



U.S. DEPARTMENT OF LABOR

Job Quality and Equity NOFO Language

Job Quality and Equity Notice of Funding Opportunity (NOFO) Draft Language for Federal Agencies

NOTICE: Below you will find a suggested list of draft job quality and equity language that agencies may want to consider embedding into their funding opportunities (as preferences, encouragements, requirements, etc.). DOL is happy to provide a presentation or deeper dive into any of the issues outlined below for federal agency staff, particularly those involved with grant writing and review. **Every agency must assess its own underlying statutory authority and follow the OMB Uniform Guidance (note that some agencies may have promulgated exceptions to or deviations from the Uniform Guidance in their adoption of the Uniform Guidance) before embedding any suggested policies in funding opportunities.**

Union Organizing & Collective Bargaining

- Encouraging Language:

- Applicants should describe whether and how project delivery and implementation create good-paying jobs **with the free and fair choice to join or form a union to the greatest extent possible.**
- Applicants should describe whether and how planned methods of project delivery and implementation (for example, use of **Project Labor Agreements** and/or Local Hire provisions, training, and placement programs for underrepresented workers) provide opportunities for all workers, including workers underrepresented in construction jobs, to be trained and placed in good-paying jobs directly related to the project.
- In addition, applicants should explain whether and how they will execute **labor peace agreements, project labor agreements, or collective bargaining agreements...**

- Requiring Language:

- Goal of requiring and evaluating a Quality Jobs Plan is to ensure that federal investments are supporting the creation and retention of good-paying jobs, free from discrimination, including harassment, and retaliation, where workers are properly classified as employees, and **with a free and fair chance to join or form a union.** Applicants may demonstrate that workers have a free and fair chance to join a union **by committing to the use of Project Labor agreements (if applicable);** the use of workers who are covered by a collective bargaining agreement; or the submission of a signed letter from a labor union or worker organization that confirms the commitment to free and fair union elections and collective bargaining that describes the number and characteristics of high-quality jobs on the project.

Union Neutrality

- Requirement:

- An award recipient or any subrecipient may not use grant funds, whether directly or indirectly, to support or oppose union organizing.
- Funds under this grant may not be used to support or oppose union organizing.

Distribution of Workplace Rights

-Encouraging Language:

- Applicants should also describe whether and how project delivery and implementation create good-paying jobs with the free and fair choice to join a union to the greatest extent possible, the use of demonstrated strong labor standards; . . . **the distribution of workplace rights notices, including the notice developed under E.O. 13496 . . .**
- In addition, applicants should explain whether they will . . . **distribute workplace rights notices, including the notice developed under E.O. 13496. . .**
- Applicants should describe whether and how **copies of workplace rights notices** stating that workers are on a federally assisted project and explaining their rights under the National Labor Relations Act, the Davis Bacon Act, the Occupational Safety and Health Act and information on whistleblower protection laws including the right to report safety violations free from intimidation and harassment will be provided directly to individual workers in addition to fulfilling the legally required general posting requirements. In addition, workers should receive direct individualized information about their status as an employee or independent contractor, their Davis Bacon classification, and their wage/fringe benefit rates.

Local and Economic Hiring

- Encouraging Language:

- Applicants should also describe whether and how project delivery and implementation create good-paying jobs . . .the use of **Local or Economic Hire provisions**; registered apprenticeships; or other similar standards or practices. Applicants should describe how planned methods of project delivery and implementation (for example, use of Project Labor Agreements and/or **Local or Economic Hire provisions**, training, and placement programs for underrepresented workers) provides opportunities for all workers, including workers underrepresented in construction jobs, to be trained and placed in good-paying jobs directly related to the project.
- In addition, applicants should explain whether and how they will execute labor peace agreements, project labor agreements, or collective bargaining agreements; distribute workplace rights notices, including the notice developed under E.O. 13496; **use local or economic hire . . .**

Safety and Health

- Encouraging Language:

- Applicants should describe whether and how they will execute supplemental safety training for workers (including employees of contractors and subcontractors) to enhance workplace safety above and beyond statutory minimums.
- Applicants should describe whether and how they will have or plan to have a workplace safety and health management system that includes management leadership and employee involvement, worksite analysis, hazard prevention and control, safety and health training, and anti-harassment training. Please provide details or attach plan.
- Applicants should describe whether employer has no history of major OSHA or Whistleblower citations.

Preventing Worker Misclassification

- Encouraging Language:

- Applicants should explain how the proposed project will create and/or retain high quality, good-paying jobs, **where workers are properly classified as employees . . .**
- Applicants should explain whether and how they will distribute notification of rights of employees to all workers (including workers treated as independent contractors).
- Applicants should describe whether and how project delivery and implementation create good-paying jobs with the free and fair choice to join a union to the greatest extent possible. In this description, **applicants should explain how they will utilize employees employed by the applicant directly and an explanation of when and why they will outsource any work to other employers.**

Diversity, Equity, Inclusion, and Accessibility

- Encouraging Language:

- Applicants should describe whether and how the project sponsor is directly supporting training, recruitment, and retention through programs that also focus on the recruitment, training, placement, and retention of individuals who belong to underserved communities that have historically been denied equitable treatment, such as Black, Latino, and Indigenous and Native American persons, Asian Americans and Pacific Islanders and other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender, and queer (LGBTQ+) persons; persons with disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or inequality and supports their entry, along with all others, into the project workforce from those programs. [See Footnote 1]
- Applicants should describe whether the project budget includes funding for supportive services and direct cash assistance that will help people facing systemic barriers to employment be able to participate and thrive in training and employment. Eligible supportive services include: housing, child and elder care, tools, work clothing, application fees and other costs of apprenticeship or required pre-employment training, transportation and travel to training and work sites, and services aimed at helping to retain underrepresented groups like mentoring, support groups, and peer networking.
- Applicants should describe whether and how the project plan includes training for worksites on anti-harassment and other strategies to prevent and address harassment based on race, gender, ethnicity or other factors protected under law. Such strategies might include communication to all personnel that harassment will not be tolerated; the posting of EEO policy statements; supervisory training and guidance on the need to maintain a work environment free of harassment, intimidation, and coercion; procedures to take and investigate complaints of harassment; efforts to monitor the work environment for the presence of any forms of harassment, intimidation, or coercion; harassment awareness training program; and clearly detailed plan of how one reports harassment and what happens afterwards.

- Notice Regarding Current Obligations:

- Affirmative Action and Pay Transparency Requirements for Covered Contractors:
 1. Construction contractors holding contracts exceeding \$10,000 annually will be subject to the requirements of Executive Order 11246:
 2. Applicants, subrecipients (contracting with federally assisted construction contractors), contractors and subcontractors are prohibited from discriminating in employment on the basis of race, color, religion, sex, sexual orientation, gender identity or national origin.
 3. Applicants are required to take affirmative action to ensure that equal opportunity is provided in all aspects of their employment. This includes flowing down the appropriate language to all subrecipients, contractors and subcontractors.
 4. Covered federal contractors are required to post the Pay Transparency Nondiscrimination Provision either physically or electronically and include it in their employee handbook or manual.

- Requiring Language (Must contact DOL before using this language):

- Equal employment opportunity is an important priority. The Department wants to ensure that project sponsors have the support they need to meet requirements under EO 11246, Equal Employment Opportunity (30 FR 12319, and as amended). All federally assisted contractors are required to make good faith efforts to meet the goals of 6.9% of construction project hours being performed by women and goals that vary based on geography for construction work hours for work being performed by people of color. The U.S. Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) has a Mega Construction Project Program through which it engages with project sponsors as early as the design phase to help promote compliance with non-discrimination and affirmative action obligations. Through the program, OFCCP offers contractors and subcontractors extensive compliance assistance, conducts compliance evaluations, and helps to build partnerships between the project sponsor, prime contractor, subcontractors, and relevant stakeholders. OFCCP will identify projects that receive an award under this notice and are required to participate in OFCCP's Mega Construction Project Program from a wide range of federally assisted projects over which OFCCP has jurisdiction and that have a project cost above \$35 million. **XXX Department will require project sponsors with costs above \$35 million that receive awards under this funding opportunity to partner with OFCCP, if selected by OFCCP, as a condition of the XXX Department award.** [See Footnote 2]

General Job Quality Statements

- Encouraging Language:

- Applicants should describe whether and how project delivery and implementation create good-paying jobs with the free and fair choice to join a union to the greatest extent possible. In this description, applicants should explain how they will utilize direct employees (explaining in detail when and why they will rely on contractors and subcontractors). In addition,

applicants should explain whether they will execute labor peace agreements, project labor agreements, or other collective bargaining agreements; distribute workplace rights notices, including the notice developed under E.O. 13496; use local hire or economic hire agreements; participate in registered apprenticeships; or other similar standards or practices. Applicants should describe how planned methods of project delivery and implementation (for example, use of direct employees, labor peace agreements, training, and placement programs for underrepresented workers) provides opportunities for all workers, including workers underrepresented in XXX jobs to be trained and placed in good-paying jobs directly related to the project.

- In addition, the Department intends to use the XXX opportunity to support the creation of good-paying jobs with the free and fair choice to join a union and the incorporation of strong labor standards and workforce programs, in particular registered apprenticeships, labor management partnerships and Local Hire agreements, in project planning stages and program delivery.
- This section of the application should describe how the project will contribute to the following outcomes: (1) result in high-quality job creation by supporting good-paying jobs with a free and fair choice to join a union in project construction and in on-going operations and maintenance, and incorporate strong labor standards, such as through the use of project labor agreements, registered apprenticeship programs, and other joint labor-management training programs; (2) result in workforce opportunities for historically underrepresented groups, such as through the use of local hire provisions or other workforce strategies targeted at or jointly developed with historically underrepresented groups, to support project development; (3) foster economic growth and development while creating long-term high quality jobs, while addressing acute challenges . . .

- Criteria involves the following factors:

- Quality and manner in which the proposed project will create and/or retain high quality, good-paying jobs, where workers are properly classified as employees, work in places that are devoid of hostility and harassment and have a free and fair chance to join or form a union. Applicants may demonstrate that workers have a free and fair chance to join a union by committing to the use of Project Labor Agreements (if applicable); the use of workers who are covered by a collective bargaining agreement; or the submission of a signed letter from a labor union, or worker organization that confirms the commitment to free and fair union elections and collective bargaining and that describes the number and characteristics of high-quality jobs on the project.
- Extent to which proposed project supports equitable workforce development strategies (including Pre-Apprenticeship with partnerships and pathways into Registered Apprenticeship) with provisions for supportive services and leading to broad occupational training and career-track employment. Supportive services provisions can include partnerships with workforce development boards and other organizations that connect individuals to services. These services may include, but are not limited to, the following: linkages to community services; assistance with transportation; assistance with child care and dependent care; assistance with housing; assistance with educational testing, books, fees, certifications, etc.; reasonable accommodations for individuals with disabilities above and beyond those that are legally required; legal aid services; referrals to health care; needs-related payments that allow individuals to participate in training; and assistance with appropriate work attire and work-related tools, including such items as eyeglasses and protective eye gear.
- Extent to which proposed project has and will engage workers and their representatives. This includes extent project has an intentional strategy to recruit workers from underrepresented communities.

Workforce Development

- Quality Pre-Apprenticeship [See Footnote 3]:

- **Quality Framework for Pre-apprenticeship Programs**

A pre-apprenticeship program is defined as a set of strategies designed to prepare individuals for entry into a RAP. Pre-apprenticeship programs differ from internships, job shadowing, externships, and co-ops, which may also offer individuals an opportunity to experience firsthand a profession or practice, but do not always engage in practical and applied experiential learning. For the purposes of this NOFO, pre-apprenticeship programs must include the following five elements to be considered a quality pre-apprenticeship program:

1. Designed in Collaboration with RAP Sponsors. Quality pre-apprenticeship programs are designed by organizations with input from a RAP sponsor. A pre-apprenticeship program's educational and pre-vocational services prepare individuals to meet the entry requisites of one or more RAPs. They have training goals to teach participants a defined set of skills required and agreed upon by the RAP sponsor for entry into their programs. The start date and length of specific pre-apprenticeship programs may vary. Ideally, pre-apprenticeship programs provide an industry-recognized credential and possibly stipends or wages.

2. Meaningful Hands-on Training that Does Not Displace Paid Employees. Quality pre-apprenticeship programs provide hands-on training to individuals in 1) a workplace, 2) simulated lab experience, or 3) work-based learning environment, and also do not supplant a paid employee, while accurately simulating the industry and occupational conditions of the partnering RAPs, which includes observing proper supervision and safety protocols.

3. Facilitated Entry and/or Articulation. The purpose of a pre-apprenticeship program is to train individuals for entry into a RAP. A quality pre-apprenticeship program assists in exposing participants to local, state, and national apprenticeship programs and provides direct assistance to participants applying to those programs. Whenever possible, formalized agreements exist with RAPs that enable individuals who have successfully completed the pre-apprenticeship program to enter directly into a RAP. These may also include articulation agreements that allow the individual to earn advanced credit/placement for skills and competencies already acquired.

4. Sustainability Through Partnerships. To support the ongoing sustainability of a quality pre-apprenticeship partnership, such partnerships collaboratively promote the use of RAPs as a preferred means for industry to develop a skilled workforce and to create career opportunities and pathways leading to RAP enrollment for individuals.

5. Access to Appropriate Supportive Services. Quality pre-apprenticeship programs facilitate access to appropriate supportive services during the program; these supportive services may continue after the participant leaves the pre-apprenticeship program and enters a RAP. Services may include counseling, transportation assistance, childcare, and rehabilitative services, among others.

- Pre-apprenticeship expansion efforts include, but are not limited to, the following:
- Growing the pre-apprenticeship model into in-demand industries and occupations, including and within clean energy, public service, healthcare, childcare, construction, technology, cybersecurity, manufacturing, and transportation and other occupations and industries in the critical supply chain;
- Expanding on the use of the pre-apprenticeship model in the WIOA and other workforce or education programs that can lead to RAP and other career pathways that lead to RAP enrollment;
- Increasing support of pre-apprenticeship stakeholders and customers in their diversity, equity, inclusion, and accessibility efforts by actively working to support EEO efforts and the recruitment of underrepresented populations and underserved communities. These efforts can also include extending pre-apprenticeship for new populations and into new communities, including rural and urban neighborhoods; and
- Building on existing pre-apprenticeship efforts already in place to maximize the use of resources and minimize the duplication of efforts, ultimately ensuring the core customers of the apprenticeship system are served efficiently.
- Pre-apprenticeship programs funded through this grant must directly lead to RAPs during the grant period of performance. Pre-apprenticeship programs funded under this grant should ensure that the skills and competencies being developed align with industry needs. It is allowable and encouraged for pre-apprentice completers to receive grant-funded services in a RAP so they may be a grant participant.

- Registered Apprenticeship:

- Registered Apprenticeship Programs (RAPs) are a proven model of job preparation, registered by DOL or a DOL-recognized State Apprenticeship Agency (SAA), which employ workers and combine paid On-the-Job Learning (OJL) (also referred to as On-the-Job Training (OJT)) with Related Instruction (RI) to progressively increase workers' skill levels and wages. RAPs are also a business-driven model that provide an effective way for employers to recruit, train, and retain highly skilled workers. RAPs allow workforce partners, educators, and employers to develop and apply industry standards to training programs, thereby increasing the quality of the workforce and workforce productivity. RAPs offer job seekers immediate employment opportunities that pay sustainable wages and offer advancement along a career path as they complete their training. Completers of RAPs receive recognized postsecondary credentials, and their training may be applicable toward further post-secondary education. RAPs are authorized under the National Apprenticeship Act of 1937 (29 U.S.C. 50 et seq.), and implementing regulations located at 29 CFR Part 29 (Subpart A) and 29 CFR Part 30. The Department's Office of Apprenticeship (OA), in conjunction with SAAs, registers programs for federal purposes, ensures that RAPs meet applicable federal and state laws and regulations covering RAPs, issues certificates of completion to apprentices, encourages the development of new programs through outreach and technical assistance, protects the safety and welfare of apprentices, and ensures equal employment opportunity for apprentices.

- New programs developed under this funding opportunity must conform with federal and state laws and regulations covering RAPs. RAPs supported by this funding opportunity must include the following five key elements: • Direct Business Involvement • Structured On-the-Job Learning/Training (OJL/OJT) • Related Instruction (RI) • Progressive wage increase • National Industry Recognized Credential Please refer to Appendix D for definitions of the five core components referenced above.

RAPs combine an educational or instructional component with a paid work-based learning component. RAPs are registered through the DOL's Office of Apprenticeship or a DOL recognized SAA. Each RAP, with approval of the Registration Agency, sets its own apprentice to journeyworker guidelines for supervision within the parameters of 29 CFR 29.5(b)(7). Upon successful completion of all phases of work-based learning and related-instruction components, Registered Apprentice completers receive industry-recognized certificates of completion leading to long-term career opportunities.

Prevailing Wages

- Notice Regarding Current Obligations (where Davis Bacon applies)

- **Davis-Bacon Act Requirements:**

- Projects awarded under this FOA will be funded, in whole or in part, by funding that is subject to Davis-Bacon Act labor standards. All laborers and mechanics employed by the applicant, subrecipients, contractors or subcontractors in the performance of construction, alteration, or repair work on an award or project in excess of \$2000 funded directly by or assisted in whole or in part by funds made available under this FOA shall be paid wages at rates not less than those prevailing on similar projects in the locality, as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code commonly referred to as the "Davis-Bacon Act" (DBA).

- Applicants shall provide written assurance acknowledging the DBA requirements for the award or project and confirming that all of the laborers and mechanics performing construction, alteration, or repair work on projects in excess of \$2000 funded directly by or assisted in whole or in part by and through funding under the award are paid or will be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with Subchapter IV of Chapter 31 of Title 40, United States Code (Davis-Bacon Act).

- Applicants acknowledge that they will comply with all of the Davis-Bacon Act requirements, including but not limited to :

(1) ensuring that the wage determination(s) and appropriate Davis-Bacon clauses and requirements are flowed down to and incorporated into any applicable subcontracts or subrecipient awards.

(2) ensuring that if wage determination(s) and appropriate Davis-Bacon clauses and requirements are improperly omitted from contracts and subrecipient awards, the applicable wage determination(s) and clauses are retroactively incorporated to the start of performance.

(3) being responsible for compliance by any subcontractor or subrecipient with the Davis-Bacon labor standards.

(4) receiving and reviewing certified weekly payrolls submitted by all subcontractors and subrecipients for accuracy and to identify potential compliance issues.

(5) maintaining original certified weekly payrolls for 3 years after the completion of the project and making those payrolls available to the [funding agency] or the Department of Labor upon request, as required by 29 CFR 5.6(a)(2).

(6) conducting payroll and job-site reviews for construction work, including interviews with employees, with such frequency as may be necessary to assure compliance by its subcontractors and subrecipients and as requested or directed by the [funding agency].

(7) cooperating with any authorized representative of the Department of Labor in their inspection of records, interviews with employees, withholding requests, and other actions undertaken as part of a Department of Labor investigation.

(8) posting in a prominent and accessible place the wage determination(s) and Department of Labor Publication: WH-1321, Notice to Employees Working on Federal or Federally Assisted Construction Projects.

(9) notifying the Contracting Officer of all labor standards issues, including all complaints regarding incorrect payment of prevailing wages and/or fringe benefits, received from the recipient, subrecipient, contractor, or subcontractor employees; significant labor standards violations, as defined in 29 CFR 5.7; disputes concerning labor standards pursuant to 29 CFR parts 4, 6, and 8 and as defined in FAR 52.222-14; disputed labor standards determinations; Department of Labor investigations; or legal or judicial proceedings related to the labor standards under this Contract, a subcontract, or subrecipient award.

(10) preparing and submitting to the Contracting Officer, the Office of Management and Budget Control Number 1910-5165, Davis Bacon Semi-Annual Labor Compliance Report, by April 21 and October 21 of each year.

- Recipients of funding under this FOA will also be required to undergo Davis-Bacon Act compliance training and to maintain competency in Davis-Bacon Act compliance. The Contracting Officer will notify the recipient of any [funding agency] sponsored Davis-Bacon Act compliance trainings. The U.S. Department of Labor (“DOL”) offers free Prevailing Wage Seminars several times a year that meet this requirement, at <https://www.dol.gov/agencies/whd/government-contracts/construction/seminars/events>.
- For additional guidance on how to comply with the Davis-Bacon provisions and clauses, see <https://www.dol.gov/agencies/whd/government-contracts/construction> and <https://www.dol.gov/agencies/whd/government-contracts/protections-for-workers-in-construction>.

- Preference Language (only for Instances where Davis Bacon does NOT statutorily apply):

- Applicants must ensure that construction work on projects funded under this NOFO are paid wages and fringe benefits at least equal to those paid for similar work in the community as determined by an applicable state or local prevailing wage law or ordinance or in accordance with a wage determination for the locality issued by the US Department of Labor under 40 U.S.C. 3141 et seq and 29 CFR Part 1, [whichever is higher].
- (In the alternative/additional language) Applicants must provide documentation certifying the wages and benefits that are to be paid to laborers and mechanics performing construction work on projects funded under this NOFO. This provision may be met by certifying that laborers and mechanics will be paid wages and fringe benefits at least equal to those paid for similar work in the community as determined by an applicable state or local prevailing wage law or ordinance or in accordance with a wage determination for the locality issued by the US Department of Labor under 40 U.S.C. 3141 et seq and 29 CFR Part 1, [whichever is higher].

Footnotes

1. Consider providing preference points for grantees/awardees that train, recruit, and retain diverse workers.
 2. This language can only be added to a grant Notice of funding opportunity after agencies have worked closely with DOL’s OFCCP to determine whether OFCCP has jurisdiction over the grant. Please reach out to the Good Jobs Initiative to be connected to OFCCP for further information.
 3. This definition is based on the TEN (https://wdr.doleta.gov/directives/attach/TEN/TEN_13-12.pdf). However, it includes stronger language to require pre-apprenticeship programs to include the 5 elements identified in the TEN and also includes an additional requirement that pre-apprenticeship must lead to Registered Apprenticeship Program placements and do so during the life of the grant.
- If a Funding Opportunity Announcement is using the definition of a “Quality Pre-Apprenticeship” from TEN No. 13-12, suggest stating that explicitly in the text.
 - We added in the additional requirement that pre-apprenticeships must lead to Registered Apprenticeship Program placements during the life of the grant, because the appropriation (FY21 Consolidated Appropriations Act) from which this grant is funded has the following language: “to expand opportunities through apprenticeships **only registered under the National Apprenticeship Act.**”

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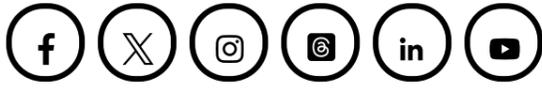
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