.8% of the labor force but represent only 7.1% of the new enrollments in registered apprenticeship programs for 2015. (See Table I.)

Disparities between male and female enrollment in the construction trades apprenticeship programs are even more prevalent, with only 2.8% of women enrolled in the 2015 fiscal year. Similarly, minorities show lower percentages entering apprenticeship programs than the overall workforce. (See Table II.)
Besides women and minorities, DOL strongly believes people with disabilities should be included in apprenticeship program affirmative action efforts, because they experience high levels of unemployment. DOL cites data from the Bureau of Labor Statistics showing 30.5% of working-age individuals with disabilities were in the labor force in 2015 compared with 76.1% of working-age individuals with no disability. DOL does not have data to show the representation of disabled individuals in apprenticeship programs. 

Update to the Nondiscrimination Pledge

A program’s nondiscrimination pledge typically appears in the apprenticeship agreement, standards and notice of openings for the program. DOL added age, disability, sexual orientation (including pregnancy and gender identity) and genetic information to the categories in which discrimination is unlawful in an apprenticeship program for activities such as recruitment, selection, placement, pay rates, workhours and job assignments. All apprenticeship programs will need to update their nondiscrimination pledge to reflect these additions by July 17, 2017.

Update to Internal Procedures and Training for Equal Opportunity Standards

The final regulations implement several additional procedures an apprenticeship program must use to monitor its nondiscrimination and equal opportunity standards. The material changes to note are a requirement to designate an individual to be responsible for overseeing development of the affirmative action program and a requirement to implement harassment and discrimination training. Program sponsors will have until July 17, 2017 to implement the following steps.

1. Designate an Individual to Be Responsible

Sponsors will be required to designate an individual, such as an apprenticeship coordinator, to be responsible and accountable for overseeing the development of an affirmative action program. Duties include monitoring all apprenticeship activity to ensure compliance with the nondiscrimination and affirmative action obligations, maintaining records, and generating and submitting reports to the apprenticeship registration agency as required by the regulations.

2. Develop Internal Procedures

Apprenticeship sponsors will be required to develop internal procedures to communicate their equal opportunity and affirmative action obligations to apprentices, applicants for apprenticeship and individuals involved with the administration and operation of the apprenticeship program. The apprenticeship program must require individuals connected with the administration and operation of the program to aid the sponsor in meeting its nondiscrimination and affirmative action obligations, including journeymen and employees regularly working with apprentices. DOL is holding the sponsors ultimately
responsible for ensuring compliance with these obligations. If a sponsor is not the employer of the apprentice, DOL expects the sponsor “to take action to address discrimination with employers and, if unremedied, take steps to terminate its relationship with the discriminating employer.”

Part 30.3 of the Apprenticeship Programs Equal Employment Opportunity Regulation identifies specific minimum activities that a sponsor must undertake to satisfy the obligation to distribute internally its equal opportunity policy.

- Publish the equal opportunity pledge in apprenticeship standards and appropriate publications.
- Post the pledge on bulletin boards, including through electronic media, accessible to apprentices and applicants for apprenticeship.
- Conduct orientation and periodic information sessions for apprentices and all individuals connected with the administration and operation of the program, including journeyworkers who regularly work with apprentices, to inform and remind them of the pledge.
- Maintain records necessary to demonstrate compliance with this requirement.

3. Update Outreach and Recruitment Efforts

A sponsor will be required to confirm that its outreach and recruitment efforts for apprentices extend to all persons available and qualified for apprenticeship within the sponsor’s recruitment area. Sponsors will be required to develop annually a list of recruitment sources that will generate referrals from all demographic groups, including women, minorities and individuals with disabilities, with contact information for each source. The program must notify these sources in advance of any apprenticeship opportunities, and a 30-day advance notice is preferred.

4. Develop Nondiscrimination and Harassment Procedures and Required Training

A sponsor must develop and implement procedures to ensure its apprentices are not harassed because of their race, color, religion, national origin, sex, sexual orientation, age (40 or older), genetic information or disability and that the program is free from intimidation and retaliation. To accomplish this, sponsors will be required to:

- Communicate to all individuals that harassing conduct will not be tolerated
- Provide anti-harassment training to all individuals connected with the administration and operation of the program, including all journeyworkers who regularly work with apprentices. This cannot be a mere transmittal of information but must include participation by trainees (in person or interactive online).
- Make all facilities and apprenticeship activities available without regard to race, color, religion, national origin, sex, sexual orientation, age (40 or older), genetic information and/or disability
- Establish and implement procedures for complaints about harassment and discrimination.

Sponsors will be responsible for addressing any violations of these procedures by employers participating in the sponsor’s program.

Affirmative Action Restructuring

The premise underlying an affirmative action program is that absent discrimination, 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. Sponsors should already have an affirmative ac-
Sponsors will need to update their written affirmative action plans to comply with the new regulations. The new methodology for utilization analysis and goal setting for race, sex and ethnicity should be performed using only two factors (instead of the previous five) and should be organized by occupational titles (instead of by industry). Plans also are now required to conduct utilization analysis and goal setting for individuals with disabilities.15 Sponsors with fewer than five apprentices registered are exempt from these requirements.16 DOL will provide a model written affirmative action plan for sponsors to review. The registration agency may request to see the sponsor’s affirmative action plan, especially during a compliance review. The affirmative action program must be a written plan and include the following elements.

1. Utilization Analysis and Goal Setting for Race, Sex and Ethnicity

Programs will be required to assess whether they are reflective of the population available for apprenticeship in the sponsor’s relevant recruitment area. Sponsors must identify the racial, sex and ethnic composition of their programs grouped by occupational titles.17 Then, sponsors must determine the availability of qualified individuals for apprenticeship by race, sex and ethnicity within that occupation in the relevant recruitment area to be used as a benchmark to compare the apprenticeship program.18 Sponsors will work with the registration agency to conduct availability analysis at each compliance review.

If the program is underutilized compared with availability in the industry for women, ethnic and/or racial minority groups, sponsors will be required to establish utilization goals for each racial, gender or ethnic group that is underutilized in an industry.19, 20

2. Utilization Analysis and Goal Setting for Individuals With Disabilities

This is a completely new requirement. Instead of establishing utilization goals based on the industry as set forth above, a national utilization goal of 7% for individuals with disabilities will be used for each major occupation group. If the program utilization rate falls below the 7% rate, the sponsor must take specific measures to address this disparity.21

The regulations rely on voluntary self-identification by individual apprentices to determine the disability rates. Sponsors must request self-identification (a) when an applicant is considered for apprenticeship, (b) after an applicant is accepted into the program but before he or she starts the apprenticeship and (c) after he or she is enrolled in the program.22 A sponsor must review individuals with disabilities on an individual basis to determine if the individual can perform the job with a reasonable accommodation, as described in Title I of the Americans with Disabilities Act. The sponsor must keep any information collected that concerns the medical condition of an apprentice or applicant in separate medical files and treat as confidential.23 If the utilization rates are below 7%, the sponsor must take steps to determine whether impediments to equal opportunity exist.

3. Targeted Outreach, Recruitment and Retention Activities

Sponsors will need to establish targeted outreach, recruitment and retention activities if they find underutilization for a specific group set forth above and describe those efforts.24 As part of the retention efforts, sponsors are encouraged to evaluate any barriers to equal opportunity in apprenticeship. Sponsors may want to consider (a) using journeymen and apprentices from the underutilized groups to help with the affirmative action program, (b) using journeymen and apprentices from the underutilized groups to serve as mentors and assist with the targeted outreach and recruitment and (c) conducting exit interviews with apprentices leaving the program prior to graduation to determine why they are leaving, to help shape future retention efforts.25
4. Review of Personnel Processes

Sponsors will be required to review their personnel processes annually as part of the affirmative action program and make any necessary modifications to ensure compliance. A description of how this review is conducted must be included in the affirmative action plan.

Failure to meet the utilization goals alone will not result in an enforcement action or sanctions by the registration agency. The agency will look at all of a sponsor’s efforts in this area to analyze compliance. Sponsors that don’t meet the goals will need to show their good faith efforts to remove any impediments to equal employment opportunity to comply with the regulations.

Other Changes

The final regulations also provide more flexible selection procedures, allowing sponsors to select apprentices through any of the selection methods in the regulations as long as it does not discriminate. The regulation updates set response time frames to be followed if a registration agency notes program deficiencies in a compliance review of a sponsor. Regulations regarding apprentice complaint procedures were also revised to eliminate the use of private review bodies. This change would require all apprentice complaints to be filed with the registration agency.

Next Steps

The following items should receive top priority for sponsors looking to meet the July 17, 2017 compliance deadline:

- Update equal opportunity pledges and any necessary documentation containing the pledges (standards, affirmative action plan, notice of openings, etc.).
- Designate an individual to be responsible for the equal opportunity standards.
- Develop internal procedures to be followed for equal opportunity standards, including communication to journeymen and employers regularly engaged with the program.
- Implement nondiscrimination and harassment policies and training, including with journeymen and employers regularly engaged with the program.
- Develop a list of recruitment sources with contact information.

Endnotes

4. Ibid.
5. Ibid.
7. 29 CFR §29.7 and 30.1.
8. 29 CFR §30.3.
9. 29 CFR §30.3.
11. 29 CFR §30.3.
12. 29 CFR §30.3.
13. 29 CFR §30.3.
14. 29 CFR §30.3.
15. 29 CFR §30.4.
16. 29 CFR §30.4.
17. 29 CFR §30.5.
18. 29 CFR §30.5.
22. 29 CFR §30.7.
23. 29 CFR §30.12.
25. 29 CFR §30.8.
28. Ibid.
29. Ibid.
30. 29 CFR §30.10.