

Maryland Ratio Subcommittee Revised Guidance

Approved by the Maryland Apprenticeship and Training Council on July 12, 2022

PURPOSE: To inform the staff of the Maryland Apprenticeship and Training Program (MATP or Program), Maryland Apprenticeship and Training Council (Council), Registered Apprenticeship program sponsors, potential sponsors, and employers about Maryland's policy and process for reviewing requests from registered apprenticeship sponsors to establish or revise their ratio of apprentices to journeyworkers pursuant to the applicable regulatory provisions governing ratios at Code of Maryland Regulations (COMAR) 09.12.43. This guidance document is intended to articulate the methodology for the process to consider ratio requests for Maryland Apprenticeship and Training Council approved registered apprenticeship programs. The guidance will enable the Council and Program staff to ensure a consistent approach in making determinations on ratio requests from registered apprenticeship sponsors and employers.

SCOPE AND APPLICABILITY:

The Subcommittee examined Circular 2017-01, issued by the US Department of Labor (USDOL) January 9, 2017¹, USDOL Circular 2021-02, issued January 12, 2021, and Maryland's 2018 Ratio Subcommittee Guidance, approved by the Council on January 5, 2018.

The purpose of this Guidance is to provide a process for review of either the revision or establishment of ratios by Registered Apprenticeship program sponsors. In response to the issuance of Circular 2017-01 the Council approved a Ratio Subcommittee. The Subcommittee was tasked with ensuring that Maryland's Ratio Guidance was in compliance with Maryland and Federal law as both Maryland and Federal law requires that ratios set by apprenticeship sponsors be "consistent with proper supervision, training, safety, and continuity of employment". The Subcommittee recommended that a series of steps be followed by Registered Apprenticeship Sponsors, in making a request for an expansion of ratios beyond 1 apprentice to 1 journeyworker.

The Subcommittee produced the 2018 Ratio Subcommittee Guidance which was subsequently approved by the Council and implemented in 2018. The issuance of Circular 2021-02 by the USDOL created the need for the Ratio Subcommittee to be reinstated to review the new federal guidance in comparison with the existing Maryland guidance to ensure compliance.

The 2021-02 Circular is similar to the 2017-01 Circular in that the Circular has direct applicability to federally administered (OA) states. The guidance also provides recommendations and rationale for State Apprenticeship Agencies, like the Maryland Department of Labor (MD Labor) to consider.

¹ Circular 2017-01 was rescinded on November 20, 2018.

This guidance is intended to establish a uniform process for the consideration of requests from program sponsors in Maryland to establish or revise their ratio of apprentices to journeyworkers. This guidance is designed to meet or exceed the USDOL Office of Apprenticeship's (OA) Circular and to ensure consistency with the federal approach to evaluating ratio requests and the guidance to adopt their approach across the National Apprenticeship System.

Nothing in this guidance shall operate to supersede the limitations and conditions established at 29 CFR section 570.50 or any state laws or regulations with respect to the employment, training, and supervision of 16- and 17-year old apprentices in certain occupations covered by the US Secretary of Labor's Hazardous Occupation Orders (HOs), which are administered and enforced by the USDOL's Wage and Hour Division (WHD) nor with any provisions of the Maryland Occupational Safety and Health Division. Additionally, this guidance was created to ensure compliance with the Circular 2021-02.

Any Registered Apprenticeship Sponsor approved for an expanded ratio (i.e., 2 apprentices to 1 journeyworker) shall not be permitted to utilize such expanded ratio for any apprentices who are under the age of 18 and registered through a School to Apprenticeship (STA) process.

BACKGROUND: COMAR 09.12.43.05 states that in order to be eligible for approval and registration, a sponsor must include the following as a standard of apprenticeship:

"H. Ratio of Journeypersons to Apprentices.

(1) Each program shall have a minimum ratio of one journeyperson regularly employed for one apprentice consistent with proper supervision, training, and continuity of employment and applicable provisions in collective bargaining agreements.

(2) Deviation from the minimum ratio, including the bargaining agreements, is not permitted unless first submitted to the Council in writing for its approval."

For clarification and to be consistent with COMAR 09.12.43.05, ratios are to be expressed as the number of apprentices to the number of journeyworkers, i.e., the format 1:2 would indicate "1 apprentice to 2 journeyworkers."

I. POLICY ON RATIOS OF APPRENTICES TO JOURNEYWORKERS:

A. Consistent with the requirements of COMAR 09.12.43, the burden of justifying an appropriate ratio of apprentices to journeyworkers rests with the program sponsor, including new sponsors² establishing a ratio or existing sponsors seeking modification of their program

² Throughout this document a "new sponsor" is one who has been approved by the Council but has yet to complete a minimum of one (1) complete cohort of registered apprentices.

standards. While the safety of apprentices is an important consideration in determining the appropriate ratio of apprentices to journeyworkers, MATP staff will also give due consideration and weight to proper supervision, proper training, and continuity of employment in evaluating a sponsor's ratio requests (particularly in connection with requests for expanded ratios) prior to presenting such requests to the Council for approval.

In its review of a request from a sponsor (including any relevant joint labor-management apprenticeship programs governed by the terms of collective bargaining agreements discussed below) for a particular ratio of apprentices to journeyworkers, staff will consider all relevant information, including but not limited to: ratios for approved programs within the same occupations in the same geographic areas; ratio practices in the occupation on a national basis; the level of physical engagement; the level of supervision in similar environments, and relevant industry/occupational studies. All such requests will be reviewed on an individualized basis in light of the requirements of COMAR 09.12.43 and the guidance contained in this document. All ratio recommendations shall identify the information and data used in reaching the recommendation.

Maryland agrees with the OA determination that an expanded ratio of more than one apprentice to one journeyworker (e.g., two or more apprentices to one journeyworker) in any industry or occupation should be approved only upon a demonstration by the sponsor that such an expanded ratio poses little or no risk to the safety of workers (i.e., both apprentices and journeyworkers) in the workplace. The process outlined in this guidance details those criteria, such as the hazards of an industry or occupation and the track record of the program sponsor, which will inform the MATP's and Council's ratio approval process and determinations.

B. In order to provide uniformity and consistency for all monitoring units, expanded ratios granted to a Sponsor shall not be utilized for Davis Bacon, Maryland Prevailing Wage, Maryland Stadium Authority, Providing Our Workers Education and Readiness (POWER) Act, Maryland county/municipal wage work or Project Labor Agreement (PLA) work. Standards of apprenticeship for any approved deviation shall include this language. A program sponsor approved for an expanded ratio under MATC's previous guidance is permitted to complete work on contracts submitted for bid or awarded PRIOR to the date of this guidance document's approval if otherwise permitted by the contract and state and federal law.

II. ANALYTICAL FRAMEWORK THAT WILL BE USED IN EVALUATING EXPANDED APPRENTICE-TO-JOURNEYWORKER RATIO REQUESTS FROM SPONSORS:

This section of the guidance describes the approach that the Council will use to review and evaluate ratio requests from new program sponsors establishing apprentice-to-journeyworker ratios, or from existing program sponsors requesting to modify previously approved apprenticeship ratios:

(A) Requests to create an expanded ratio, defined as the assignment of more than one

apprentice to a journeyworker, such as moving from a 1:1 ratio to a 2:1 ratio (2 apprentices to 1 journeyworker); and

(B) Requests to expand the number of apprentices assigned to a journeyworker after the first apprentice assigned to that journeyworker has completed a minimum number of hours of supervision.

For purposes of this guidance, each of the foregoing types of sponsor requests shall be regarded as requests for an **expanded ratio** of apprentices to journeyworkers.

Maryland Apprenticeship and Training (MATP) staff must apply the guidelines and factors listed below in Section II. A (Ratio Application Process), II.B (Proper Safety and Supervision) and Section II.C (Proper Training and Continuity of Employment) in assessing the appropriate apprentice-to-journeyworker ratio for a sponsor's program:

A. Ratio Application Process

In reviewing requests for expanded ratios of 2 apprentices (or more) to 1 journeyworker for registered hazardous occupations, a Sponsor must first submit a request to the staff of the MATP. The Sponsor must include certain information in their request. This information will include, at minimum:

1. List the individual occupation for which the Sponsor desires to change the ratio. A Sponsor may make multiple requested changes to multiple occupations. However, submissions cannot be combined into one request.
2. The Sponsor's reason for the requested deviation from the 1 apprentice to 1 journeyworker ratio previously established standards.
3. A self-assessment of the quality of their Registered Apprenticeship Program to include:
 - a. Percentage of those completing the program in the prior calendar year for the corresponding cohort of Apprentices;
 - b. Percentage of those transferring to other Registered Apprenticeship Programs, if known; and,
 - c. Documentation showing the Sponsor or Signatory/Participating employers have an Experience Modification Rate (EMR) of a .99 or below.
 - d. Submission of the most recent calendar year OSHA Form(s) 300-A
 - Forms 300 must be made available to MATP staff upon request should circumstances require a more in-depth review.

e. Submission of updated Employer Acceptance Agreements (EAA) and Employer Acceptance Supplements (EAS)

For a group program sponsor to apply for an expanded ratio the requirement is that 85% of all participating/signatory employers be in full compliance with all criteria established in this guidance. Examples include, but are not limited to, supplying EMR Forms showing a rating of .99 or below, providing Form(s) 300 and/or Forms(s) 300-A and current updated Employer Acceptance Agreements (EAA) and Employer Acceptance Supplements with accurate apprentice and journeyworker data.

B. **Proper Safety and Supervision**

Establishing an apprentice-to-journeyworker ratio that is conducive to ensuring the proper safety and supervision of apprentices in the workplace is of importance to the Council and MD Labor. This is particularly true in instances where an apprentice may be exposed to work conditions, tasks, and/or equipment that pose a risk of serious bodily injury or death. In such cases, it is critically important that apprentices receive proper guidance and supervision from experienced and capable journeyworkers and/or supervisors who possess expert knowledge on how to mitigate such risks (please note that a journeyworker could also be the apprentice's supervisor, at least at a specific job site). Accordingly, in evaluating what constitutes an appropriate apprentice-to-journeyworker ratio for a program, consideration should be given to the level of supervision that will mitigate the risk of serious bodily injury or death in industry sectors or occupations that present such heightened dangers to new workers (see paragraphs II.B.1 and 2 below).

In addition to these considerations, the appropriate extent of apprentice supervision will depend in large part upon whether a close, direct, and ongoing one-on-one mentoring and supervisory relationship with a journeyworker is essential to acquiring the technical precision and practical skills required by the occupation. In this regard, MATP staff must also consider additional relevant data, including the level of physical engagement, levels of supervision in similar environments, and industry/occupational studies in assessing the appropriate level of supervision when determining if an application for an expanded ratio should be presented by MATP staff to the Council for review and approval. As proper safety and supervision of apprentices are largely interdependent, the approach below must be followed by MATP staff in evaluating these factors.

For purposes of this guidance an industry sector (as defined by utilizing the two-digit industry sector code assigned by the North American Industry Classification System (NAICS) Manual) with a high rate of fatal work related injuries is one that, utilizing the data compiled by the U.S. Department of Labor's Bureau of Labor Statistics (BLS), has an average fatal work injury rate exceeding five (5) deaths per 100,000 full-time equivalent workers over the three (3) most recent calendar years for which such statistics are available.

Utilizing this empirical approach, new Registered Apprenticeship programs operating within the following four industry sectors would be subject to a heightened level of scrutiny with respect to their utilization of expanded ratios under this guidance: (1) Construction; (2) Transportation and warehousing; (3) Mining, quarrying, and oil and gas extraction; and (4) Agriculture, forestry, fishing, and hunting.

For more information on the rate of fatal work injuries by industry sector, visit the BLS website at <https://www.bls.gov/iif/oshcfoi1.htm>, and the most current as of the date of this circular - <https://www.bls.gov/news.release/cfoi.t04.htm>). *Note – This list may vary based on the most current BLS data.* Apprenticeship programs falling within this category should furnish the MATP staff with objective data (examples provided below in section II.A.4) that is sufficient to justify the utilization of an expanded ratio.

1. New Apprenticeship Programs Registered by the Council in High-Hazard Industry Sectors - As of the effective date of this guidance, Registered Apprenticeship programs that have been provisionally registered³ or newly⁴ registered by the Council that operate in industry sectors with high rates of fatal work-related deaths (as defined in the next paragraph), and that are being considered for permanent registration will not be eligible for an expanded ratio. New Sponsors with registered hazardous occupations will not be eligible to request ratios beyond 1:1 for occupations listed as hazardous in accordance with USDOL Circular 2021-02. In order to obtain the necessary information regarding program quality, a Sponsor must complete at least one cohort before being eligible to apply. (See II. C.)

2. Existing Apprenticeship Programs Registered by the Council in High-Hazard Industry Sectors - For those apprenticeship programs that were previously registered by the Council as of the date of this guidance and that have been approved to utilize expanded ratios in the industry sectors described in section II.A.1 above, such programs are also subject to monitoring by the Council and MATP staff. In order to support the continued use of an expanded ratio, existing programs shall provide the Council with the safety-related data described in Section II.A.4 annually to verify that the sponsor's workplace continues to be safe for apprentices, and that the expanded apprentice-to-journeyworker ratio for the program remains appropriate. For a group program sponsor to continue to be eligible for use of the expanded ratio the requirement is that 85% of all participating/signatory employers be in full compliance with all criteria established in this guidance.

3. New and Existing Apprenticeship Programs Registered by the Council in Industry Sectors not included in the hazardous occupation definition – New and existing apprenticeship programs that utilize or seek to utilize expanded ratios and that do not operate

³ "Provisionally registered" A provisionally registered apprenticeship program is one which has been approved by the Council, is within its first year of registration and has not been approved for full registration.

⁴ "Newly registered" is a program seeking approval for registration and requesting an expanded ratio within its initial cohort cycle.

within the high-hazard industry sectors described in section II.A.1 may request an expanded ratio. This request may be approved by the Council provided that such programs demonstrate quality training, performance, and/or satisfactory completion rates (see Section II.C), also follow proper safety and training standards (Section II.A.5) and receive approval from the Council.

Any program seeking an expanded ratio must still justify the use of an expanded ratio under the applicable criteria set forth in this guidance and in COMAR 09.12.43.

4. Safety Assessments of Program Sponsors Utilizing Expanded Ratios in High-Hazard Industry Sectors and/or Occupations - In conducting reviews of programs that have been granted expanded ratios in high-hazard industry sectors and/or occupations, MATP staff will consider the following objective sources of data in evaluating whether the maintenance of such an expanded ratio continues to be warranted:

- Review of Form(s) 300 and/or Form(s) 300-A from the Department's Occupational Safety and Health Administration (OSHA) recording work-related injuries and illnesses, where applicable;
- Copies of Form(s) 300-A must also be filed with MATP by the Sponsor
 - New employers who are unable to generate a 300-A form would not be eligible for participation in an expanded ratio.
 - Employers who have not previously reported; typically, due to having less than ten (10) employees, shall begin to file these reports with MATP if the program sponsor is requesting a ratio exemption.
- Proof that the sponsor has a current agreement with OSHA pursuant to the OSHA Alliance Program (for more information on this topic, please see the following link: <https://www.osha.gov/alliances/>) or with the Maryland Occupational Safety and Health (MOSH) equivalent OR the sponsor can demonstrate a fully implemented safety and health management system that includes employee input and employer commitment. Sponsors/companies with a Collective Bargaining Agreement must have commitment/participation from the union(s) in the process or waiver letters from the union waiving their right to participate in the safety program.
- A demonstration of adequate safety training in the apprenticeship program (via standards or curricula), including details on how the program's standards ensure that an apprentice receives direct supervision and training from a qualified journeyworker in a manner consistent with the requirements contained in COMAR 09.12.43; and:
- Experience Modification Reports (EMR) indicating a .99 or lower or;
- In examples such as government agencies where an EMR does not exist available worker's compensation insurance information or documentation acceptable to the MATP.

The above information and documentation will be submitted on an annual basis to MATP staff no later than September 1st of each year. For a group program sponsor to continue to be eligible for use of the expanded ratio the requirement is that 85% of all participating/signatory employers be in full compliance with all criteria established in this guidance.

In addition to this data, the MATP reserves the right to consider additional objective data in those instances where the foregoing data points are inconclusive in assessing overall program safety and quality.

5. **Work Related Accidents Involving Apprentices** - Despite the fact that MOSH has included the Director of the Maryland Apprenticeship and Training Program on the notification list for fatalities, all sponsors and/or participating/signatory employers participating in a program with an expanded ratio shall notify the Director of the Maryland Apprenticeship and Training Program within 72 hours of a serious incident or fatality. **This reporting requirement is in addition to the existing MOSH requirement that employers report to MOSH any fatality within 8 hours and any serious injury, as defined, within 24 hours.**

When informed of fatal accidents or serious injury⁵ of apprentices, the MATP shall directly contact the sponsor regarding the incident in consultation with other agencies as necessary and appropriate (i.e., OSHA, MOSH or the Maryland Division of Labor and Industry). In such instances, the MATP shall conduct an Apprenticeship Program Review and determine if the sponsor was following the apprenticeship standards as developed, including whether the stipulated ratio of apprentices to journeyworkers was being adhered to, and whether proper safety and supervision protocols were being followed during the incident. If the program sponsor is found not following proper safety and training protocols, the MATP/Council will require corrective action or take other appropriate actions to include revocation of the expanded ratio or deregistration of the Sponsor (under COMAR 09.12.43).

6. **Collective Bargaining Agreements (CBAs)** - Nothing in this guidance will serve to invalidate any apprenticeship provision in any collective bargaining agreement between employers and employees setting more stringent apprenticeship standards however any requests for an expanded ratio must follow each process identified in this guidance document.

Ratios established through collective bargaining agreements for joint labor-management apprenticeship programs are articulated in the approved program standards and may be described in CBAs. All new and existing joint programs must submit a copy of the CBA relevant to ratios to MATP for review when requesting approval of new apprenticeship standards or a

⁵ A "Serious injury" requiring a report to MATP's Director is all severe work-related injuries, defined as an amputation, in-patient hospitalization, or loss of an eye.

change to the ratio identified in currently approved apprenticeship standards should it require an expanded ratio beyond 1:1.

The processes noted in this guidance are not applicable to any provisions in CBAs that establish **more stringent** apprenticeship standards with respect to apprentice-to-journeyworker ratios than the minimum standards stipulated herein (i.e., CBA provisions that require the assignment of more than one journeyworker for each apprentice).

C. Proper Training and Continuity of Employment

To objectively analyze proper training and continuity of employment in connection with the establishment or modification of apprentice-to-journeyworker ratios, the MATP will utilize program completion rates, to determine that a Sponsor has a high-quality program with high completion rates.

To ensure the Sponsor has a high-quality program with high completion rates the MATP staff will evaluate the Sponsors most recent Compliance or Quality Review. If a review has not taken place within two years of an application for an expanded ratio, a review will be scheduled and conducted prior to the MATP Staff completing an assessment of the application to determine if the request is eligible for a recommendation to the Council. Findings or other deficiencies must be corrected prior to the request being recommended to the Council.

Programs with a historically low completion rate or with a low completion rate in their most recent Compliance or Quality Review are not eligible for an expanded ratio regardless of the occupation being requested. Requests for an expanded ratio will not be recommended to the Council until such time as a satisfactory completion rate can be demonstrated. A program with a consistent record of low performance will be required to complete a minimum of one and a maximum of three cohorts of apprentices as determined by the Director of the MATP to show a satisfactory completion rate.

Should a Sponsor be approved for an expanded ratio, the program will be reviewed during the first year after approval, to establish that safety, quality and continuity of training and completion rates are not being negatively impacted by the increase in the ratio.

In any event, the Sponsor has the obligation of ensuring the Apprentices continue to work and receive On-the-Job Learning (OJL) and Related Instruction (RI) to the same extent as if the ratio were to remain at the traditional 1:1.

Apprenticeship training consists of a combination of OJL and RI. The OJL usually takes place on the job site and comprises the majority of time needed to complete an apprenticeship program. Apprenticeship training encompasses the learning of theoretical knowledge (through RI) and the development of technical skills that are vital to becoming a fully qualified worker in a specific occupation. Effective apprenticeship OJL at the job site includes proper supervision and instruction to achieve the transfer of knowledge from a journeyworker to an

apprentice.

The proper on-the-job training of apprentices (including training on safe workplace practices) is often closely connected to the proper supervision and mentoring of apprentices, particularly in apprenticeable occupations that require a rigorous practical training regimen. Proper training often will not only require that a journeyworker possess the skill to impart the practical skills required by an occupation, but also the capacity to effectively measure the apprentice's progress and provide effective feedback on performance.

As noted above, completion rates are a useful objective factor in assessing an apprentice's training and continuity of employment with a program sponsor. "Completion rate" is defined as "the percentage of an apprenticeship cohort that receives a Certificate of Completion of Apprenticeship within one year of the projected completion date. An apprenticeship cohort is the group of individual apprentices registered to a specific program during a one-year time frame, except that a cohort does not include the apprentices whose agreement has been cancelled during the probationary period."⁶

In conducting reviews of programs that have established expanded ratios, MATP staff shall review a record of the program sponsor's historical apprentice completion rates as well as the most recent cohorts for the previous 5 years.

If deficiencies/negative impacts are identified during the initial program review of the ratio expansion, the Sponsor will receive the opportunity to correct the deficiency at the direction of the Council. If the deficiency is not corrected in accordance with the Council's directive, the Sponsor's journeyworker to apprentice ratio will revert back to the previously recognized ratio of 1:1. If a sponsor's ratio is reverted, the sponsor is then ineligible to request another deviation for a period of one full cohort. If a ratio reverts back to 1:1 and causes the dislocation of apprentices, the Council and MD Labor will offer reemployment assistance to the impacted apprentices. Should deficiencies be noted in subsequent program reviews the aforementioned criteria and processes remain applicable.

D. **PROGRAMS IN INACTIVE STATUS** A program in "inactive status" is defined as not having a registered apprentice involved in an on-the-job training or related instruction activity for a 1-year period per COMAR 09.12.43.13. Programs reactivated pursuant to COMAR 09.12.43.13 are not eligible for an expanded ratio until one full cohort of apprentices is completed after reactivation as defined in II.C above.

III. PROCESS FOR APPROVING EXPANDED RATIOS:

⁶ OA Bulletin 2015-10.

Upon receipt of the initial request for Expanded Ratio, applications will be reviewed by MATP to assure compliance with related requirements as outlined in this Revised Guidance. Once staff has gathered the required documentation and completed the review, a request will be submitted to the MATP Director.

The MATP Director will conduct an assessment of quality and safety of the sponsor's program in light of all criteria contained in this guidance. The MATP Director will consult with OSHA/MOSH to confirm that all safety records furnished are adequate evidence under the guidance to allow an expanded ratio. The MATP Director will determine if the request complies with this guidance and is eligible for consideration of an expanded ratio will refer the request to the Council for final review and approval.

IV. RESCISSION OF A SPONSOR'S EXPANDED RATIO:

The Council reserves the right to rescind previously granted expanded ratios upon receipt of information that these ratios are not consistent with, or not being used correctly with, their approved Standards of Apprenticeship, COMAR or this guidance document. Examples of factors which could lead to a rescission of an expanded ratio include but are not limited to, the sponsor's safety record, completion rates or diversity goals (as required by COMAR 09.12.42) Should factors such as these be considered unsatisfactory by the Council, the expanded journeyworker to apprentice ratio for the program may be revoked and restored to the 1:1 ratio.

V. COMPLIANCE WITH STATE AND FEDERAL LAW

As noted above, nothing in this guidance shall operate to supersede any Federal or State laws establishing more stringent standards with respect to ratios of apprentices to journeyworkers than those elaborated herein. OA has noted that it may consider SAA alignment with the overall content and policy contained in Circular 2021-02 as a consideration for evaluating future federal investments to States in connection with registered apprenticeship initiatives. This guidance has been designed to ensure compliance with USDOL Circular 2021-02 and any/all existing Federal or State Regulations.

EFFECTIVE DATE:

This guidance is effective immediately upon Council approval and replaces the Ratio Guidance from 2018. This guidance will remain in effect until rescinded.

ACTION:

This policy is intended to advise the Maryland Apprenticeship and Training Program (MATP), Maryland Apprenticeship and Training Council (Council), and Registered Apprenticeship

program sponsors and potential sponsors about Maryland's policy and process for reviewing requests from program sponsors to establish or revise their ratio of apprentices to journeyworkers pursuant to the applicable regulatory provision governing ratios at Code of Maryland Regulations 09.12.43. All staff, sponsors, and the Council should familiarize themselves with this guidance.

If you have any questions, please contact staff at the MATP at: info@mdapprenticeship.com.