

SPOTLIGHT ON TARGETED HIRING

- **Definitions and Goal Setting**
- **Processes and Best Practices**
- **Implementation, Monitoring and Compliance**

Key Elements of a Targeted Hiring Program

Regardless of whether you decide to try to win a PLA/CWA, or a responsible contracting policy, or something else entirely, you will have to develop the basic outlines of a targeted hiring program as part of this effort.

Making sure the targeted hiring provisions are strong, enforceable, and tailored to meet the needs and interests of community partners is undoubtedly one of the most important roles you can play in a construction careers effort.

The program you develop and the legal language that defines it are vitally important, because your work will be used to create the processes and practices that will determine how and whether low-income people actually get access to the jobs.

Remember these key points from earlier sections of this manual:

- Many different entities have to be coordinated & work in concert for any low-income person to get hired.
- Some of those entities — especially subcontractors and apprenticeship coordinators — may know little about the intentions behind this targeted hiring program; very likely all they have to go on is what is written into the broader agreement (the PLA or responsible contractor ordinance) and the procedures put into place by other actors in the project.
- Timing and coordination are key. In order for the targeted hiring provision to be effective, community organizations, job readiness providers, pre-apprenticeship training and the apprenticeship coordinators have to understand the timeline and know when new apprentices will be needed.

So there is a high demand for this language to be thorough and comprehensive.

What's the real goal of a targeted hiring program?

Most targeted hiring programs include mechanisms that do two things:

- Maximize the chances that workers from the targeted category who are already in the construction industry will get called to work on that job.
- Create opportunities for new workers — aspiring apprentices who want training and a construction career — to get trained and hired.

Calling up workers who are already on the bench is sometimes referred to as zip-coding (meaning the hiring hall determines which workers meet geographical targeting) or name-calling (the hiring hall tags specific workers who meet other kinds of targeting criteria).

Achieving the right balance of these two elements of a targeted hiring program requires local leaders to work together. How many workers are on the bench (and out of work), how many targeted workers are already in the construction workforce, how many apprenticeship openings the targeted projects will create — all of these considerations help determine the right balance.

Designing a targeted hiring program — and establishing the basic rules that will make it effective — requires the following: clearly articulated hiring goals, a definition of the targeted employment category, and provisions for monitoring, problem-solving and accountability. You can be sure you have a comprehensive program if you have detailed answers to the following questions:

- ✔ *What are the hiring goals?*
- ✔ *Who will count as a targeted worker?*
- ✔ *How will the hiring process work?*
- ✔ *Who will monitor and what will be the problem-solving and compliance process?*

✔ **What are the hiring goals?**

Your outline should establish numerical goals for hiring targeted workers on covered projects. These goals provide a concrete way to demonstrate how this construction project will benefit the local community by establishing a commitment that everyone involved with the project will make to offer new and/or underrepresented workers access to construction careers.

Three sets of hiring goals should be included.

1 Some defined percentage of all worker hours should be performed by targeted workers.

What's the right number? It depends on the project and the community. Remember that real goal is to get low-income people into good jobs, not to make a point. Agreements that establish extremely high goals are unlikely to be successful unless there is a lot of training capacity in the community and deep connections with construction trades apprenticeship programs already in place. Unrealistic targeted hiring goals can be self-defeating for those that propose them.

Many existing agreements have established a 30% requirement. For some kinds of work, higher requirements may be realistic. The City of Milwaukee has a residence preference program for all public infrastructure that regularly exceeded its long-standing 30% requirement. Because the track record was so good, city officials decided in 2009 to raise the requirement to 40%.

2 An apprenticeship utilization requirement.

The key to making a difference for low-income people with construction projects is to get them into apprenticeships. If contractors on the project are able to use their own discretion to decide if they want apprentices on the job or not, then new workers may not have meaningful opportunities to enter the construction trades through the project. The Oakland MAPLA established a goal that 20% of the work be performed by apprentices. To pre-qualify as a potential contractor or subcontractor, a bidder must participate in a legitimate, certified and registered apprenticeship program. This language can be part of a CWA/PLA or a responsible contractor system.

3 A goal that a certain percentage of first-year apprentices and/or of total apprentices come from the targeted hiring category. Creating a mechanism for placing new apprentices on public construction projects supports the “earn while you learn” apprenticeship model and provides the best opportunity for new workers to get into construction careers. In addition to requiring that 20% of the work be performed by apprentices, the Oakland MAPLA also set an ambitious target that all of the apprentices should come from the targeted employment category. The LA Community College District CWA requires 30% of the hours be worked by apprentices, with half of those hours targeted to first year apprentices. Consider also the value of identifying particular pre-training and pre-apprenticeship programs by name as sources.

Getting Workers of Color Into Construction Careers



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While low-income communities and communities of color are key constituencies for targeted hire agreements, actually identifying workers of color and women workers as the target employment categories can create legal problems, and may render the agreement vulnerable to a lawsuit. In some places, it may be legal and politically viable. In other communities, it may be extremely difficult or impossible.

Some regions have state and local laws that prohibit any targeting based on race or gender, like Proposition 209 in California. Even where no similar law is in place, local elected leaders are often reluctant to pass race-based targeting programs because of the real or perceived threat of a lawsuit. Across the country, some cities and local governments are shifting their race-based minority business programs by reshaping them as disadvantaged or emerging business programs. Instead of focusing on creating opportunity for businesses owned by people of color, these new programs focus on the size of the operation, or other criteria that indicate a need for assistance.

A key Supreme Court decision — *City of Richmond v. J.A. Croson Company* — allows for race-based targeting but only under specific conditions. A program designed to target workers of color (or businesses owned by people of color) must be (a) supported by a substantial disparity study demonstrating past discrimination in the relevant market and (b) narrowly tailored to remedy the disparities identified in the study.

In some places, targeted hiring programs have explicitly focused on workers of color. The agreement between Missouri Department of Transportation and Metropolitan Congregations United in St. Louis specified that minorities, women and economically disadvantaged workers should have access to work on construction to upgrade and rebuild I-64.

But even where it is possible to develop a legal program that targets workers of color, it is not always politically viable. Hence the emergence of programs that establish a wide array of targeted categories that help address many of the underlying barriers that make it difficult for people of color to access construction careers.

✔ *Who Counts as a Targeted Worker?*

Your outline must identify the group of workers whose employment will satisfy the targeted hiring goals, and who are the intended beneficiaries of this program.

The definition could include:

- Residents of census tracts or zip codes that have high poverty or unemployment rates (zip codes and census tracts should be identified specifically by number);
- Residents of neighborhoods that surround the project, especially if the project area is in a low-income part of the region (e.g., workers or job-seekers who reside within a three mile radius of the project);
- “Hard-to-employ” workers, including people who are on or recently left public assistance, single parents, workers with a history of homelessness, and workers with a criminal record;
- Women and/or minority workers;
- Un- or under-employed residents of low-income households throughout the city or region; and/or,
- Graduates of named pre-apprenticeship programs or job-seekers referred through community organizations that focus on working with low-income people.
- Veterans.

When deciding how to define the targeted employment category, keep these considerations in mind:

- Target strategically — establish a targeted employment category that provides new opportunities for poor people to get into high quality construction careers and demonstrates how the covered project(s) will benefit the broader community;
- Think about implementation — however you define the targeted workforce, make sure it is easy (and legal) to verify and track. Certified payroll records already show zip code of residence, so contractors can easily show compliance. Graduates of named pre-apprenticeship programs are easily verified. For any definition that includes more detailed requirements, be sure there is a way to identify and verify that workers hired for the covered project(s) have those characteristics.



Helmets to Hardhats Provides a Model for Construction Targeted Hiring

Established in 2002, *Helmets to Hardhats* is a federally funded program that provides support and tools to help military veterans get into construction union apprenticeship programs. The approach is simple, and yields benefits for veterans, construction contractors, and communities.

Veterans can enroll in *Helmets to Hardhats* online. They take a career assessment test to determine the best fit. They can be given credit for previous training or experience. They receive financial support through the GI bill and other federal veterans' assistance programs. And an advocate who understands their background and the transition they are undertaking helps them navigate the whole system.

Furthermore, veterans that enroll in *Helmets to Hardhats* can benefit from direct entry agreements established in 30 states. These agreements allow qualified veterans to move immediately into apprenticeship programs.

The total number of veterans who have moved into construction careers nationally through *Helmets to Hardhats* is unknown, but one staff person reported 1,056 placements confirmed for 2009, and 869 confirmed for 2010. In those years, 88 of the veterans placed have been at least 30 percent disabled.

Tiffany Ince, a veteran of the Iraq war and Guyanese immigrant, enrolled in *Helmets to Hardhats* and opted for an apprenticeship with the Metallic Lathers Local 46. "This is my first experience with the building and construction trades and I am enjoying it," Tiffany said. "I really toughened up while in the military and couldn't see myself working at a desk job. I enjoy working outside and being out of an office setting. The work is difficult, but I like the challenge. My local really takes care of their members and they appreciate my military skills. I am glad that I signed up with *Helmets to Hardhats* and recommend that others do the same."

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✔ *How Does the Hiring Process Work?*

The best targeted hiring program lays out clearly the responsibilities of every actor in the hiring process. That list includes (at a minimum) the project owner, the managing agency, contractors and subcontractors, union hiring halls, and apprenticeship programs. Some programs establish a good faith effort provision. Under these provisions, when projects do not meet the hiring targets, these entities can only avoid penalty by demonstrating they have met all their responsibilities.

These responsibilities include the following:

- **Contractors** must show that they have asked the hiring hall for referrals that fit the targeted hiring requirements. They should be able to document these requests and show that they have made every effort to hire and keep targeted workers on the job.
- The union **hiring halls** must be willing to refer workers from the targeted category as they are needed. In some cases, this may mean that targeted workers are referred before other workers that are above them on the list.¹⁴ The hiring halls should be able to show that they have a mechanism for identifying the targeted workforce and referring them to the job.
- **Apprenticeship programs** must show that they have opened up or reserved slots for new apprentices who meet the targeted hiring requirements, and that they refer those workers to contractors as requested. They may also be asked to demonstrate that they are working with named pre-apprenticeship programs (if there are any) in the community to help identify and recruit workers into their apprenticeship programs.

- **Managing Agencies**, typically the public entity that has funded or subsidized the project, and **project owners** (e.g. owner of a private development project) must show they have clearly communicated requirements to all bidders, and required bidders to establish a plan for meeting the targets.

✓ **Who will monitor and what will be the problem-solving and compliance process?**

Your targeted hiring program should say what information contractors must submit to show they have met the hiring goals. The monitoring information should include specific explanation of how often the information is submitted, to what entity (preferably a public agency or a committee with broad representation of project stakeholders), and how often that information is reviewed to determine progress.

A few tips:

- **Make it easy!** One way of monitoring is to ask contractors to submit monthly certified payroll records that document which workers on their crew met the targeted hiring criteria. If there are prevailing wage requirements on the job, contractors are likely to have to submit this information anyway.
- **Don't wait — start collecting and analyzing progress right away!** Monitoring progress toward hiring goals should start early in the project. Once the project is half over, or more, it becomes harder and harder to make up lost ground on the targeted hiring program because too much of the work is already committed or completed. Contractors should be able to show early on that they are meeting the targeted hiring requirements, or that they have a plan to meet them.

An Innovative Approach to Targeted Hire: Direct Entry

Some communities are experimenting with an innovative approach to targeted hiring, typically called Direct Entry or Direct Access.

Direct Entry refers to a targeted hiring system in which graduates of a named pre-training program (or programs) who meet apprenticeship eligibility criteria have a direct route into an apprenticeship program. Typically, pre-training programs that are selected for a direct entry relationship serve low-income workers and workers of color, and they have a proven track record for producing highly qualified graduates who can succeed on the job. Aspiring construction workers who graduate from these programs skip the list and go right into apprenticeship after demonstrating they meet the entry qualifications.

This approach is still in a stage of innovation. Many apprenticeship programs in the state of New York have received approval from the state's apprenticeship regulation body to reserve slots for graduates of particular pre-training programs. Direct entry agreements exist widely for trades sponsoring Job Corps programs, and for the Helmets-to-Hardhats program. Several other cities have also seen apprenticeship programs and quality pre-training programs experiment with direct entry agreements. Many apprenticeship coordinators have come to recognize that working with these pre-training programs serves dual purposes — it helps them recruit stronger apprenticeship classes with candidates who will make valuable contributions to the building trades workforce, and it helps them develop a diverse membership that more closely reflects the communities they work in.

- **Make it public!** Ensuring that everyone has confidence in the program and is helping make it succeed requires that hiring data be assembled and released to the public. The best targeted hiring programs establish a committee of stakeholders to receive the data, evaluate progress, and provide problem-solving support for contractors who are having difficulty meeting the hiring goals. This committee could include representatives of the general contractor and end-user, as well as the union hiring halls and apprenticeship programs and representatives from community-based organizations.
- **Prioritize problem solving!** The monitoring committee may have a direct role in problem-solving on a case-by-case basis with contractors who aren't meeting the hiring goals. The committee could call these contractors to a meeting where committee members help identify obstacles and ensure communication among the entities required to make the program work. This committee could also develop creative solutions that help ensure more workers get hired.
- **Don't rush to penalize, but use penalties when you need them!** Good monitoring and implementation focuses on getting workers into jobs. Penalties for failure to make progress should be a last resort. But make sure someone — perhaps the monitoring committee — has the power to establish penalties if they are needed. Penalties can include fines, withholding payment, or debarment from working on this project or future projects overseen by the same entity.
- **Do not jump to the conclusion that the unions and their hiring halls are at fault!** As we have discussed, the employer makes hiring decisions, frequently has a list of core workers, and may arrive on day one of the job with an entire crew drawn from a job recently completed. As a result, the hiring process created by the PLA may have been ignored and these early decisions frequently throw the hiring goals and best intentions of the participating unions and their community partners under the bus. More than one project has had this kind of problem, and the early sloppiness in implementing the hiring process leaves everyone else of good intention playing catch up for the remainder of the job.

However your coalition decides to handle these matters, make sure your program is summarized in a plain-language document that is easy for everyone to understand. Ultimately, you might also need some legal assistance to make sure the official version of the agreement treats these program elements as you intended.

Don't Be Scared Off by Legal Objections, But Don't Ignore Them Either!

Make Sure Your Proposed Program Rests on a Solid Legal Foundation

A construction careers approach can give rise to a number of legal issues, especially when incorporated into government policy. Too often, however, those issues are raised as road blocks to good policy. They don't have to be. Your coalition should take confidence in the fact that construction careers approaches have been successfully adopted at every level of government — local, state and federal. Today there are construction careers policies and agreements in place in cities across the U.S. governing billions of dollars worth of construction work.

That isn't too say that you can ignore the legal issues. To the contrary, your coalition needs an approach that properly navigates legal considerations and will stand up in court if challenged. Working with a local attorney who understands these matters is an important step in your campaign, and one that you should take early in the process. The Partnership also offers legal resources for local attorneys and campaigns.



Strategies for Success

In addition to the policy language in your agreement, there are also some best practices that have emerged in existing PLA/CWA projects.

- **Have a Pre-employment Conference.** The project owner (local government or developer) should hold a pre-employment conference for all contractors that have bid on or want to bid on the project. This conference should explain the requirements to all bidders, provide them with resources that will help them comply, and answer questions they may have. The conference is important both for communicating the importance of the targeted hiring program and increasing the capacity of your community of contractors to work within its terms. If your targeted hiring program applies to many projects overseen by a public agency, the agency should hold regular conferences to make sure new bidders on the work understand their obligations.
- **Require contractors to use a craft request form to call-up workers.** Contractors should be required to use a craft request form to ask workers to be referred to them for the project. This form documents that contractors asked for targeted workers, and provides hiring halls or other referral agencies to explain who they referred and why. If no eligible targeted workers are available, the form can explain that. This form provides a way to get around the “he said/he said” problem, which happens when every actor claims they did their part but no one else did and that’s why outcomes weren’t met. The craft request form documents who did what.
- **Designate a jobs coordinator.** Some successful targeted hiring programs have designated a jobs coordinator — typically a community based organization that works with low-income people, or a workforce intermediary — who is tasked with syncing up all the actors in the system. The jobs coordinator might be funded by the same public agency, or they might apply for federal funds to serve in this role.