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Affirmative Action for Government Sponsors of Registered Apprenticeship Programs

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Purpose

This brief is intended to educate readers on the affirmative action requirements Registered Apprenticeship Programs must meet. Please note that the information in this brief does not constitute legal advice.

Introduction

Registered Apprenticeship Programs, or RAPs, are high-quality, paid job training programs that leverage on-the-job training, classroom instruction and mentorship to prepare individuals for in-demand occupations. While apprenticeships are typically associated with construction and building trade professions, there are more than 1,000 occupations eligible for apprenticeship, enabling apprentices to gain training at no or minimal cost. For these reasons and more, many state and local government employers are turning to apprenticeship as a strategy for growing talent pipelines and attracting workers to public sector jobs.

As part of the [federal equal employment opportunity regulations](#) for apprenticeship, sponsors of RAPs must develop and maintain an affirmative action program to ensure all qualified applicants and apprentices have an equal opportunity to participate and succeed in the program. Affirmative action programs help apprenticeship sponsors address barriers to equal opportunity by analyzing which populations are under-represented within the program and conducting targeted recruitment efforts to ensure that the population of apprentices reflects the demographics of the broader community.

This brief will introduce RAPs, their value to public employers and the affirmative action requirements with which they must comply. It will then highlight the existing state-level bans on affirmative action and the differences between affirmative action in employment and education. In conclusion, this brief will feature a discussion of how misunderstanding about these bans' requirements could place barriers to public employers' participation in apprenticeship and potential actions to alleviate these challenges.



What is a Registered Apprenticeship Program?

[Registered Apprenticeship Programs \(RAPs\)](#) are high-quality, industry-led career pathways overseen by the U.S. Department of Labor. RAPs enable employers to prepare their future workforce or upskill existing employees by providing hands-on training and support.

RAPs are designed to promote diversity by working to widen onramps to promising careers and ensure that the apprentice population reflects the demographics of the broader community in which the program operates. In addition, apprentices enjoy strong worker protections to ensure program quality and safety. Upon program completion, apprentices earn a certificate of apprenticeship completion from the U.S. Department of Labor and can earn additional credentials throughout the program.

RAPs can assist public employers, including state government agencies and county and municipal governments, in filling vacancies created by the wave of retirements due to an aging workforce and other related trends. Aspects of apprenticeship programs, including mentorship, low- or no-cost training, a progressive wage scale and a nationally recognized credential, can all help increase the appeal of public sector employment to potential employees.

What is Affirmative Action?

Affirmative action refers to practices or policies to improve employment or educational opportunities for members of historically disadvantaged groups. [Modern affirmative action policies originated in 1961](#), when former President John F. Kennedy issued [Executive Order 10925](#) instructing federal contractors to take “affirmative action” to ensure equal opportunity in employment and to establish the Committee on Equal Employment Opportunity. The executive order was [issued in response](#) to the civil rights movement and to previous failures by the federal government to compel defense and construction contractors to hire more racial minorities.

While affirmative action is most associated with positive steps taken to increase the inclusion of racial minorities, it has a different meaning in education than it does in the employment context.

In the educational context, affirmative action refers to admissions policies to increase the number of racial and

ethnic minorities in a college’s student population. These policies are often referred to as “race conscious,” and [institutions of higher education](#) have claimed that race has been just one of multiple holistic factors considered in admissions decisions. In 2023, the U.S. Supreme Court ruled in [Students for Fair Admissions, Inc. v. President and Fellows of Harvard College](#) that these policies, specifically in colleges and universities, violate the equal protection clause of the U.S. Constitution, barring racial discrimination by the government, putting an end to these admissions practices.

However, in the employment context, affirmative action has never equated to any kind of racial or gender-based preference or quota. Affirmative action, as it is used today by federal contractors, originates with [Executive Order 11246 of 1965](#), which requires all federal government contractors to “take affirmative action to ensure that applicants are employed ... without regard to their race, color, religion, sex, sexual orientation, gender identity or national origin.” Any employer contracting with the federal government must take positive steps to ensure that equal employment opportunity is offered in all stages of recruitment, hiring and throughout employment. The executive order does not permit preference to be given based on any protected identity; rather, obligated employers must analyze their employment practices to identify shortcomings and take positive steps to correct them.



RAP Affirmative Action Requirements

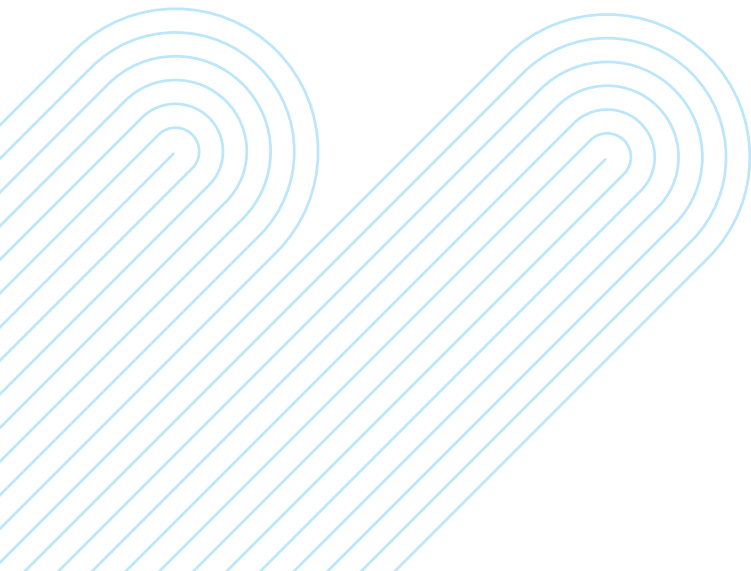
Code of Federal Regulations (CFR) Title 29, Part 30 requires all RAP sponsors with five or more apprentices to create and maintain an Affirmative Action Program, including a written Affirmative Action Plan, documenting the program's demographic data and the sponsor's actions to promote equal opportunity, which is submitted to the U.S. Department of Labor. Like requirements for federal contractors, an Affirmative Action Program assists RAP sponsors in **detecting, diagnosing and correcting any barriers to equal opportunity** that may exist in their apprenticeship program. It is also designed to **ensure equal opportunity and prevent discrimination in RAPs**.

Like other Affirmative Action Programs, affirmative action requirements for RAPs **do not mandate the hiring of any unqualified people into a program or set-asides for specific groups**, and **quotas are expressly forbidden**. Sponsors who employ fewer than five apprentices are exempt from the federal requirement. They can also meet this requirement by demonstrating that they are implementing a compliant Affirmative Action Program, including the use of recruitment targets for underrepresented groups.

The deadline for sponsors to implement their Affirmative Action Programs varies by state. In states where a state apprenticeship agency registers and monitors programs on behalf of the federal Office of Apprenticeship, the deadline depends on the state's Equal Employment Opportunity Plan. In states where the federal Office of Apprenticeship registers programs directly, the deadline is two years after a program's registration date, or two years from the date the program registers its fifth apprentice (whichever is later).

AFFIRMATIVE ACTION PROGRAMS MUST INCLUDE FIVE COMPONENTS:

- 1 Demographic analyses for race, sex and ethnicity**, where sponsors compare data on the race, sex and ethnicity of their apprentice workforce to the characteristics of the qualified workforce in their recruitment area.
- 2 Invitations to apprentices and apprenticeship applicants to voluntarily self-identify as an individual with a disability**, using the Voluntary Disability Disclosure Form.
- 3 Examination of the proportion of individuals with disabilities in their program**, compared to the federal Office of Apprenticeship's goal that 7% of apprentices are qualified individuals with disabilities.
- 4 Setting goals to increase underrepresented groups and conducting targeted outreach and recruitment**, if the comparisons of demographic characteristics of apprentices and the qualified workforce in the recruitment area show that inclusion of women, ethnic or racial minorities, or people with disabilities is lower than would be expected.
- 5 Annual review of personnel practices**, including employment practices, policies and decisions for the impact they have on employing minorities, women and individuals with disabilities in the program, and revision of any policies that create barriers to equal opportunity.



Affirmative Action Bans and Potential Implications for Registered Apprenticeship

Nine states have added language to their state constitutions, enacted an executive order or passed legislation requiring that public institutions “shall not discriminate against or grant preferential treatment to any individual or group.” The first state to do so was California, when voters approved [Proposition 209](#) to add this language to [Section 31, Article 1 of the state constitution](#).

Since then, Arizona, Michigan, Nebraska, Oklahoma and Washington have also approved ballot initiatives utilizing identical language. In Florida, former Gov. Jeb Bush signed [Executive Order 99-281](#) banning set-asides, preferences or quotas based on race or gender. New Hampshire and Idaho enacted similar bans through legislation in 2012 and 2020, respectively.

These statutes are regularly referred to as “affirmative action bans” among [media](#) and [policy organizations](#) alike. However, none of these bans utilize the term “affirmative action,” instead banning “discrimination” and “preferential treatment.” As previously mentioned, the U.S. Supreme Court has decided that affirmative action, as it was previously practiced by institutions of higher education, is illegal and unconstitutional preferential treatment. However, affirmative action, as required for federal contractors and Registered Apprenticeship sponsors, and as utilized voluntarily by other employers nationwide, is not.

While the affirmative action requirements for apprenticeship sponsors do not require — and, in fact, forbid — the use of preference or quotas, there is still opportunity for confusion among public employers that wish to participate in Registered Apprenticeship, who these discrimination and preference bans apply to.



CASE STUDY: IDAHO

Since 2020, Idaho has formed a coalition of partners to promote Registered Apprenticeship, meeting public sector talent needs. In 2022, The Council of State Governments (CSG) and the Urban Institute provided technical assistance to partners at the Idaho Department of Labor’s [Apprenticeship Idaho](#) program with interpretation of Idaho’s then-recently enacted affirmative action ban, [Idaho Statute 67-5909A](#).

According to the statute:

“The state shall not discriminate against, or grant preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment or public education.”

Similarly, [CFR 29, Part 30](#) states that affirmative action programs for apprenticeship sponsors “may not provide a sponsor with a justification to extend a preference” and “do not create set-asides for specific groups.” However, there was initial confusion among state agency personnel about whether this new statute prevented Idaho’s state government and other public employers wanting to develop Registered Apprenticeship Programs from meeting the affirmative action requirements necessary to be federally recognized.

CSG and the Urban Institute supported Apprenticeship Idaho by conducting legal research on other states with “affirmative action bans” and facilitating discussions among stakeholders from labor, human resources and the state’s U.S. Office of Apprenticeship satellite office. While it was ultimately determined that existing equal opportunity employment policies within state agencies likely met federal affirmative action requirements, confusion about the impact of this statute temporarily slowed expansion of RAPs within state government.





Conclusion

The practice of affirmative action in employment, including affirmative action in federally Registered Apprenticeship Programs, has a decades-long history in the United States and has been affirmed as neither unlawful discrimination nor preferential treatment. Nonetheless, popular understanding of affirmative action has focused on its use in the higher educational context, which has provided opportunities for misunderstanding and uncertainty.

Since affirmative action in higher education has been ruled unconstitutional nationwide by the U.S. Supreme Court, it is unlikely that states will continue to pass their own individual bans on discrimination and preferential treatment in public employment and education. But as [more states introduce legislation banning](#) broader diversity, equity and inclusion practices at public educational institutions, misconceptions about the equal employment opportunity requirements for RAPs could likely persist, especially for public employers.

State apprenticeship agencies and the U.S. Office of Apprenticeship may consider the following actions to provide clarity and guidance on affirmative action and promote Registered Apprenticeship as a high-quality career pathway for all.

- State apprenticeship agencies and the U.S. Office of Apprenticeship can create resources on equal employment opportunity requirements tailored to public employers that emphasize the goals of affirmative action and affirm its legality under federal and state discrimination laws.
- State apprenticeship agencies and public sector program sponsors can consult with their state's office of the attorney general to confirm compliance with any new laws relating to affirmative action or diversity, equity and inclusion policies.
- Public sector program sponsors can work closely with their department of human resources to identify whether existing equal employment opportunity policies meet federal requirements for Registered Apprenticeship Programs.

Through cross-agency collaboration, stakeholders can guarantee that public and private employers alike can reap the benefits of Registered Apprenticeship and ensure that this high-quality, industry-driven career pathway is attainable for all individuals.

This project was supported by a Grant from Ascendium Education Group. Ascendium Education Group is a 501(c)(3) nonprofit organization committed to helping people reach the education and career goals that matter to them. Ascendium invests in initiatives designed to increase the number of students from low-income backgrounds who complete postsecondary degrees, certificates and workforce training programs, with an emphasis on first-generation students, incarcerated adults, rural community members, students of color and veterans. Ascendium's work identifies, validates and expands best practices to promote large-scale change at the institutional, system and state levels, with the intention of elevating opportunity for all. For more information, visit <https://www.ascendiumphilanthropy.org>.