



## Understanding Utilization Analyses of the Proposed Affirmative Action Obligations of Apprenticeship Programs

**Proposed contents of the Affirmative Action Program (designed to streamline, reorganize and add clarity to existing regulation)**

1. Utilization analyses for race, sex and ethnicity
2. Establishment of utilization goals for race, sex and ethnicity
3. Utilization goals for individuals with disabilities
4. Targeted outreach, recruitment and retention
5. Review of personnel processes

### Steps for Conducting Utilization Analyses and Establishing Goals

*Step 1: Identify the racial, sex, and ethnic composition of the apprentice workforce*

**Ethnicity:** (1) Hispanic or Latino—A person of Cuban, Mexican, Puerto Rican, Cuban, South or Central American, or other Spanish culture or origin, regardless of race

**Race (Not Hispanic or Latino):** White, Black or African American, Native Hawaiian or Other Pacific Islander, Asian, American Indian or Alaska Native or Two or More Races

*Step 2: Create Apprentice Groupings*

Grouped apprentices by occupational title and by industry (e.g., Construction Industry - carpenter, electrician, glazier, maintenance technician, etc.)

**Step 3: Conduct Availability Analyses**

The purpose of the availability analysis is to establish a benchmark against which the demographic composition of the sponsor's apprenticeship program can be compared in order to determine whether barriers to equal opportunity may exist with regard to the sponsor's apprenticeship program. When conducting availability analyses the following sources should be considered:

1. External Availability - The percentage of individuals available with the present or potential capacity for apprenticeship within the sponsor's relevant recruitment area broken down by race, sex, and ethnicity.
2. Internal Availability (as necessary) - The percentage of sponsor's employees with the present or potential capacity for apprenticeship broken down by race, sex, and ethnicity. (e.g. construction company employing laborers)

*Example:*

Labor Area	RAW AVAILABILITY DATA									Weight	WEIGHTED AVAILABILITY DATA								
	Male	Female	Whites	Blacks	Hisp	NIHPI	Asians	N.A.	2+		Male	Female	Whites	Blacks	Hisp	NIHPI	Asians	N.A.	2+
ACS/Census	86.0%	14.0%	40.0%	13.0%	43.0%	1.0%	1.0%	1.0%	1.0%	50.0%	43.0%	7.0%	20.0%	6.5%	21.5%	0.5%	0.5%	0.5%	0.5%
Vocational	90.0%	10.0%	35.0%	18.0%	43.0%	1.0%	1.0%	1.0%	1.0%	25.0%	22.5%	2.5%	8.8%	4.5%	10.8%	0.3%	0.3%	0.3%	0.3%
Internal Availability	89.0%	11.0%	33.0%	15.0%	48.0%	0.5%	0.5%	1.0%	2.0%	25.0%	22.3%	2.8%	8.3%	3.8%	12.0%	0.1%	0.1%	0.3%	0.5%
<b>FINAL AVAILABILITY</b>											<b>87.8%</b>	<b>12.3%</b>	<b>37.0%</b>	<b>14.8%</b>	<b>44.3%</b>	<b>0.9%</b>	<b>0.9%</b>	<b>1.0%</b>	<b>1.3%</b>

*Definitions:*

**Labor Area** – Sources of availabilities (see Appendix A for suggested resources)

**Raw Availability Data** – Percentages of availability from each labor area

**Weight** – Percentage of time apprenticeship positions are filled from each labor area

**Weighted Availability Data** – A product of Weight x Raw Availability

**Final Availability** – These are the percentages to which the apprenticeship workforce is compared and is derived by adding the Weighted Availabilities from each column.

**Step 4: Conduct Utilization Analyses and Establish Goals**

The purpose of the utilization analysis is to provide sponsors with a method for assessing whether possible barriers to apprenticeship exist for particular groups of individuals by determining whether the race, sex, and ethnicity for apprentices in a sponsor's apprenticeship program is reflective of persons available for apprenticeship by race, sex, and ethnicity in the relevant recruitment area(s). Where significant disparity exists between availability and representation in the sponsor's apprenticeship program, the sponsor will be required to establish a utilization goal.

**Example:**

	UTILIZATION ANALYSES								
	Male	Female	Whites	Blacks	Hisp	NHPI	Asians	N.A.	2+
Apprenticeship Workforce Raw	90	10	37	13	40	0	0	0	1
Apprenticeship Workforce %	90.0%	10.0%	37.0%	13.0%	40.0%	0.0%	0.0%	0.0%	1.0%
Final Availability %	87.8%	12.3%	37.0%	14.8%	44.3%	0.9%	0.9%	1.0%	1.3%
Underutilized Yes/No - (*Whole Person Test)	No	Yes	No	Yes	Yes	No	No	Yes	No
Goal - Additional # Needed to Eliminate Underutilization		2		1	4			1	

\* May use: Whole Person, Any Difference, 80% or Statistical Significance Tests

**Definitions:**

**Apprenticeship Workforce Raw:** Number of apprentices within workforce by race/ethnicity/gender

**Apprenticeship Workforce %:** Percentage of men/women and minority apprentices within workforce by race/ethnicity/gender

**Final Availability %:** Availability percentages as identified in the Availability Analyses

**Underutilized Yes/No - (\*Whole Person Test):** Are the percentages of those available for apprenticeship greater than the apprentices in the workforce? Results will vary depending on the utilization test used.

**Goal - Additional # to reach Availability:** Additional number of apprentices required to eliminate underutilization

**Practical Implications of Utilization Goals:**

1. A goal is not a finding nor an admission of discrimination
2. Should be a targets reasonably attainable through good faith efforts
3. Goals are:

- a. **Not rigid and inflexible quotas which must be met...not a ceiling or floor...quotas are expressly forbidden**
- b. Not used to extend preference to an individual or affect an individual's status as an apprentice
- c. Do not create set-asides for specific groups
- d. May not be used to supersede eligibility requirements for apprenticeships
- e. Do not require a sponsor to select a person who lacks qualifications to participate in the program successfully
- f. Goals are established annually
- g. Where no goals have been established the Sponsor may wait two years to conduct utilization analyses

**Important Note:** Results are only as good as the amount of effort put into this process! But don't get caught in the weeds . . . this is equal parts art and science!

*Step 5: Where Goals are established review targeted outreach, recruitment and retention*

1. Analyze the current external recruitment practices and identify why they are ineffective in attracting underutilized groups to the **initial applicant pool**. Modify the practices or substitute new ones.
2. Evaluate Selection Procedures - Under this NPRM a sponsor would be required to adopt any method for the selection of apprentices provided that the method (1) complies with UGESP; (2) is uniformly and consistently applied to all applicants and apprentices; (3) complies with the qualification standards set forth in title I of the ADA; and (4) is facially neutral in terms of race, color, religion, national origin, sex, sexual orientation, age (40 or older), and disability.
3. Underutilization may occur as a result of protected groups leaving the program prior to completion. If this is the case review current processes and document why they are leaving the program to determine whether or not policies, procedures or practices are the root cause. Evaluate Retention as it relates EEO Policies and Practices:
  - Hiring, upgrading, periodic advancement, promotion, award of tenure, 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.

4. Monitor the effect of personnel decisions through the use of statistical tools such as adverse impact calculations.

**Step 6: Review of personnel processes**

1. As part of its affirmative action program, the sponsor must, for each registered apprenticeship program, engage in an annual review of its personnel processes related to the administration of the apprenticeship program to ensure that the sponsor is 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. The review must be a careful, thorough, and systematic one and include review of all aspects of the apprenticeship program, 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 to the use of information and communication technology). The sponsor must make any necessary modifications to its program to ensure that its obligations under this part are met.
2. The sponsor must include a description of its review in its written AAP and identify in the written plan any modifications made or to be made to the program as a result of its review.

**Step 7: Create an Affirmative Action Plan for Individuals with Disabilities**

The purpose of the utilization goal is to establish a benchmark against which the sponsor must measure the representation of individuals with disabilities in the sponsor's apprentice workforce by industry in order to assess whether any barriers to equal opportunity in apprenticeship remain. The goal serves as an equal opportunity objective that should be attainable by complying with all of the affirmative action requirements of this part.

1. *Apprentice workforce analysis.* Sponsors are required to analyze the representation of individuals with disabilities within their apprentice workforce by industry. This is a two-step process.
  - a. First each sponsor must group all occupational titles represented in its registered apprenticeship program by industry.
  - b. Next, for each industry represented, the sponsor must identify the number of apprentices with disabilities.

2. *Utilization goal.* The Administrator of OA has established a utilization goal of 7 percent (7%) for employment of qualified individuals with disabilities as apprentices for each industry within which the sponsor has an apprenticeship program.
3. *Utilization analysis*—the utilization analysis is designed to evaluate the representation of individuals with disabilities in the sponsor's apprentice workforce grouped by industry. If individuals with disabilities are represented in the sponsor's apprentice workforce in any given industry at a rate less than the utilization goal, the sponsor must take specific measures to address this disparity.
4. *Periodic review of goal.* The Administrator of OA will periodically review and update, as appropriate, the utilization goal established.
5. *Action-oriented programs.* The sponsor must undertake action oriented programs, including targeted outreach, recruitment, and retention activities, designed to correct any problem areas that the sponsor identified pursuant to its review of personnel processes and outreach and recruitment efforts.
6. *Invitation to self-identify as an individual with a disability*
  - a. *Pre offer.* As part of the sponsor's general duty to engage in affirmative action, the sponsor must invite applicants for apprenticeship to inform the sponsor whether the applicant believes that that he or she is an individual with a disability. This invitation must be provided to each applicant when the applicant applies or is considered for apprenticeship. The invitation may be included with the application materials for apprenticeship, but must be separate from the application.
  - b. *Post offer.* At any time after acceptance into the apprenticeship program, but before the applicant begins his or her apprenticeship, the sponsor must invite the applicant to inform the sponsor whether the applicant believes that he or she is an individual with a disability.
  - c. *Apprentices.* The sponsor must invite each of its apprentices to voluntarily inform the sponsor whether the apprentice believes that he or she is an individual with a disability as defined in § 30.2. This invitation shall be extended the first year the sponsor becomes subject to the requirements of this section and then each time an apprentice is enrolled into an apprenticeship program. The sponsor must remind apprentices yearly that they may voluntarily update their disability status.
  - d. The sponsor may not compel or coerce an individual to self-identify as an individual with a disability.
  - e. The sponsor must keep all information on self-identification confidential, and must maintain it in a data analysis file (rather than the medical files of individual apprentices).

End.



## Appendix A

### Data Sources for Constructing Availabilities for Apprenticeship Programs

Data Source	Readily Available	Specific and Relevant Occupational Data	Contains Gender, Race and Ethnicity Data	Challenge/Benefit *
Census Bureau's American Fact Finder (CBAFF)	Yes	Yes	Yes	-Finding the right dataset -Highly reliable for utilization analyses
American Community Survey (ACS) EEO Tabulation 2006 to 2010 (Subset of CBAFF data)	Yes	Yes	Yes	-Identifying and/or combining the right census code -Highly reliable for utilization analyses
Sponsors of registered apprenticeship programs in the construction industry – Pre-apprenticeship program	Possibly	Yes	Possibly	- May not be collecting demographic data -Highly reliable for utilization analyses
Data from vocational education schools	Possibly	Yes	Possibly	-Compelling them to collect gender/race/ethnicity -Directly related to job/industry, highly reliable
Secondary/postsecondary other career and employment training institutions	Possibly	Possibly	Possibly	-Compelling them to collect gender/race/ethnicity -Directly related to job/industry, highly reliable
Labor market information data from State workforce agencies	Yes	No	No	-Aggregated data not specific to industry -Data does not identify race/ethnicity
Educational attainment data from the Census Bureau	Yes	No	No	-Aggregated data not specific to industry -Data does not identify race/ethnicity
Data provided by DOL/OFCCP through 41 CFR part 60-4	Yes	No	No	-Data does not identify race/ethnicity
Census Bureau's Quick Facts tables	Yes	No	No	-Aggregated data not specific to industry
Nationwide goal for Individuals with Disability	Yes	NA	NA	National goal of 7%

\*See Appendix B for more information

## Appendix B

### Where can we find reliable 'Discrete' availability data?

**Census Bureau's American Fact Finder** – This is the most reliable data source and consequently the primary source used by over 100,000 federal contractors for the purposes of conducting availability analyses.

- American Community Survey and Census 2010
  - EEO Tabulation is sponsored by four Federal agencies: EEOC, DOJ, OFCCP, and OPM
  - Launched in 2005 to replace the decennial census long-form
  - Surveys sent to 250,000 households/month (each and every month)
  - Responses compiled and then extrapolated to the population as a whole
  - EEO Tabulation is a “five-year estimate” meaning that it is a compilation of responses from over a five-year time frame (i.e., 15,000,000 surveys)
  - Available Geographies
    - U.S. Total
    - All states (incl. the District of Columbia and Puerto Rico)
    - Primary metro and micro areas (think: combinations of large counties surrounding an urban metropolis)
    - Counties
    - Places (think: cities, boroughs, townships, etc.)
    - EEO county sets (think: combinations of counties to address sample size confidentiality requirements)
  - Available Databases (potentially relevant to contractors): Data cross-tabulated by:
    - Occupation (487)
    - Industry
    - Age
    - Educational Attainment



- Earnings
- **American Community Survey (ACS) EEO Tabulation 2006 to 2010** – there are 107 data sets to choose from within this subset. The two most appropriate for availability comparisons are;
  - EEO 4r. EEO-1 Job Categories by Sex, and Race/Ethnicity for Residence Geography, Total Population  
Universe: Civilian labor force 16 years and over EEO Tabulation 2006-2010 (5-year ACS data)
  - Or
  - EEO 1r. Detailed Census Occupation by Sex and Race/Ethnicity for Residence Geography  
Universe: Civilian labor force 16 years and over EEO Tabulation 2006-2010 (5-year ACS data)

**Sponsors of registered apprenticeship programs in the construction industry** – Could be a very reliable source if gender/race/ethnicity data is collected.

**Data from vocational education schools** – Could be a reliable source if gender/race/ethnicity is collected and the school serves to educate individuals within specific, relevant trades.

**Secondary and postsecondary school or other career and employment training institutions** – Could be a good source if gender/race/ethnicity is collected and the school serves to educate individuals within specific, relevant trades.

**Labor market information data from State workforce agencies** – General labor demographics typically identifying unemployment by gender and total race and within 10-15 broad occupational categories.

**Educational attainment data from the Census Bureau** – General labor demographics identifying level of education attainment for gender/race/ethnicity by broad occupational categories.

**Data provided by DOL/OFCCP through 41 CFR part 60-4** – Defined demographic data for gender and combined races using broad geographic areas, covering all construction trades. This data was last collected in 1980 and is expected to be updated in the near future (date is unknown).

Example: Technical Assistance Guide for Federal Construction Contractors

Minority representation for Maryland:

- 019 Baltimore, MD SMSA Counties: 0720 Baltimore MD - 23.0%  
(MD Anne Arundel; MD Baltimore; MD Carroll; MD Harford; MD Howard; MD Baltimore City.)

- Non-SMSA Counties - 23.6%  
(MD Caroline; MD Dorchester; MD Kent; MD Queen Annes; MD Somerset; MD Talbot; MD Wicomico; MD Worcester; VA Accomack; VA Northampton)

Female representation is based on a single National availability percentage: 6.9%

Census Bureau's Quick Facts tables – Easy to find but labor data is reported as a whole and not specific to the type of job

Example:

- White alone, not Hispanic or Latino, percent, April 1, 2010 - 63.7%
- Female persons, percent, April 1, 2010 - 50.8%