

<b>EMPLOYMENT AND TRAINING ADMINISTRATION</b> <b>ADVISORY SYSTEM</b> <b>U.S. DEPARTMENT OF LABOR</b> <b>Washington, D.C. 20210</b>	<b>CLASSIFICATION</b> Registered Apprenticeship
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**ADVISORY: OFFICE OF APPRENTICESHIP CIRCULAR NO. 2023-01**

**TO:** NATIONAL APPRENTICESHIP SYSTEM STAKEHOLDERS  
OFFICE OF APPRENTICESHIP STAFF  
STATE APPRENTICESHIP AGENCIES

**FROM:** JOHN V. LADD  
Administrator, Office of Apprenticeship

**SUBJECT:** Guidance – Equal Employment Opportunity in Registered Apprenticeship

1. **Purpose.** To inform the staff of the Office of Apprenticeship (OA), State Apprenticeship Agencies (SAAs), Registered Apprenticeship program sponsors, Registered Apprenticeship partners, and other interested parties of OA’s commitment to promoting Equal Employment Opportunity (EEO) in Registered Apprenticeship, and to provide guidance to program sponsors to help ensure that Registered Apprenticeship Programs (RAPs) are operating in compliance with the regulations under 29 CFR part 30 (titled “Equal Employment Opportunity in Apprenticeship”), or parallel requirements contained in a State plan for equal opportunity in apprenticeship adopted under 29 CFR part 30 and approved by the U.S. Department of Labor (“Department” or “DOL”).
2. **Action Requested.** The Department’s Employment and Training Administration’s OA requests Registered Apprenticeship stakeholders to familiarize themselves with this guidance and for sponsors, specifically, to take any and all necessary steps to ensure their program’s continued conformity with 29 CFR part 30. This circular is being sent via electronic mail.
3. **Summary and Background.**
  - a. *Summary* – This guidance clarifies key EEO in Registered Apprenticeship provisions of 29 CFR part 30 and emphasizes OA’s commitment to the effective implementation of EEO provisions for sponsors. Part 30 prohibits discrimination in RAPs based on race, color, religion, national origin, sex, sexual orientation, age (40 or older), genetic information, and disability. It also prescribes affirmative action efforts that certain sponsors must take to ensure equal opportunity for apprentices and applicants for apprenticeship. This circular provides key information to sponsors regarding: (1) actions to foster and ensure programs free from discrimination and harassment; (2) mechanisms to ensure that apprentices and applicants for apprenticeship are aware of their ability to file EEO complaints; (3) outreach, recruitment, and support activities; (4) program reviews to ensure a program’s compliance with the regulations under 29 CFR part 29, subpart A (titled “Registered Apprenticeship Programs”) and 29 CFR part 30; (5) updated

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Title VII of the Civil Rights Act of 1964 (Title VII) case law in connection with sex discrimination; and (6) exemption requests from the requirements under 29 CFR part 30.

- b. *Background* – Registered Apprenticeship is a powerful tool for growing the American economy and training its workforce. The sponsors of RAPs must play a vital role in ensuring that their apprenticeship programs are accessible to all individuals seeking to enroll, and their programs are tapping into the strengths and talents of America’s labor pool so that that their programs are broadly reflective of the demographic composition of the communities in which they operate. Since 1963, the Department has administered an EEO regulation for RAPs that prohibits discrimination against apprentices and applicants for apprenticeship. In 2016, DOL revised and updated its EEO in apprenticeship regulation at 29 CFR part 30 to align it more closely with the evolution of EEO case law since the previous iteration of the regulation was issued in 1978. Among other things, the 2016 EEO in apprenticeship regulation emphasized that RAPs should be free of harassment and discrimination, while also requiring that such programs take affirmative steps to ensure more equitable employment opportunities for all apprentices. RAPs are also required to make good faith efforts to reflect the demographic composition of the workforce available in the local area covered by the program.

The Department is committed to undertaking proactive sponsor technical assistance initiatives (for both sponsors and existing sponsors) that inform sponsors of their EEO obligations. Additionally, the Department is committed to ensuring that all RAPs are free from discrimination, harassment, and intimidation, and that such programs provide a workplace and training environment that is welcoming and supportive of persons of all backgrounds. Accordingly, OA is issuing this circular to apprenticeship program sponsors, SAAs, and other interest parties to provide useful guidance concerning the Department’s EEO-related regulatory requirements.

#### 4. **EEO in Registered Apprenticeship.**

- a. **EEO in Registered Apprenticeship Overview.** The EEO regulation at 29 CFR part 30 sets forth requirements for promoting equality of opportunity in RAPs. The regulations prohibit discrimination on the basis of race, color, national origin, religion, sex (including pregnancy, gender identity, and sexual orientation), disability, age (40 or older), sexual orientation, and genetic information, and set specific actions sponsors must take to ensure non-discriminatory practices in their program operation, as well as creating harassment-free environments. The EEO regulation also prescribes affirmative action efforts covered sponsors must take to ensure equal opportunity for apprentices and applicants for RAPs. The Final Rule is available at: <https://www.govinfo.gov/content/pkg/FR-2016-12-19/pdf/2016-29910.pdf>.
- b. **Promoting Discrimination-free and Harassment-free Environments (§ 30.3).** The EEO in Apprenticeship regulation requires RAPs to take concrete and actionable steps to ensure a discrimination-free and harassment-free environment for all aspects of the

program. The purpose is to ensure that all apprentices feel safe and welcomed, and are treated fairly in their workplace environment.

To promote the development maintenance of a discrimination-free and harassment-free environment, all RAP sponsors must, at a minimum:

- Designate an individual or individuals with appropriate authority under the program, such as an apprenticeship coordinator, to be responsible and accountable for overseeing its commitment to equal opportunity in Registered Apprenticeship, including the development and implementation of an affirmative action program (AAP) as required by § 30.4. (§ 30.3(b)(1))
- Communicate their EEO policy to applicants, apprentices, and other staff connected with the program to ensure that no one is denied equal opportunity in selection and promotion, demotion, transfer, layoff, termination, and re-hiring; rotation among work and job assignments; disciplinary action; pay; work conditions; and other terms and conditions of apprenticeship. This can be accomplished by providing orientation and periodic information sessions for all individuals connected with the administration or operations of the apprenticeship program, including all apprentices and journeyworkers who regularly work with apprentices, to inform them of the EEO policy, as well as by publishing their EEO pledge in the sponsor's standards and other materials. (§ 30.3(b)(2)). The orientation phase info should be provided within a reasonable amount of time (e.g., within one month of the start of the apprenticeship program) and the periodic information sessions should be conducted with regular frequency (e.g., every six months). While such specificity regarding the timing of training sessions is not specifically required by the regulatory language, OA considers such scheduling as evidence of "good faith" efforts that would demonstrate compliance. Further, the examples provided should not be seen as prescriptive; sponsors should consider their program needs and how to best integrate training.
- Maintain a program free from discrimination, harassment, intimidation, and retaliation by implementing procedures and training to prevent and address harassment and ensuring that participating employers are committed to maintaining a harassment-free workplace. Make all facilities and apprenticeship activities available without regard to race, color, religion, national origin, sex, sexual orientation, age (40 or older), genetic information, or disability. (§ 30.3(a)(1), § 30.3(b)(4), § 30.3(b)(4)(ii), § 30.10, § 30.17);
- Ensure a transparent complaint process for apprentices through the establishment of complaint procedures and inform apprentices and applicants of the steps to filing a complaint with the Registration Agency. Additionally, sponsors must publicize guidance and information to ensure apprentices have full access, and awareness of their right and ability, to make and file EEO complaints. (§ 30.14); and
- Utilize selection procedures that comply with the Uniform Guidelines on Employee Selection Procedures (UGESP) and Title I of the Americans with Disabilities Act

and the U.S. Equal Employment Opportunity Commission's (EEOC) implementing regulations; are uniformly and consistently applied to all applicants; and "do not discriminate on the basis of race, color, religion, national origin, sex, sexual orientation, age (40 or older), genetic information, or disability" (facially neutral).

Sponsors are responsible for ensuring all aspects of the RAP, including on-the-job-learning (OJL) and related instruction (RI) components and mentoring are in compliance with the EEO regulations. In instances where sponsors have employer acceptance agreements, the sponsor of record is responsible for ensuring its OJL and RI training partners adhere to the requirements under this provision, and that these components are free from discrimination and harassment. Sponsors with participating employers are also responsible for ensuring EEO standards are maintained at these sites, and failure to do so may result in deregistration.

Consistent with the National Apprenticeship Act's express commitment to ensuring the welfare of apprentices, program sponsors have a legal obligation to immediately investigate, address, and report to the appropriate Registration Agency (either OA or an SAA), or to other EEO or law enforcement agencies, as appropriate all instances of discrimination, harassment, intimidation, and workplace violence (including assault) at places of business where apprentices are employed. Additionally, program sponsors are reminded that they are liable under OA's regulations for any such unlawful conduct that their affiliated or contracting employers ignore, tolerate, or encourage.

- c. **Sponsor Obligation to Prevent the Harassment of Apprentices.** In order to promote a workplace environment in which all apprentices and apprentice applicants feel safe and welcomed, and are treated fairly, apprenticeship program sponsors are required (under 29 CFR section 30.3(b)(4)) to develop and implement procedures to ensure that their apprentices are not harassed "because of their race, color, religion, national origin, sex, sexual orientation, age (40 or older), genetic information, or disability and to ensure that [their] apprenticeship program is free from intimidation and retaliation."

In designing and implementing such internal procedures, sponsors should consider adopting practical measures for effectively addressing and mitigating harassment risks to apprentices, as well as for promptly handling and resolving apprentice complaints about harassment and intimidation. Examples of such measures could include, but not be limited to: designating an individual or office within the employing organization to handle harassment complaints and effectively address harassment risks; establishing disciplinary guidelines and procedures for holding offending persons accountable for their actions; adopting a process for immediately referring incidents of workplace harassment that involve assault or other crimes to law enforcement

agencies; and providing supportive services (such as counseling) to apprentices who have experienced harassment and intimidation in the workplace.

Moreover, when credible allegations of workplace harassment, intimidation, or discrimination against an apprentice or applicant are brought to the attention of OA personnel (either through a formal written complaint from an apprentice, or from other credible sources), OA will, as a matter of policy and practice, immediately refer the complaint to another EEO enforcement agency and/or initiate a review of the program operations to determine whether the program has established effective and practical procedures for addressing harassment and is otherwise compliant with 29 CFR part 30. Part 30 requires that, as part of their procedures for preventing and addressing harassment, sponsors: (i) provide anti-harassment training; (ii) ensure that facilities and apprenticeship activities are available to apprentices without regard to protected bases (race, color, religion, national origin, sex, sexual orientation, age (40 or older), genetic information, or disability); and (iii) establish procedures for handling and resolving complaints about harassment. In this connection, a failure by a program sponsor to establish or to follow its procedures with respect to protecting apprentices from harassing conduct could result in the initiation of enforcement actions, including de-registration proceedings by the Department.

***What is harassment?*** Harassment is conduct that creates a work environment that would be intimidating, hostile, or offensive to reasonable people. Harassment can include, but is not limited to, menacing or threatening conduct, physical action, objects or symbols with historical connotations intended to bully, scare, isolate, or demean, hate speech/symbols/conduct toward any protected group, and unwelcome sexual advances, requests for sexual favors, and other verbal or physical harassment of a sexual nature. Harassment in RAPs is unlawful when it is: 1) because of someone's religion, sex (including pregnancy, gender identity, or sexual orientation), race, color, national origin, sexual orientation, disability, age (40 or older), or genetic information, or because the individual filed an EEO complaint; 2) unwelcome; and 3) so frequent or severe that it creates a hostile or offensive work environment or results in an adverse employment decision or the threat of such a decision. This is consistent with the definition of harassment as developed in case law under Title VII.

While not all such behaviors may rise to the level of unlawful harassment, any unwelcome or offensive conduct based on a protected trait that has the purpose or effect of being detrimental to work performance, professional advancement, and/or mental health, and that creates an intimidating, hostile, or offensive workplace environment or involves a threatened or actual adverse employment action must not be tolerated. In such instances, sponsors must take active and immediate steps to address and eliminate such conduct from the workplace, including taking disciplinary action against the perpetrators of such conduct, and making referral to other EEO or law enforcement agencies, as appropriate. The failure of a sponsor to act promptly and decisively in such instances may result in the initiation of

deregistration proceedings by the Registration Agency and could also result in the referral of such cases to an appropriate EEO enforcement agency.

***Anti-harassment Training.*** Sponsors are obligated to provide anti-harassment training to all individuals connected with the administration or operation of the apprenticeship program, including all apprentices and journeyworkers who regularly work with apprentices. New RAP sponsors are strongly encouraged to conduct anti-harassment training at the beginning of the program, and to repeat such training for new cohorts of apprentices. The training content must include at a minimum: (a) that harassing conduct will not be tolerated; (b) the definition of harassment and the types of conduct that constitute unlawful harassment; and (c) the right to file a harassment complaint. A program sponsor may also wish to consider addressing additional topics in their anti-harassment training such as: examples of what constitutes harassing conduct (with industry-specific examples as appropriate), how to report harassment (including sexual harassment), and how the sponsor will respond to harassing conduct. Sponsors may utilize OA-developed training resources or independently develop their own and must provide documentation to verify that the training delivered met the content elements required by the regulations. OA resources concerning anti-harassment training are available at: <https://www.apprenticeship.gov/eo/sponsors/prevent-harassment>.

- d. **Complaints Involving EEO Issues (§ 30.14).** Section 30.14 sets out the requirements and process for filing complaints. Notices for complaint filing must be provided in the application for apprenticeship posted in public places, and all claims of discrimination, harassment, or retaliation must be investigated so the Registration Agency can determine if they rise to the level of unlawful behavior. Complaints filed with OA or an SAA may be referred to the appropriate EEO enforcement agency for investigation, and would be subject to further investigatory review by the Registration Agency.

***Retaliation.*** A participant in a RAP may not be retaliated against for exercising any rights or privileges under the EEO regulations, including if the individual has filed a complaint alleging an EEO violation. Additionally, apprentices must be protected from retaliation if they opposed a practice prohibited by the EEO regulations or any other Federal or State equal opportunity law, if they furnished information to, or assisted or participated in any manner, in any investigation, compliance review, proceeding, or hearing as part of the EEO regulations, or any Federal or State equal opportunity law. (See § 30.17.)

Additional information on the EEO complaints process is available at: <https://www.apprenticeship.gov/eo/apprentices-and-applicants/complaints>.

- e. **Outreach and Recruitment (§ 30.3(b)(3)).** Universal outreach and recruitment ensures that all qualified individuals have equal opportunities to become apprentices. Sponsors have considerable flexibility in selecting apprentices to hire for their programs.

The EEO in Apprenticeship regulations require sponsors to ensure that their outreach to, and recruitment of, apprentices extend to all persons available for apprenticeship within their recruitment area – without regard to race, sex (including pregnancy, sexual orientation, and gender identity), ethnicity, or disability.

Specifically, sponsors must:

- Develop and update annually a list of recruitment sources that will generate referrals from all demographic groups. This list must include the contact information for each recruitment source. Sponsors must keep records of such outreach for review by the Registration Agency.
- Reach out to recruitment sources to provide them advance notice – preferably 30 days before the application deadline – so the sources can notify and refer candidates when opportunities become available.
- Include the EEO Pledge in their Registered Apprenticeship opportunity announcements. A copy of the EEO Pledge can be accessed at: <https://www.apprenticeship.gov/sites/default/files/eeo-pledge-language.pdf>.

***Partnering with the Workforce Development System to Support Outreach, Recruitment.*** Establishing strong connections and developing robust partnerships with the workforce development system funded through the Workforce Innovation and Opportunity Act (WIOA), is vital to ensuring RAP opportunities are available to a broad and talented pool of job seekers. WIOA supports the operations of approximately 2,300 American Job Centers (AJCs) nationwide. Partnering with the workforce system will further enhance outreach efforts to all qualified individuals.

The workforce development system, through the AJC network, also supports RAPs in many communities by providing services, such as: orientation sessions to increase awareness about apprenticeship opportunities; assisting employers with recruiting and screening apprentices; providing basic skills remediation and training or partnering in pre-apprenticeship efforts; providing training funds for eligible individuals for RI; developing customized and on-the-job training contracts with employers who sponsor, or are party to, RAPs; and contributing non-financial and financial supportive services to apprentices, such as mentoring, transportation allowances, childcare, tools, books, and other supplies.

RAPs are strongly encouraged to identify the AJCs in their operating area and to ensure that RAP opportunities are publicized through the AJC network. Ensuring

strong partnerships with the AJC network in a sponsor's area can help ensure effective outreach and recruitment efforts. To find AJCs in your local area, sponsors should visit the CareerOneStop Business Center at:

<https://www.careeronestop.org/BusinessCenter/default.aspx>.

Additionally, OA's online [Universal Outreach Tool \(UOT\)](#) provides a searchable index of community-based organizations and other organizations that can serve as local recruitment sources.

***Leveraging Quality Pre-Apprenticeship Programs.*** RAPs that establish and cultivate close working relationships with quality pre-apprenticeship programs often find that such linkages are highly effective in reducing barriers to job market entry. Some individuals may be prevented from taking advantage of earn- while-you-learn opportunities because they may lack foundational skills, work experience, and/or require some form of remediation and/or other supports in order to successfully apply to a RAP. Accordingly, partnering with high-quality pre- apprenticeship programs in the RAP's operating area(s) is one important way DOL encourages RAPs to support outreach and recruitment efforts within their local communities to better ensure a qualified labor pool.

- f. **Non-discriminatory Selection Procedures (§ 30.10).** In order to ensure sponsors are truly benefitting from their universal outreach efforts, it is vital that their selection procedures are consistent with general nondiscrimination practices. A sponsor's selection procedures must also be included in their written plan for Standards of Apprenticeship submitted to and approved by the Registration Agency. (See the **Apprentice Selection Quick Reference Guide** for information on selection procedures at: <https://www.apprenticeship.gov/sites/default/files/sponsor-quick-reference-guide-selection.pdf>.)

Sponsors may utilize one or more selection procedure(s) so long as they are uniformly and consistently applied to all applicants, comply with the Uniform Guidelines on Employee Selection Procedures (UGESP) and Americans with Disabilities Act, and are facially neutral with respect to Part 30's protected bases (race, color, religion, national origin, sex, sexual orientation, age (40 or older), genetic information, or disability).

OA resources concerning outreach and recruitment activities and selection procedures are available at: <https://www.apprenticeship.gov/eo/sponsors/recruit-and-hire>.

- g. **Elements of Affirmative Action Programs (AAPs) (§ 30.4-§ 30.9, § 30.11).** The requirements outlined above refer to the affirmative steps that all sponsors must take



to ensure equal opportunity in every aspect of the apprenticeship program. In addition, sponsors are required to establish Affirmative Action Programs (AAPs), unless covered by an exemption. These AAPs include both routine reviews by an apprenticeship program sponsor of its program operations, as well as the adoption of policies and procedures to meet EEO objectives and standards. Establishing and implementing an AAP is an important requirement for sponsors to prevent discrimination and harassment and to ensure equal opportunity.

*29 CFR section 30.4.* Programs with five (5) or more apprentices that are not otherwise exempt must develop and maintain a written Affirmative Action Plan. The Affirmative Action Plan must be developed within two years of registration, or within two years of the date the sponsor registers their fifth apprentice if they have fewer than five active apprentices at the time of initial registration.

Covered sponsors must develop a written Affirmative Action Plan that includes diagnostic components and specific, practical steps designed to address any barriers to equal opportunity that may be contributing to underutilization of individuals from protected groups. To aid in the development of the plan, program sponsors may opt to use OA's Affirmative Action Plan Boilerplate (Appendix C to the Boilerplate Standards) as a template or use the Affirmative Action Plan Builder Tool in OA's Registered Apprenticeship Partners Information Data System (RAPIDS) to facilitate the development and maintenance of an Affirmative Action Plan.

A key element of developing an Affirmative Action Plan includes conducting demographic analyses for specified groups. Program sponsors may access the Demographic Analysis Tool (DAT) and the Affirmative Action Plan Builder Tool through RAPIDS. The DAT assists sponsors with conducting the calculations required for demographic analysis, and is based on data collected by the U.S. Census Bureau. While sponsors may choose to perform manual computation, OA strongly recommends using the electronic tool to ensure the most accurate calculation is achieved, as results have direct impact on subsequent activities. Because this tool is designed for sponsors that recruit externally and uses education level as the entry-level eligibility criterion, OA expects that sponsors will routinely utilize it for conducting their utilization analysis. Programs that do not elect to utilize the DAT should be prepared to explain in their Affirmative Action Plan why this approach is compliant with the Department's EEO regulations. The demographic analyses to be conducted are the:

Workforce Analysis – Analyzes the apprentice workforce by occupational title and by major occupation group;

Availability Analysis – Identifies the qualified workforce – those individuals eligible for program enrollment – within the geographic recruitment area; and

Utilization Analysis – Compares the demographic representation within each major occupation group to demographic representation available in the relevant recruitment area.

While sponsors may choose any appropriate method of statistical analysis to assess the significance of disparities in the utilization analysis, the two most commonly used are the “80 percent rule” and the two standard deviations statistical test. These two methods are specifically endorsed as appropriate methods in the EEO final rule; (see Attachment for explanation of these two analyses). A key advantage of using the Data Analysis Tool in RAPIDS is that it provides sponsors the opportunity to utilize either method of analysis.

If these analyses show that one or more of the protected groups is significantly underrepresented within a major occupation group, the sponsor will need to establish a utilization goal for that group and to take certain targeted steps to address any barriers contributing to that underrepresentation. The utilization goal for individuals with disabilities is set at seven (7) percent, as described in 29 CFR section 30.7. These **goals are not quotas**, nor do they supersede merit-based selection; hiring preferences are equally prohibited. OA does not promote establishing quotas, creating set-asides for specific groups, and hiring individuals who do not meet qualifications for the apprenticeship program.

The regulations require sponsors to set their schedule of analyses to occur at various points including: the second anniversary of the program’s initial registration (workforce analysis only); the first program review following the program’s second anniversary, and each subsequent review (for workforce, availability, and utilization analyses); and every three years following the first review (workforce analysis only). Sponsors must update their Affirmative Action Plan every time the required workforce analyses are completed.

Where analyses reveal that one or more demographic groups (race, sex, or ethnicity) and/or individuals with disabilities are being underutilized and/or there are problem areas resulting in impediments to EEO, those sponsors must conduct targeted outreach and recruitment, with intention to increase the pool of qualified candidates, in addition to their continued universal outreach. As discussed above, examples of relevant recruitment sources include: the AJC network; community-based organizations; community colleges; vocational, career and technical schools; pre-apprenticeship programs; and federally-funded, youth job-training programs such as YouthBuild, Job Corps, and State Vocational Rehabilitation agencies. If not already underutilized, the first step for sponsors should be to share job postings with the AJC network in the sponsors local area.

***Review of personnel processes (§ 30.9).*** Those program sponsors that are required to maintain an AAP must also complete an annual review of personnel processes related

to the administration of their apprenticeship program; the purpose of this annual review is to ensure that they 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. This review should be a careful, thorough, and systematic one that analyzes all aspects of the apprenticeship program at the program, industry and occupation level to help determine whether the sponsor is in compliance with the EEO obligations. These reviews could help a sponsor uncover, for example, occupational segregation in which women and/or minorities are more likely to be in lower paying occupations than higher paying occupations, as well as unequal treatment in compensation, work assignments, performance appraisals, discipline, or the handling of accommodation requests. A written description of this review process, as well as any modifications the sponsor will make in response, should be included in the Affirmative Action Plan, per 29 CFR section 30.9(b).

These annual reviews are not contingent upon a determination of underutilization and instead are intended to facilitate a comprehensive review of all aspects of the program at the program, industry and occupation level, including, but not limited to, the qualifications for apprenticeship, application and selection procedures, wages, outreach and recruitment activities, advancement opportunities, promotions, work assignments, job performance, rotations among all work processes of the occupation, disciplinary actions, handling of requests for reasonable accommodations, and the program's accessibility to individuals with disabilities (including the use of information and communication technology). The reviews may correspond to the structure of the sponsor's program, but sponsors will need to coordinate with any participating employers in order to ensure that the sponsors are not coordinating apprenticeship programs with employers that are discriminating against the apprentices placed there.

***Opportunity for Individuals with Disabilities to Self-Identify (§ 30.11)***. Sponsors must provide apprentices (and applicants for apprenticeship) with an opportunity to voluntarily self-identify their disability (or disabilities) at the pre-offer stage, the post-offer stage, and on at least an annual basis thereafter, and must also maintain records of having extended such invitations to self-identify. Sponsors must use the invitation language published on the OA website and keep all information on self-identification confidential in a separate file. This means that voluntary disclosure forms may not be provided to officials involved with interviewing, testing, hiring, supervising, or assigning applicants, to guard against selection officials using disability information in their hiring, completion, or other programmatic decisions. To view the Department's form on which apprentices and applicants for apprenticeship may voluntarily self-identify a disability (or disabilities), go to the following link:

[https://www.apprenticeship.gov/sites/default/files/Disability\\_Disclosure\\_form-671.pdf](https://www.apprenticeship.gov/sites/default/files/Disability_Disclosure_form-671.pdf).

Self-identification as an individual with a disability refers to an individual’s voluntary disclosure of whether or not they have a disability. This does not mean identifying any particular disability that the individual might have, but rather, simply whether or not they have a disability. Individuals also have the opportunity to indicate that they would rather not respond. Inviting apprentices and applicants to self-identify whether they have a disability allows sponsors to track whether individuals with disabilities are successfully accessing the program and its benefits. However, disability self-disclosure is a profoundly personal and voluntary decision; sponsors may not coerce or pressure individuals to self-identify as an individual with a disability. Sponsors should work to develop an inclusive and welcoming culture to encourage self-identification and provide support for its apprentices and applicants with disabilities.

An important aspect of developing an inclusive and welcoming culture for individuals with disabilities includes providing necessary supports for apprentices and applicants with disabilities – such as reasonable accommodations and auxiliary aids and services. There are resources available to provide sponsors technical assistance on these issues. For example, the Department’s Office of Disability Employment Policy (ODEP) has funded a technical assistance center, the Job Accommodation Network (JAN), which may be contacted at <http://www.askjan.org> or (800) 526-7234 (voice) or (877) 781-9403 (TTY). The JAN provides free, expert, and confidential guidance on workplace accommodations and disability employment issues for employers, employees, and practitioners. The JAN also provides interested persons with helpful resources concerning reasonable accommodation topics; these resources include the following items:

- Accommodating People with Disabilities: A Guide for Employers - [https://askjan.org/toolkit/loader.cfm?csModule=security/getfile&pageid=3352382&se\\_archID=3815850&pageNum=1](https://askjan.org/toolkit/loader.cfm?csModule=security/getfile&pageid=3352382&se_archID=3815850&pageNum=1)
- Accommodation and Compliance: Transgender Issues and Resources - [https://askjan.org/topics/transgender.cfm?csSearch=3815850\\_1](https://askjan.org/topics/transgender.cfm?csSearch=3815850_1)
- Strategies for Developing a Transgender Inclusive Workplace - [https://askjan.org/events/event\\_details\\_forwarder.cfm?customel\\_datapageid\\_1747=51\\_197&csSearch=3815850\\_1](https://askjan.org/events/event_details_forwarder.cfm?customel_datapageid_1747=51_197&csSearch=3815850_1)

For more information and resources on disability self-identification topics, you may also access the following links from OA’s RAP sponsor guide:

- Video: Disability Inclusion Starts with You - [www.dol.gov/ofccp/SelfIdVideo.html](http://www.dol.gov/ofccp/SelfIdVideo.html)
- FAQs on Disability Self-Disclosure - [www.dol.gov/ofccp/regs/compliance/faqs/503\\_faq.htm](http://www.dol.gov/ofccp/regs/compliance/faqs/503_faq.htm)
- Building an Inclusive Environment that Encourages Self-Identification - [www.dol.gov/ofccp/regs/compliance/resources\\_selfid.htm](http://www.dol.gov/ofccp/regs/compliance/resources_selfid.htm)

- Best Practices that Encourage Self-Identification - [www.askearn.org/topics/federal-contractorrequirements/encouraging-self-identification](http://www.askearn.org/topics/federal-contractorrequirements/encouraging-self-identification)

**h. Apprenticeship Program Reviews (APRs) and Extended Apprenticeship Program Reviews (EAPRs) (§ 30.13).** The Federal regulations governing RAPs require that a Registration Agency conduct reviews to determine if sponsors have maintained compliance with 29 CFR part 29, and 29 CFR part 30 on a regular basis<sup>1</sup>, or when program circumstances so warrant. Program reviews – the APR and EAPR – allow OA and other Registration Agencies the opportunity to provide support and technical assistance to help sponsors meet their obligations, and to identify situations where enforcement action may be required. The careful conduct of such program reviews by OA and other Registration Agencies is indispensable to ensuring that all RAPs are free from unlawful discrimination, harassment, and other types of pernicious conduct that pose barriers to program enrollment and completion by underserved populations. During these program reviews, and at any time outside the review cycle, OA and other Registration Agencies will provide technical assistance to apprenticeship program sponsors to review program operations and recommend corrective action, where applicable.

The Department is committed to ensuring ongoing technical assistance to programs to assist them in efforts to meet EEO compliance requirements. As part of OA’s efforts to increase its commitment to ensuring high quality program and EEO reviews (APRs and EAPRs), on December 16, 2021, OA released [Bulletin 2022-31, \*Announcement of the Registered Apprenticeship Program Review Manual and Related Materials; and Overview of Program Review Procedures\*](#), which provided an APR Manual, a standardized review tool for Registration Agency staff to use when conducting both APR and EAPR reviews. To aid sponsor compliance with EEO regulatory requirements, OA has substantially increased the technical assistance tools available on its website.

The APR assesses a program sponsor’s compliance with its registered Standards and the regulations, including, but not limited to, the delivery and application of OJL and RI and scheduled wage increases for apprentices. During an APR, all sponsors are reviewed for compliance with 29 CFR part 29, and with the regulatory provisions at 29 CFR part 30 that apply to all sponsors. The EAPR assesses a program sponsor’s

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<sup>1</sup> There are no pre-set timelines for EEO compliance reviews in 29 CFR section 30.13(a), and the review cycle will vary by the Registration Agency. Historically in states administered by OA, as a general matter, reviews have been conducted approximately every five years during a program’s existence, and more frequently as circumstances warrant. OA will continue to provide technical assistance to program sponsors prior to and during EEO compliance reviews (EAPRs) to ensure compliance with the requirements of 29 CFR part 30.

compliance with those aspects of 29 CFR part 30 that cover only sponsors that are required to develop an AAP. During an EAPR, sponsors with five or more apprentices who are not otherwise exempt from the AAP requirements in 29 CFR part 30 are reviewed to determine their progress toward meeting the required obligations, and those goals established in their AAP.

In accordance with 29 CFR section 30.12, sponsors are required to maintain accurate records for five years. These records must at least include those that pertain to apprentice selection, program operations, universal outreach efforts and anti-harassment training, complaints filed, disability self-identification, and requests for reasonable accommodation as they provide the strongest evidence of a sponsor's satisfaction of its EEO obligations. OA has developed a [reference guide](#) to assist sponsors in maintaining all necessary records, preparing for their program review, and meeting their EEO obligations.

- i. **Enforcement Actions (§§ 30.15, 30.16).** In instances where OA or another Registration Agency makes a written determination that a sponsor has failed to operate its RAP in accordance with any applicable provision of the EEO in Apprenticeship regulations at 29 CFR part 30 (either as a result of a compliance review, a complaint investigation, or other reason), the sponsor may be subject to enforcement actions by OA or another Registration Agency, which may entail (but not be limited to): the provision of technical assistance to promote compliance with the regulation; the development of a compliance action plan; the suspension of the sponsor's right to register new apprentices for failure to timely implement such an action plan; and/or the initiation of deregistration proceedings against the sponsor.

Examples of failure to operate in accordance with the EEO regulations include, but are not limited to, failure to timely remedy any deficiencies identified by the Registration Agency with respect to 29 CFR part 30 requirements, failure to develop an AAP if required, failure to provide anti-harassment training on a periodic basis, failure to review personnel practices on an annual basis, failure to include the EEO Pledge in its apprenticeship standards, failure to provide apprentices notice of their right to file EEO complaints, and failure to invite apprentices and applicants for apprenticeship to self-identify as having a disability and on an annual basis thereafter.

Please note that, an apprenticeship program that is deregistered for not complying with the requirements of 29 CFR part 30 may have its registration restored upon the presentation of adequate evidence that the program is currently operating in accordance with the requirements of the EEO in apprenticeship regulation.

- j. **Expanded Scope of EEO Protections at 29 CFR Part 30 (after the *Bostock***

**Decision).** In *Bostock v. Clayton County, Georgia*,<sup>2</sup> the U.S. Supreme Court held in 2020 that, under Title VII, sex discrimination includes discrimination based on sexual orientation and gender identity. In each of the three cases which had been consolidated before the Court, an employer allegedly fired a long-time employee because of their sexual orientation or gender identity. The Court held that, based on the plain text of Title VII, “discrimination based on homosexuality or transgender status necessarily entails discrimination based on sex.” Thus, the Bostock holding effectively expanded the scope of individuals protected from employment discrimination under Title VII by prohibiting discrimination because of sexual orientation or gender identity.

Accordingly, this circular now provides formal notice to OA, SAAs, RAP sponsors, apprentices, applicants for apprenticeship, workforce intermediaries, and all other relevant apprenticeship stakeholders and interested parties that the current scope of 29 CFR part 30 (last revised in 2016) – which prohibits discrimination and harassment by the sponsor of a RAP against an apprentice or an applicant for apprenticeship on the basis of race, color, religion, national origin, sex (including pregnancy and gender identity), sexual orientation, age (40 or older), genetic information, or disability with respect to any benefit, term, condition, or privilege associated with apprenticeship – will now be interpreted by the Department as including sexual orientation as a form of “sex” discrimination. Part 30 already recognized gender identity as a form of “sex discrimination.”

*Note* - The current 2016 EEO in apprenticeship regulation at 29 CFR part 30 already expressly recognizes sexual orientation as a separate prohibited basis for discrimination by RAPs. The prohibition against “sex” discrimination under Title VII and 29 CFR part 30 further includes actions taken based on pregnancy, childbirth, or a medical condition related to pregnancy or childbirth, consistent with the Pregnancy Discrimination Act of 1978 and subsequent court rulings.

- k. **Exemption from the AAP Requirement at 29 CFR Section 30.4.** A RAP sponsor is exempt from the requirement to develop and maintain an AAP (i.e., exempt from the requirements contained in 29 CFR sections 30.4 through 30.9, as well as 29 CFR section 30.11) if the sponsor’s program meets one or more of the following exemption criteria detailed at 29 CFR section 30.4(d):

***(1) The Program Has Fewer than Five Apprentices:***

The apprenticeship program has fewer than five apprentices registered (unless such program was adopted to circumvent the requirements of 29 CFR section 30.4); or

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<sup>2</sup> *Bostock v. Clayton County, Georgia*, 140 S. Ct. 1731 (2020).

***(2) The Sponsor Has an Approved APP That Satisfies Either:***

*(i) Title VII.* The program sponsor furnishes the Registration Agency with satisfactory evidence that it is in compliance with an EEO program providing for affirmative action in apprenticeship (including the use of goals for any underrepresented group or groups of individuals) which has been approved by the EEOC, by a state fair employment practices agency, or by a court as meeting the requirements of Title VII, and agrees to extend (or already extends) such protections to include individuals with disabilities; *or*

*(ii) Executive Order 11246 and Section 503 of the Rehabilitation Act.* In the case of a program sponsor that is a federal contractor and that also employs apprentices, the program sponsor submits to the Registration Agency satisfactory evidence that it is in compliance with an EEO program providing for affirmative action in apprenticeship (including the use of goals for any underrepresented group or groups of individuals) which has been approved by the Department's Office of Federal Contract Compliance Programs (OFCCP) as meeting the requirements of both Executive Order (E.O.) 11246, as amended, and section 503 of the Rehabilitation Act, as amended (29 U.S.C. 793), and their implementing regulations at title 41 of the Code of Federal Regulations, Chapter 60.<sup>3</sup>

For exemption category (2) immediately above, 29 CFR section 30.4 stipulates that AAPs approved, modified or renewed after January 18, 2017, will qualify for these exemptions only if the goals for any underrepresented group for the selection of apprentices provided for in such programs are likely to be equal to or greater than the goals required under 29 CFR part 30.

**Demonstration of the Foregoing AAP Exemption Criteria by a Program Sponsor**

***A. Determining if a sponsor's RAP has fewer than five apprentices for purposes of qualifying for the AAP exemption.***

In determining the number of active apprentices that are currently enrolled in a RAP, it is important to remember that the exemption applies to the aggregate number of apprentices enrolled in the sponsor's program, rather than the number of apprentices employed by each individual employer that may participate in the

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<sup>3</sup> OFCCP administers and enforces [E.O. 11246, as amended](#), which, among other things, prohibits discrimination by Federal contractors and requires affirmative action for all applicants and employees to ensure EEO without regard to race, color, sex, sexual orientation, gender identity, religion, and national origin. OFCCP also administers and enforces [Section 503 of the Rehabilitation Act of 1973](#), which prohibits discrimination by Federal contractors and requires affirmative action in all employment practices for qualified individuals with disabilities.



sponsor's program (usually through the vehicle of an employer acceptance agreement).

If an apprenticeship program enrolled fewer than five active apprentices at the time the program was registered by OA or by an SAA, the exemption at 29 CFR section 30.4(d)(1) applies and the sponsor is not required to establish an AAP (although they may do so, and OA encourages the development of AAPs by programs of all sizes). However, if the program had five or more active apprentices at the time of registration, the exemption would not apply, and the sponsor would be required to establish an AAP within two years from the date of the registration of the program.

For an apprenticeship program that initially had fewer than five active apprentices at the time of registration by OA or an SAA, but that subsequently enrolled five or more active apprentices after the date of program registration, the sponsor should develop an AAP no later than two years after the registration of the program's fifth active apprentice.

Finally, there may be instances where an apprenticeship program had established an AAP because it enrolled five or more active apprentices, but subsequently experienced a sustained decline in enrollment (i.e., for more than two consecutive years) below the mandatory AAP threshold of five active apprentices. Where that program sponsor does not reasonably anticipate enrolling five or more active apprentices in future years, the sponsor may qualify for the exemption, but is nevertheless encouraged by OA to maintain their existing AAP to ensure the retention of a broad-based apprenticeship workforce.

It is important to note that AAPs are an important way to prevent and address unlawful harassment and discrimination and to ensure equal opportunity and that, accordingly, the Department strongly encourages programs that may be exempt from the AAP requirement to voluntarily develop and implement an AAP.

***B. Satisfactory Evidence of Compliance with an EEO Program Under Title VII by Non-Governmental Program Sponsors (e.g., private-sector employers, joint labor-management apprenticeship programs, etc.)***

Title VII prohibits employment agencies and private-sector employers with 15 or more employees who worked for an employer for at least twenty calendar weeks (in the current

or previous year) from discriminating on the basis of race, color, religion, national origin, or sex (including pregnancy, sexual orientation, and gender identity) in all aspects of an employment relationship, including recruitment,

selections, terminations, and other decisions concerning terms and conditions of employment. Several other Federal laws, such as the Age Discrimination in Employment Act of 1967, the Rehabilitation Act of 1973, the Americans with Disabilities Act, and the Genetic Information Non-Discrimination Act, prohibit discrimination based on, respectively, age, disability, or personal genetic attributes.

The foregoing Federal laws prohibiting race, color, national origin, sex (including pregnancy, sexual orientation, and gender identity), religion, disability, and genetic information discrimination also apply to all labor organizations that either operate a hiring hall or have at least 15 members. A labor union is prohibited under Title VII from discriminating in its capacity as an employer, in its capacity as a bargaining representative for its members, or as a referral agency or hiring hall. The foregoing laws also cover any joint labor-management committee controlling apprenticeship or other training or retraining programs, including an on-the-job training program. It is unlawful for such a committee to discriminate against any individual because of their race, color, religion, sex (including pregnancy, sexual orientation, and gender identity), national origin, age (age 40), disability, or genetic information in admission to, or employment in, any program established to provide apprenticeship or other training.

An employer or labor organization (including a joint labor-management committee sponsoring a RAP) might be required to develop and implement an affirmative action plan by a court order, by the direction of a federal agency, or by a state fair employment practices agency. Similarly, an employer or labor organization (including a joint labor-management committee sponsoring a RAP) might develop and implement an affirmative action plan as part of a settlement agreement with the EEOC or a state fair employment practices agency. Where such a plan is reviewed and expressly approved by the agency or court involved, the plan is considered an approved plan by the EEOC.

Accordingly, if a private-sector sponsor of a RAP or a joint labor-management committee that sponsors an apprenticeship program provides OA or an SAA with the following examples of documentation concerning their existing AAP, such evidence may be satisfactory to exempt the program sponsor from following the AAP requirements for apprentices described in 29 CFR sections 30.4(b) and (c):

- Furnishing OA with a current approval letter (i.e., issued by the EEOC to the program sponsor within two years of the exemption request) or a settlement agreement with the EEOC (or a state fair employment practices agency) regarding the approval or establishment of an affirmative action plan

currently being operated by the employer or labor-management committee sponsoring the RAP;

- Furnishing OA with a current court order or agency mandate directing the establishment of an AAP by the employer or joint labor-management committee sponsoring a RAP, along with a copy of the AAP itself, and any documentation from the agency or court confirming current compliance with the order;
- Providing proof that the scope of the AAP covers apprentices (including applicants for apprenticeship) and extends to individuals with disabilities; or
- Furnishing OA with other satisfactory documentary evidence showing that the sponsor has established and maintains a current AAP for its employees (including its apprentices) that has been approved as compliant with Title VII and its corresponding regulations.

Please note that the granting of an exemption (on account of coverage under Title VII) from the AAP requirements in 39 CFR section 30.4 can only be approved by the Administrator of OA or a subordinate OA official designated by the OA Administrator.

***C. Satisfactory Evidence of Compliance with an EEO Program under Executive Order 11246 / Rehabilitation Act Section 503 by Program Sponsors***

Federal contractors that meet certain dollar and employee thresholds (i.e., a contract of \$50,000 or more for E.O. 11246 and Section 503 and that also have at least 50 employees) must develop, maintain, and implement a written Affirmative Action Plan for each establishment to ensure that such covered federal contractors are providing applicants and employees with EEO. The Department's OFCCP administers and enforces this AAP requirement with respect to this set of Federal contractors. A federal contractor is also required to submit an annual report to the EEOC and OFCCP (through the submission of Form EEO-1 to the EEOC, which handles the data collection) detailing the demographic composition of its workforce.

OFCCP periodically conducts evaluations of federal contractors to determine if they are adhering to the federal EEO laws governing such contractors, including the foregoing affirmative action plan requirement, where applicable. If OFCCP completes such an evaluation of a contractor and finds no violations of the applicable requirements, it will issue a closure letter, known as a Notice of Closing: Compliance Evaluation (No Violations Found), which officially ends the evaluation. Conversely, if OFCCP does find violations, then it provides notice and typically initiates negotiations with the contractor, with an eye towards entering into a Conciliation Agreement ("CA"). If these negotiations are successful, OFCCP will document the terms of the settlement in a formal CA.

Accordingly, if a federal contractor that is also an apprenticeship program sponsor provides OA or an SAA with the following examples of documentation concerning their AAP, such evidence may be satisfactory to exempt the program sponsor from following the AAP requirements for apprentices described in 29 CFR sections 30.4(b) and (c):

- Furnishing OA with a current Letter of Compliance from OFCCP (issued by OFCCP to the program sponsor within two years of the exemption request);
- Furnishing OA with a current CA from OFCCP (issued by OFCCP to the program sponsor within two years of the exemption request) that either addresses the sponsor's AAP directly and the sponsor shows current compliance with those CA provisions, or proof that the CA did not identify violations of the AAP requirement during the compliance review; or
- Furnishing OA with other satisfactory documentary evidence showing that the sponsor has established and maintains a current AAP for its employees (including its apprentices) that is compliant with E.O. 11246, Section 503 of the Rehabilitation Act, and their corresponding regulations.

Please note that the granting of an exemption (because of coverage under EO 11246 or section 503 of the Rehabilitation Act) from the AAP requirements in 29 CFR sections 30.4(b) and (c) can only be approved by the Administrator of OA, or a subordinate OA official designated by the Administrator.

***D. Granting of Partial or Complete Exemptions from the Requirements of 29 CFR Part 30 by the OA Administrator (§ 30.19).***

Pursuant to the plenary exemption authority conferred by 29 CFR section 30.19, OA may grant either partial or complete relief from the provisions of the EEO in apprenticeship regulation at 29 CFR part 30 in instances where the party requesting an exemption provides a written statement of the reasons supporting their request.<sup>4</sup> OA may grant such a partial or complete exemption in instances where the requesting party has demonstrated good cause for such relief. Written submissions by sponsors for such an exemption should describe in detail the rationale(s) for seeking a partial or complete exemption pursuant to 29 CFR section 30.19 and

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<sup>4</sup> OA reminds its field staff, Registration Agencies, program sponsors, and other interested persons that two of its previous policy circulars addressing the availability of partial exemptions from the AAP requirements contained in 29 CFR part 30 for certain governmental sponsors of registered apprenticeship programs (namely, Circular 1972-38 (titled "Exemption of Federal Agency Apprenticeship Programs from Title 29 CFR Part 30") and Circular 1981-29 (titled "Partial Exemption from the Provisions of Title 29 CFR Part 30 for Registration of Apprenticeship Programs with State and Local Governments")) were rescinded on June 4, 2020 by Circular 2020-01. Accordingly, the policy guidance on partial or complete exemptions from the requirements of 29 CFR part 30 contained in this document should be followed.

should also specify the applicable regulatory provisions of 29 CFR part 30 from which the applicant seeks relief.

The safeguarding of EEO for apprentices has been a fundamental requirement for the registration of apprenticeship programs since the first issuance of an EEO in Apprenticeship regulation in 1963. Accordingly, any written requests made by a program sponsor pursuant to 29 CFR section 30.19 for a partial (or complete) exemption from the EEO requirements contained in 29 CFR part 30 should be granted by the Administrator only in those rare instances where the sponsor can demonstrate that such an exemption is warranted based upon a compelling and persuasive set of facts and circumstances.

To illustrate, an apprenticeship program sponsor – such as, for example, a governmental agency or instrumentality – could possibly qualify for an exemption under 29 CFR section 30.19 from the AAP-related aspects of the EEO regulation (i.e., a partial exemption) if it demonstrates to the satisfaction of the OA Administrator that it has already established a comprehensive set of policies and procedures that have proven highly successful in attracting and retaining a broad-based workforce, and that such policies and procedures have been (or will be) extended to the recruitment and retention of apprentices. A request for an exemption under 29 CFR section 30.19 may also be considered in instances where the sponsor’s apprenticeship program focuses its recruitment and enrollment efforts on certain populations that have historically faced significant barriers to employment in (or re-entry into) either the general labor force or the apprenticeship labor force (such as individuals who have had contact with the criminal justice system).

Program sponsor requests for an exemption under 29 CFR section 30.19 from any or all of the EEO regulatory requirements contained in 29 CFR part 30 shall be reviewed on a case-by-case basis by the OA Administrator and granted only upon full satisfaction of the “good cause” standard established in the regulation. **Please note that all sponsor requests for an exemption under 29 CFR 30.19, whether received by an SAA or by an OA Field Office, must receive final approval from the OA Administrator.** In addition, the decision to approve or disapprove a program sponsor’s request for a partial or complete exemption from the requirements of 29 CFR part 30 pursuant to 29 CFR section 30.19 shall be entirely at the discretion of the OA Administrator, and no right to such an exemption shall adhere to an applicant solely on the basis of the foregoing illustrative examples.

5. **Inquiries.** If you have questions, please contact Andrew Ridgeway, Division Director, Office of Apprenticeship, at [Ridgeway.Andrew@dol.gov](mailto:Ridgeway.Andrew@dol.gov).

6. **References.**

- National Apprenticeship Act, 29 U.S.C. 50
- 29 CFR part 30
- Bulletin 2022-31, Announcement of the Registered Apprenticeship Program Review Manual and Related Materials; and Overview of Program Review Procedures
- EEO in Registered Apprenticeship – <https://www.apprenticeship.gov/eo>
- Equal Opportunity in Apprenticeship for People with Disabilities – <https://www.dol.gov/agencies/odep/program-areas/apprenticeship>
- Women’s Bureau Resources:
  - <https://www.dol.gov/agencies/wb/topics/apprenticeships/case-studies>
  - WANTO – <https://www.dol.gov/agencies/wb/grants/wanto>
- OFCCP’s Apprenticeships and Affirmative Action Program Frequently Asked Questions – <https://www.dol.gov/agencies/ofccp/faqs/apprenticeship>

## 7. **Attachment.**

- 80 percent rule and Two Standard Deviation Explainer