

electrical training ALLIANCE
2019 NTI
C Group

**New Standards, Selection
 Procedures and EEO Plans**

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AGENDA

- Standards Update
- EEO laws and 29.30 Overview
- New Selection Procedures and Forms
- New Standards
- New EEO Plan and Forms
- Affirmative Action Plan

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**Standards Update
 and Overview**

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Status

Inside Standards

- DOL minor comments on EEO Plan. Re-submitted 7/15/19
- Waiting on signature

Outside Standards

- Patterned on the Inside Standards, but tailored for the Outside programs
- Will be addressing comments to draft before sending to DOL for review.

Forms

- First batch is on ETA website as Word docs

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Format

- One document, three sections
- Forms are separate
- Moving everything electronic or online
- Options and flexibility

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Committee Adoption

- *Alliance* is working on the electronic Standards builder software
- Once DOL approves and the *Alliance* issues the new Standards and software, programs will have 180 days to **adopt** them
- Must be submitted to and approved by the *Alliance* prior to adoption
- Then submitted to your RA

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Standards

- Make consistent with 29.30
- Update and clarify responsibilities of contractors
- Distinctions between the JATC/AJATC and JATT and discussion of Trustee responsibilities
- Bring procedures into the 21st Century

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Selection Methods

- Even more (e.g. pre-apprenticeship)
- Streamlined format: Minimum eligibility, methods, post-offer/pre-indenture
- Flexibility to turn on/off direct interview to direct entry

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Selection Procedures

- New application, forms, interview questions
- Stay on list for 1 year, not 2
- Clarify rights and procedures to disqualify applicants (e.g. felonies)

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EEO/AA Plan

- Complete re-write for 29.30
- Revised complaint procedures, EEO language, AAP

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Forms

- Separate from the Standards
- Revised forms can be used as soon as they are put up on the *electrical training ALLIANCE* website, subject to your RA
 - For DOL states, since the approved new Standards. Selection Procedures and EEO Plans do not include any forms, DOL local offices should not have any objection to changing forms
 - SAA may take a different approach

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Forms

- A small number of forms will be required
- Most are samples or "best practices" that you can tailor or modify (or continue to use your current forms)
- Starting with Word docs. Fillable forms will be developed. Will be rolling out additional forms, guidance, samples throughout 2019.
- Developing sample provisions for your Rules/General Policies
- Will be periodically supplemented and updated

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EEO LAWS AND APPRENTICESHIP PROGRAMS

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Title VII of The Civil Rights Act of 1964 and Other EEO Laws

- Prohibits discrimination based on race, color, religion, sex or national origin.
 - Includes sexual harassment and pregnancy discrimination.
 - Likely prohibition of gender identity and sexual orientation discrimination.
- State/local laws may protect other categories, *e.g.*, sexual orientation, marital status.

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Other Federal EEO Laws

- Age Discrimination in Employment Act (ADEA) prohibits discrimination against individuals age 40 or over.
- Americans with Disabilities Act (ADA) prohibits discrimination against individuals with disabilities and requires reasonable accommodation of employees.
- GINA prohibits use of genetic information.

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29.30

- DOL's regulations for Labor Standards for Registration of Apprenticeship Programs are in Title 29 of the Code of Federal Regulations (CFR), Part 29.
 - Includes the provisions for registration, Standards, apprenticeship agreements, de-registration, etc.
- Part 30 is Equal Employment Opportunity in Apprenticeship and Training.
- Shorthand is 29 CFR Part 30, or 29.30.

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What Does 29.30 Address?

- Equal opportunity standards and programs (which cover applicants and apprentices)
- Affirmative Action plans
- Approved methods for selection of apprentices
- Records
- Compliance reviews and enforcement
- Complaint procedures

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How do the 29.30 Regulations Relate to Other EEO Laws?

- They overlap, but are not the same.
- Different procedures and remedies.
 - Violation of 29.30 can lead to deregistration of the entire program.
- JATCs and AJATCs are subject to various federal and state employment laws with their own rules and enforcement.
 - These may cover "protected characteristics" that 29.30 does not cover.

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What Activities or Programs are Potentially Covered?

- Potentially all of them
- Apprentice selection, training, supervision, rotation, discipline, termination, etc. (in class and on the job)
- Employment of staff (possibly even if fewer than 15 employees)
- Other programs, including pre-apprenticeship programs, Construction Wiremen (CW), training for journey workers, etc.

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Pre-Apprenticeship and CW Programs

- Are not covered by 29.30, but *might* be covered by Title VII and other civil rights laws.
- If so, what this means depends on the JATC's role and how the relationship is structured
- Potential issues
 - Who is recruited and selected for the programs
 - Harassment in the program
 - Terms and conditions and termination

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Non-discrimination in all Areas of Apprenticeship

- Equal application of the rules, polices and procedures
- Applies to:
 - Grading and requirements at school
 - Equal opportunities for OJT training, supervision, rotation
 - Discipline and termination
- In class and on the job

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What Will be the Effect?

- Effects of these changes depend on DOL priorities and resources for federal and state enforcement.
- Will probably not see an increase in compliance reviews until at least 2020, after new AAPs are filed.
- Impossible to predict whether unionized programs will be targeted.

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29.30 EEO Changes and Enforcement

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New Enforcement Tools

- Temporary moratorium on a Program's registration of new apprentices until the program sponsor has addressed the violations or has met the steps identified in its compliance action plan
- Referral of complaints or issues to EEOC

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EEO Changes

- Add to the list of protected categories:
 - Disability
 - Age (40 or older)
 - Genetic information
 - Sexual orientation
 - Clarify that pregnancy and gender identity are included in sex discrimination

Reminder: Other laws prohibit most, if not all, of these types of discrimination already

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LGBTQ Issues

- DOL said it was basing its sexual orientation and gender identity on “existing law” under Title VII, but even if the Supreme Court takes a different interpretation, the DOL regulations remain
- DOL deferred on specific rules regarding toilets
- No required data collection or outreach for sexual orientation

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EEO Changes (cont.)

- Increased attention to:
 - Harassment as a type of discrimination
 - Application of the EEO rules to *all aspects* of apprenticeship
 - Training of employees and apprentices
- New rules and guidance on investigating and responding to complaints of discrimination

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**Compliance Deadlines
July 15, 2017**

- Non-discrimination and general affirmative action obligations in 29.30.3
 - Stop discriminating, including new protected classes
 - Update and disseminate new EEO Pledge
 - Begin universal outreach efforts
 - Implement anti-harassment efforts—*including training*

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**Adopt, Distribute and Publish the
New Pledge**

- Adopt the EEO Pledge Update Addendum to your Standards (including Selection Procedures and AAP)
 - *You do NOT need to submit to DOL for approval until you update your Standards.*
https://doleta.gov/oa/eoo/pledge_poster/
- Distribute the Pledge
 - Post and distribute to apprentices; send to Chapter and Local, put on your website
 - Put in your rules

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**“Your Rights” and Complaint
Poster**

- DOL’s optional poster includes the “your right to equal opportunity” language and information on how to file complaints
- https://doleta.gov/oa/eoo/pledge_poster/
- This language needs to be posted and provided to applicants and apprentices
- You can modify to add any internal complaint procedure you have adopted

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Compliance Deadlines January 18, 2019

- Begin self-identification for current apprentices and applicants on ethnicity and disability
- Conduct initial workforces analysis for race/ethnicity/sex and disability
- Draft written AAP
- Conduct initial review of personnel processes

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Annual Recurring Obligations

- Update list of recruitment sources
- Review of “personnel processes”
- Remind apprentices that they can self-ID

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Recurring Obligations Tied to Each Compliance Review

- Workforce analysis (or after 3 years if no review)-race/sex/ethnicity and disability
- Availability analysis for race/sex/ethnicity

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Compliance Deadlines Tied to Your Next RA Compliance Review

- This could be anywhere from 1-5 years, depending on your Registration Agency cycle
- Conduct utilization analysis for race/sex
- If data shows underutilization for race/sex, minority groups or IWD's:
 - Set utilization goal for current and new apprentices
 - For IWD's determine any impediments and undertake action-oriented programs
 - For race/sex underutilization, undertake action-oriented programs

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NEW SELECTION PROCEDURES AND FORMS

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Qualifications for Apprenticeship

- Re-organized into:
 - Minimum qualifications
 - Direct interview
 - Direct entry
 - Transfer
 - "Other means" and
 - Post-Selection Requirements

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Minimum Qualifications

- *Except for certain forms of Direct Interview or Direct Entry*
- Complete an application--accurately and responding to all questions
- HS graduate, GED or 2-year Associate or higher
- One year HS or one semester post-HS algebra or *electrical training ALLIANCE* Tech Math
- Able to work legally in US and provide a valid SSN

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Minimum Qualifications

- 18 years old *at registration* unless permitted by state law
- The prior physical requirements; read, speak and understand instructions in English
- Understand and follow JATC/AJATC Rules
- Get to and from job sites within the jurisdiction of the Program

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Direct Entry

- New signatory employer or 30% cards (no change)
- Two new options that the JATC/AJATC can turn on for a period and then off
 - Two year military electrical experience, Interim Credential, pre-apprenticeship or “industry needs”, based upon pre-set standards evaluation factors such as top 50% of class, pass/fail interview
 - Any other Direct Interview option

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Direct Interview Options

- All of the current ones, plus
- *electrical training ALLIANCE* Interim Credential
- Pre-Apprenticeship Programs
- Industry needs
 - Located in a geographic area with high demand that cannot be served due to distance
 - Be in a category that contractors must recruit and hire under PLA or government contracts (e.g. requirements for veterans, local residents, or disadvantaged workers (as defined by income or other factors than Protected Characteristics)

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Post-Selection Requirements

Mandatory

- Provide required documentation
- Not be disqualified based upon information learned by the JATC/AJATC

Optional to add

- Drug test; boot camp; physical exam; background check

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Applications

- More toward on-line; encourage Year-round, 24/7, but an option for ten day application period as needed
- New Application and Supplement (mandatory) with expanded categories for electrical or construction experience, experience in extreme or strenuous conditions, and other experience and training
- Revised and expanded Statements of Understanding

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Application EEO Supplemental Forms

- The NJATC forms have been *separate* for good reasons.
 - They are voluntary to collect EEO data for reporting and for doing self-evaluation of the AAP
 - This information should not be provided to interviewers; it should be filed separately when received
 - New form adds social media and other sources for how the applicant learned about the program

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Disability Self-Disclosure Form

- DOL form—same as what is on their website
- “Guidance” on what is a disability.
 - This is not from DOL; it is written with language from an EEOC document
 - May try to simplify this

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Selection Procedures

- New provisions about reasonable accommodations, confidentiality and transparency
- Basic Qualifications, Standards and JATC Rules & Policies (or AJATC General Policies) must be provided to applicants and/or accessible on-line
- Must inform applicants of optional information they may provide, and other information the JATC/AJATC has or may obtain and use

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Education, Training and Experience Summary

- Mandatory form
- Prepared by TD or designee and should be the primary information the interviewers have
- Summarizes all key information from all sources (application, transcript, military or CW records) and any issues/concerns
- Avoids putting EEO and non-relevant information before the Committee, and helps ensure the same type of information on all applicants is presented

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New Interview Questions

- New instructions, categories and questions/probes
- Icebreaker, five required areas, closing question
- Q1 Icebreaker (why did you apply) and Q2 are to measure knowledge and interest in this program
- Q3 is to probe on reported experience in the construction industry, building trades or electrical work

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New Interview Questions

- Q4, 5 and 6 address three sets of abilities: cooperation and working with others on a task or project; to exercise initiative, problem-solve and adapt; and plan and organize tasks to meet a deadline
- All the sub-questions can be answered without industry experience
- New scoring scale for each (Exceptionally High to Unsatisfactory)
- Q7 is the Applicant's opportunity to sell themselves or emphasize something that may have been missed

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Optional Interview Questions

- Four optional questions on issues or abilities that are less important or harder to measure in a question: responsibility/dependability; workplace safety; understanding and agreement to program rules; and working in adverse conditions
- Three optional questions based upon applicant responses: past conduct and behavior, felony convictions and ADA issues

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Rating

- Two summary ratings on communication with others and interest in apprenticeship and this program
- The overall rating is the only one with a number, 0-100, to be consistent with past ranking
- The scale is similar to a grade scale but with a narrative: 90-100 Excellent (A); 80-89 Above Average (B); 65-79 Average (C); 50-64 Below Average (D) and 0-49 Unsatisfactory (F)

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Disqualification

- New language on the ability to disqualify applicants prior to registration, after notice an opportunity to respond
- Most common example is felony convictions, but could be other conduct, lying on application, fired from CW program, or other reliable information

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Other

- 1 year list, not 2 year
- Only appeal right is under the EEO/AA Plan

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New Standards

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Important Changes You Might Miss

- New or revised definitions, used throughout the documents and forms
- Clearer distinction between the JATC/AJATC (Committee) and JATT (Trust), and when Members/Trustees are acting in one capacity or another

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JATC/Trust Operations

- Committee members complete their terms unless removed for cause by the party that appointed them, they resign or die. The IBEW Local or NECA Chapter determine what is "cause", subject to any applicable national rules
- JATC or AJATC and JATT to adopt internal polices and procedures, including confidentiality
- Meetings may be held by audio, video or other electronic means
- Duties rest with the Committee or JATT and cannot be delegated
- New language to emphasize that the Committee is not an employer or apprentices

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Qualifications & Duties of Participating Employers

- Consolidates and expands prior provisions
- JATC/AJATC shall establish minimum expectations
- Employers must cooperate with the Committee on timely and accurate work reports and evaluations; inform the Committee of complaints; and permit the Committee on request to monitor any investigation; participate in training
- There will be a recommended model agreement with Participating Employers

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Anti-Discrimination and Harassment Under the New EEO/AA Plan

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General

- Changes must be approved by the *ALLIANCE* and the RA (See Preface)
- Committee must designate a coordinator. Some of the duties are mandatory; others are suggested options. EEO/AA Plan Pt. I(B)
- Describe how you will disseminate the Plan. Some are mandatory, others are suggestions. Template plan has some mandatory duties; others are suggested options. EEO/AA Plan Pt. I(C)

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Anti-Harassment Training Obligations

- Must:
 - Explain that unlawful harassing conduct will not be tolerated
 - Define the types of conduct that are unlawful
 - Explain the rights to file a harassment complaint, how to file, and protections against retaliation
 - Be interactive
 - EEO/AA Plan Pt. I(D)

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Who Must be Trained?

- “All individuals connected with the administration and operation of the program”
- Start with the Committee, staff, and instructors
- Train all current apprentices and incoming apprentices
- Contractor employees
 - Regulations call for training of Journeyworkers, supervisors, and any management and staff who work alongside apprentices.
 - DOL advises coordination with participating employers.
- Repeat periodically as necessary (no specific time periods)

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Complaint Procedures

- DOL requires that programs establish and implement procedures for handling and resolving complaints about harassment, intimidation or retaliation
- Publicizing the right to file external complaints is required. EEO/AA Plan Pt. I(F)(2)
- New internal complaint procedures for all forms of discrimination and harassment. EEO/AA Plan Pt. I(F)(1)

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Other Requirements

- Invitation to self-identify. EEO/AA Plan Pt. I(G)
- Recordkeeping. EEO/AA Plan Pt. I(H)
- Ensure all facilities and activities are available to all. If restrooms or changing facilities are provided, have separate or single-user facilities to ensure privacy

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Specific EEO Polices and Procedures

- General EEO Statement
- Cross reference to Selection Procedures
- Prohibition of Retaliation
- Reasonable Accommodation for Religion
 - Defines; requests to the Coordinator
- ADA compliance
- See EEO/AA Plan Pt. II(A), (b), (D), (E) and (G)

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Prohibition of Harassment

- Defined as unwelcome conduct based upon protected characteristics that is:
 - a term or condition of employment decisions,
 - unreasonably interferes with work performance, or
 - creates an intimidating, hostile or offensive work environment
- This tracks federal law standards. It is not a “zero tolerance” for every offensive remark
- EEO/AA Plan Pt. II(C)

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Mentoring and Other Support

- DOL emphasizes the need for support, especially in the first year. Experience in IBEW/NECA programs.
- Committees need to include steps they will take. The suggestions are optional.
- EEO/AA Plan Pt. II(H)

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JATC and Employer Responsibilities

- JATCs and other multi-employer programs complained to DOL that they should not be responsible for employer activities
- DOL basically said:
 - If you have control or input you must act
 - If you have knowledge of violations you must investigate and act
 - You need agreements with your employers on their compliance regarding apprentices
 - This is nothing new

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JATC and Employer Responsibilities

- EEO/AA Plan Pt. II(F) details obligations on employers
- Says the Committee will coordinate with NECA Chapter and the Local
- Employers are expected to develop their own policies
- This will tie in with the Standards and sample agreement with participating employers

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Affirmative Action Under the New EEO/AA Plan

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29.30 AAP Changes

- *Many* procedural changes
- Stated goal is to substantially increase the number of minorities, women and individuals with disabilities in apprenticeships
 - DOL has adopted a 7% goal for individuals with disabilities
- **Plans must be implemented year-round**

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Affirmative Action Options

Which of the following are lawful?

- *Setting up a mentoring program for urban minorities?*
- *Offering introductory skill programs for women?*
- *Structured Pre-apprenticeship programs for under-represented groups?*
- *Ranking minority and female applicants higher than white males?*
- *Selecting the applicants with the greatest experience?*

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What is Legal

- Expanding the pool.
- Mentoring, pre-apprenticeship or other targeted programs to improve skills and increase retention.
- Programs not based on protected characteristics alone.
- Ensuring that selection criteria are fair and do not have an adverse impact.

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Definition of Affirmative Action

- More than passive non-discrimination.
- Procedures, methods and programs for the identification, positive recruitment, training and motivation of present and potential minority and female apprentices including the establishment of goals and timetables.
- See EEO/AA Plan Pt. III(A)

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Internal Annual Review

- Required *annual* self-assessment of *all* areas of the program. See EEO/AA Plan Pt. III(B)
- Must attach when submitting the draft EEO/AA Plan to the Registration Agency
- Should start this now, if you have not already done a self-assessment
- This is different than the utilization analysis

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Self-Assessment

- Before a JATC/AJATC can consider strategies to improve compliance, a frank discussion as to why there has not been greater progress in the past is necessary
- Some possible reasons include:
 - Target goals are unrealistic
 - May include individuals not qualified for or interested in the trade
 - Recruitment sources being used are not providing candidates

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Self-Assessment

- Self-assessment to improve compliance should include a review of the following:
 - whether there is a statistically significant disparate impact between males and females or whites and minorities at any stage of the process, including interviews, those receiving offers, those accepting offers, and retention rates
 - why apprentices, particularly women and minorities, are leaving the program

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Self-Assessment

- Self-assessment:
 - Analysis of whether there is any difference between written policies and procedures and actual practices
 - Review of what progress has been made, if any, in the recruitment, selection and retention of minorities and women in the past 3-5 years

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Outreach and Recruitment Requirements

- Plan must include your affirmative action activities. See EEO/AA Plan Pt. III(C)
- In the new plan document, only a few are required, the rest are optional. This list is not exclusive; you can add others, or re-write the optional ones
- Suggestions on recruitment, preparation of applicants (e.g. pre-apprenticeship); EO awareness; and mentoring and retention activities

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Outreach and Recruitment Requirements

- Develop and update a list of recruitment sources and identify a contact at each
- DOL has a new nationwide directory. https://doleta.gov/oa/eo/outreach_recruitment/
- Provide them with advance notice of apprenticeship openings (preferably 30 days in advance) so that they can notify and refer candidates
- Must include your new Equal Opportunity Pledge

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Retention Programs

- DOL recognizes the importance of retention activities, but did not expressly require them a plan
- Retention activities will likely be included by most programs as steps to increase completion rates
- Mentoring, counseling, role models and other steps may be critical in retaining not only under-represented apprentices, but those with no background in the trades
- Exit interview and other activities were discussed by DOL, but not mandated

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Pre-Apprenticeship Programs

- Proposed regulations only apply to registered apprenticeship programs
- DOL discussed pre-apprenticeship programs in the context of using them as ways to recruit and prepare underrepresented groups
- DOL discussed ways in which “hidden bias” and “past practice” perpetuate exclusion of women and minorities
- No express mention of the ways that industry demands for increased experience (such as CW/CE) might perpetuate discrimination, but this needs to be considered

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Pre-Apprenticeship Programs and Direct Entry

- DOL advises that “to avoid underutilization of one racial minority or ethnic group that results from a single-employer sponsor drawing its apprenticeship pool entirely from a direct-entry program that is specifically designed to target another racial minority or ethnic group, the direct-entry mechanism should be used in concert with other selection mechanisms to result in a less homogenous apprenticeship pool”

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Pre-Apprenticeship Programs and Direct Entry

- Direct entry from pre-apprenticeship programs is encouraged by DOL
- If approved by the RA, "Direct entry from a training program that is targeted toward a specific underrepresented group in order to address underutilization is also permitted." Like any other selection procedure, direct entry from such a program must be approved by the Registration Agency
- <https://www.doleta.gov/oa/eo/selection/>

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Utilization Analysis for Race, Sex and Ethnicity

- Process is somewhat similar to the past, but adds ethnicity
- DOL is working on the process, but DOL or RA will provide workforce availability numbers
- There is an option for a Committee or the *Alliance* to propose use of other sources of data her data
- For most Committees, the goals for race, sex and ethnicity will be set as a single number for all related programs against the number of qualified individuals in the workforce

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Goals and Timetables

- Required if there is underutilization in selection of females and minorities
- Underutilization measured using 5-factor analysis to determine if there are fewer minorities and females than would reasonably be expected in the sponsor's labor market
 - DOL currently provides relevant market data
- Compliance measured by whether sponsor has met the goals, or proof of good faith effort toward goals

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Utilization Analysis for Disability

- See EEO/AA Plan Pt. III(E)
- DOL has adopted a 7% for individuals with disabilities
 - Broad definition of disability under ADAAA
- Can't require disclosure, but can include anyone with obvious disabilities or who asks for accommodations
- If the right questions are asked, and there is voluntary cooperation, 7% is an easy goal

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Questions?



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