

STILL EXCLUDED

***There Are Still Virtually No Women In The Federally Created And Supervised
Apprenticeship System For The Skilled Construction Trades***

By

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INTRODUCTION

In 1978 the U.S. Department of Labor (DOL) mandated affirmative action to increase women's enrollment in the apprenticeship programs that are the main pathway to employment in the skilled construction trades. DOL acted in response to women's continued near total exclusion from the programs despite the ban on sex discrimination in apprenticeship enacted by Title VII of the Civil Rights Act of 1964.

DOL's affirmative action mandate has failed to achieve its purpose. Women still hold fewer than 3% of the skilled trades jobs and fewer than 3% of the skilled trades apprenticeships. Meanwhile, in other occupations that can be as physically challenging as trades work may be, women's share of employment has grown, for example, to 43% of bus drivers, 36% of paramedics, 36% of mail carriers, 35% of athletes/coaches/umpires, 23% of farmers and ranchers, 19% of agricultural workers, 15% of the military (including 7% of marines), and 12% of police officers.¹

CONSTRUCTION WORK

Construction is a significant part of the national economy. In 2011, 7.1 million persons were employed in construction occupations, accounting for 5.1% of total civilian employment, and 9.0 million persons were employed in the construction industry, accounting for 6.5% of employment.² Note that some workers in construction occupations work for firms that are not in the construction industry, for example, electricians employed by manufacturing firms, and some workers in the construction industry are not in construction occupations, for example, accountants employed by construction firms.

Construction employment is strongly affected by the overall level of economic activity. Construction employment was about 25% greater in 2006, when unemployment averaged 4.6%, than in 2011, when unemployment averaged 8.9%.

While some construction occupations require little if any skill training, a large share of construction employment is in occupations that require extensive skill training. Such training is typically acquired through participation in an apprenticeship program, which usually lasts several years. In 2011, 3.245 million persons were employed in the seven skilled trades shown in Table 1 – carpenters, electricians, plumbers/pipefitters/steamfitters, equipment operators, masons, sheet metal workers, and iron & steel workers.³

Women have consistently held only a tiny fraction of construction jobs. In 2011, women were 2.6% of those employed in construction occupations and an even tinier fraction of those in

¹ Women in Military Service for America Memorial Foundation, *Statistics on Women in the Military* (2011), available at <http://www.womensmemorial.org/PDFs/StatsonWIM.pdf> (military participation); U.S. Bureau of Labor Statistics, *Women in the Labor Force: A Databook* (2012 ed.), available at <http://www.bls.gov/cps/wlf-databook-2012.pdf> (non-military occupations).

² Id.

³ Source for Table 1: U.S. Bureau of Labor Statistics, *Women in the Labor Force: A Databook* (2012 ed.).

the skilled construction trades. Women who do enter the trades report that sex discrimination and harassment are quite common, and these behaviors may exacerbate women's exclusion.⁴

Table 1. EMPLOYMENT IN SEVEN SKILLED CONSTRUCTION TRADES (2011)			
<i>Occupation:</i>	<i>Total Employed (thousands)</i>	<i>Percent Women</i>	
Carpenters	1330	1.9%	
Electricians	682	1.5%	
Plumbers, Pipefitters, Steamfitters	526	1.7%	
Equipment Operators	369	0.8%	
Masons (Brick, Block, Stone)	146	0.9%	
Sheet Metal Workers	126	2.3%	
Iron and Steel Workers	66	0.0%	
Total all seven	3245	1.6%	

Exclusion from the skilled trades reduces the opportunities for women without a college education to achieve economic security. Earnings in the skilled trades can be significantly higher than in other occupations that require only a high school degree. Table 2 reports median male⁵ weekly earnings in seven trades in absolute amounts, and as a percentage of the median weekly earnings for all full-time employed men with a high school degree but no college (\$711) and for all full-time employed women with a high school degree but no college (\$538).⁶ Median male earnings in all seven trades were substantially greater than the \$538 median for all employed women with a high school degree but no college. Median male earnings in five of the trades were significantly greater than the \$711 median for all employed men with a high school degree but no college.

Table 2 MEDIAN MALE WEEKLY EARNINGS IN SEVEN SKILLED CONSTRUCTION TRADES (2011)			
<i>Occupation:</i>	<i>Amount (dollars)</i>	<i>As Percent of \$711 Median Earnings of All Male HS Grads</i>	<i>As Percent of \$538 Median Earnings of All Female HS Grads</i>
Carpenters	\$630	89%	117%
Electricians	\$855	120%	159%
Plumbers, Pipefitters, Steamfitters	\$853	120%	159%
Equipment Operators	\$809	114%	150%
Masons (Brick, Block, Stone)	\$706	99%	131%
Sheet Metal Workers	\$805	113%	150%
Iron and Steel Workers	\$870	122%	162%

⁴ See, e.g., Eisenberg, Susan, *We'll Call You If We Need You* (1998), Ithaca N.Y. & London: ILR Press; Meches, Cindy, and Dulcy Abraham, *Women In Construction – Tapping the Untapped Resource to Meet Future Demands* 133 *Journal of Construction Engineering and Management* 701-705 (2007).

⁵ Statistically reliable data on female earnings in the skilled trades are unavailable because so few women are employed in the trades.

⁶ Source for Table 2: median earnings in the trades from U.S. Bureau of Labor Statistics, *Women in the Labor Force: A Databook* (2012 ed.); median earnings for all HS grads calculated by Legal Momentum using the CPS Table Creator at <http://www.census.gov/cps/data/cpstablecreator.html>.

THE NATIONAL REGISTERED APPRENTICESHIP SYSTEM

A national Registered Apprenticeship (RA) system under DOL supervision was created by the National Apprenticeship Act of 1937, which directed the Secretary of Labor to establish standards for apprentices.⁷ Within DOL, the Office of Apprenticeship (OA) is now responsible for the RA program.

Apprenticeship programs typically combine paid on the job training with technical or classroom training. There usually are incremental wage increases as skills are attained and a nationally recognized certification or certificate upon successful completion of the program. Programs must have a written plan designed to move an apprentice from a low or no skill entry-level position to full occupational proficiency. Programs must meet parameters established by DOL under the National Apprenticeship Act that are designed to protect the welfare of the apprentice. Employers cover training costs and apprentice wages.

Apprenticeship programs are administered by “sponsors,” which may be a business, an association of employers, or a joint association of employers and a labor organization. To participate in the national program, a sponsor must meet the standards specified by OA and register with OA or with a State Apprenticeship Agency (SAA) recognized by OA. OA is responsible for conducting compliance reviews of apprenticeship programs in the states where there is no SAA, and for conducting compliance reviews of SAA oversight of apprenticeship programs in the states where there is an SAA. There are SAAs in about half the states.

Apprenticeship programs in the skilled trades generally take between two and four years to complete. High school graduation is usually an admission requirement. Programs may also establish additional admission requirements.

RA programs provide training for over 1000 occupations. Nationally, in 2010 RA had about 450,000 apprentices in more than 29,000 programs.⁸ Most of the largest enrollments are in the skilled construction trades. A DOL-commissioned study of apprenticeship in ten selected states found that in 2010 the most common enrollments were electrician, plumber and carpenter.⁹ Those three occupations represented over 40% of all new apprenticeships in 2010 in the study states.

THE FAILURE OF THE APPRENTICESHIP AFFIRMATIVE ACTION MANDATE

In 1978, DOL issued Equal Employment Opportunity (EEO) regulations requiring RA programs to take affirmative action to increase women’s participation in RA programs.¹⁰ DOL explained that affirmative action was needed because the sharp increase in the 1960’s and 1970’s in women’s labor force participation had not been matched by an increase in women’s

⁷ The DOL RA regulations are codified at 29 C.F.R. Part 29 (registration standards) and Part 30 (equal employment opportunity.)

⁸ Mathematica Policy Research, *An Effectiveness and Cost-Benefit Analysis of Registered Apprenticeship in 10 States* (2012), available at http://wdr.doleta.gov/research/FullText_Documents/ETAOP_2012_10.pdf.

⁹ Id.

¹⁰ 43 Fed. Reg. 20760 - 20772 (May 12, 1978). The regulations are codified at 29 C.F.R. Part 30.

enrollment in apprenticeship programs, with women's exclusion from apprenticeship contributing to their segregation in low-paying occupations. DOL noted that at that time women represented only between 1% and 3% of apprentices in the skilled construction trades.

The EEO regulations require apprenticeship programs to have an affirmative action plan with adequate provision for outreach to and recruitment of women, and with goals and timetables for women's enrollment. DOL indicated that during the first 12 months under the regulations the goal should be no less than half of women's share of employment in the local labor market.

The goals are not quotas. Programs that fail to achieve their goals will not be found to be out of compliance if they have made a good faith effort to meet the goals. The regulations say that OA will regularly conduct compliance reviews with the potential sanction of deregistration or court action for non-compliance with affirmative action requirements.

In 1992, the U.S. General Accounting Office (GAO) released a report of its study of the RA system.¹¹ GAO reported that at that time women's apprenticeship share was 7.7% of cement masons, 6.5% of boilmakers, 4.6% of carpenters, 4.4% of electricians, 3.8% of sheet metal workers, 3.5% of pipefitters, and 2.3% of plumbers. GAO recommended that DOL take action to improve women's recruitment into apprenticeship and reported that DOL had told GAO that it would do so.

Also in 1992, Congress enacted the Women in Apprenticeship and Nontraditional Occupations Act (WANTO), authorizing DOL to make grants to community-based organizations that, in turn, will assist employers and labor unions in the recruitment and retention of women in apprenticeship. WANTO grantees have provided services that have the potential to increase the number of women in apprenticeship.¹² However, WANTO funding has been too meager to have a discernible national impact, generally no more than \$1 million a year. Currently, WANTO funds six grantees in six cities to increase recruitment of women in apprenticeship programs.¹³

In 2005, GAO released a report of its study of DOL's apprenticeship oversight.¹⁴ GAO reported that in 2004 DOL had conducted compliance reviews of only 4% of apprenticeship programs in the 23 states where DOL had direct oversight responsibility, and had not conducted any compliance reviews of SAA oversight in the states where an SAA was responsible for direct oversight. GAO recommended that DOL increase SAA oversight reviews and reported that DOL had told GAO that it would do so.

Despite an affirmative action mandate that has now been in effect for 35 years, the WANTO program, and the 1992 and 2005 GAO reports, women are still almost totally absent

¹¹ U.S. General Accounting Office, *Apprenticeship Training Administration, Use and Equal Opportunity* (GAO/HRE-92-43) (1992), available at <http://www.gao.gov/assets/160/151504.pdf>.

¹² See Legal Momentum, *WANTO's Future* (2012), available at <http://www.legalmomentum.org/our-work/women-at-work/resources-and-publications/wanto-information.pdf>; Mathematica Policy Research, *An Effectiveness and Cost-Benefit Analysis of Registered Apprenticeship in 10 States*, note 8, *supra*.

¹³ The grantees are listed at <http://www.dol.gov/opa/media/press/eta/ETA20121310.htm>.

¹⁴ U.S. General Accountability Office, *Registered Apprenticeship Programs, Labor Can Better Use Data to Target Oversight* (GAO-05-886) (2005), available at <http://www.gpo.gov/fdsys/pkg/GAOREPORTS-GAO-05-886/pdf/GAOREPORTS-GAO-05-886.pdf>.

from the skilled trades apprenticeship programs. A 2006 study of apprenticeship enrollment in 31 states in the period 1995-2003 reported that women's apprenticeship share was 4.9% of carpenters, 3.3% of electricians, and less than 3% of pipefitters, plumbers, sheet metal workers, and structural steel workers. This study also found that women had significantly higher drop-out rates than men.¹⁵ In 2009, DOL reported that women were only 3% of construction trade apprentices, a smaller percentage than GAO had found in 1992.¹⁶ The ten state study of RA enrollment in 2010 found that women's apprenticeship share was less than 2% among carpenters, electricians, sheet metal workers, and plumbers, likewise a smaller percentage than GAO had found in 1992. This study also reported that four of the five female construction apprenticeships who were interviewed said that they had experienced explicit discrimination or harassment while participating in the program:

One woman mentioned that the apprenticeship program coordinator at the union had a chauvinistic attitude and treated her in a patronizing manner, especially when she had to ask permission to leave early for child care reasons. Two other women had been on the receiving end of lewd remarks and unwelcome sexual advances. A fourth woman mentioned threatening graffiti being written in the common bathroom on a site where she was not provided with her own facilities; despite her repeated complaints to the foreman, the graffiti was not removed.¹⁷

WHAT NEXT?

In 2009, DOL announced a plan to revise the apprenticeship affirmative action regulations, saying that the new regulations would be published in proposed form for public comment by January 2011.¹⁸ DOL failed to meet this deadline. In 2012, DOL indicated that it now planned to publish the proposed revision of the apprenticeship affirmative action regulations by June 2013.¹⁹

It seems clear that no progress will be made in increasing women's entry to the skilled construction trades unless DOL strengthens the affirmative action mandate and devotes more resources to enforcing it.

¹⁵ Berik, Günseli, and Cihan Bilginsoy, *Still a Wedge in the Door: Women Training for the Construction Trades in the U.S.*, 27 International Journal of Manpower 321-341 (2006).

¹⁶ U.S. Department of Labor Women's Bureau Fiscal Year 2009 Outlook, available at <http://www.dol.gov/wb/FY09-Outlook.pdf>.

¹⁷ Mathematica Policy Research, *An Effectiveness and Cost-Benefit Analysis of Registered Apprenticeship in 10 States*, note 8, *supra*, at 52.

¹⁸ DOL Fall 2009 Semi-Annual Regulatory Agenda, available at http://www.dol.gov/asp/regs/unifiedagenda/fall_2009_agenda2.pdf. In response to this notice, Legal Momentum submitted a comment with a detailed set of suggested changes in the regulations; the comment is available at <http://www.legalmomentum.org/legal-knowledge/legal-momentum-comments-on.pdf>.

¹⁹ DOL Rule List – 2012, available at <http://www.reginfo.gov/public/do/agencyRuleList>.