



Commonwealth of Massachusetts
Office of the State Auditor
Suzanne M. Bump

Making government work better

Official Audit Report – Issued August 15, 2019

Department of Labor Standards—Division of Apprentice Standards

For the period July 1, 2015 through December 31, 2017





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Suzanne M. Bump

Making government work better

August 15, 2019

Mr. William McKinney, Director
Department of Labor Standards
19 Staniford Street, Second Floor
Boston, MA 02114

Dear Mr. McKinney:

I am pleased to provide this performance audit of the Department of Labor Standards' Division of Apprentice Standards. This report details the audit objectives, scope, methodology, findings, and recommendations for the audit period, July 1, 2015 through December 31, 2017. My audit staff discussed the contents of this report with management of the agency, whose comments are reflected in this report.

I would also like to express my appreciation to the Division of Apprentice Standards for the cooperation and assistance provided to my staff during the audit.

Sincerely,

A handwritten signature in blue ink, appearing to read "SMB", written over a light blue circular background.

Suzanne M. Bump
Auditor of the Commonwealth

cc: Rosalin Acosta, Secretary, Executive Office of Labor and Workforce Development

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LIST OF ABBREVIATIONS

| | |
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| AAP | affirmative action program |
| CFR | Code of Federal Regulations |
| CMR | Code of Massachusetts Regulations |
| DAS | Division of Apprentice Standards |
| DLS | Department of Labor Standards |
| DOL | US Department of Labor |
| EEO | equal employment opportunity |
| EOLWD | Executive Office of Labor and Workforce Development |
| QAA | quality assurance assessment |

EXECUTIVE SUMMARY

In accordance with Section 12 of Chapter 11 of the Massachusetts General Laws, the Office of the State Auditor has conducted a performance audit of the Department of Labor Standards' Division of Apprenticeship Standards (DAS) for the period July 1, 2015 through December 31, 2017.

In this performance audit, we examined DAS's administration of its apprentice program. Below is a summary of our findings and recommendations, with links to each page listed.

| | |
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| Finding 1 Page 9 | DAS did not ensure that its sponsors' apprentice programs met established quality standards. |
| Recommendations Page 10 | <ol style="list-style-type: none">1. DAS should conduct quality assurance assessments (QAAs), using the "Apprenticeship Program Quality Assurance Assessment" form, after the first year of a sponsor's apprentice program and at least once every five years thereafter.2. DAS personnel responsible for conducting the QAAs should have the proper policies, procedures, and forms to complete them.3. DAS management should identify existing financial resources that could be allocated to enable DAS to increase its number of compliance officers in order to conduct all required QAAs and, if necessary, should request additional funding from the Legislature for this purpose.4. DAS should develop and implement written policies and procedures to schedule, conduct, and monitor the performance of QAAs. |
| Finding 2 Page 10 | DAS did not perform compliance reviews of apprentice program sponsors to ensure that they had developed and implemented affirmative action programs (AAPs) and met established hiring goals. |
| Recommendations Page 12 | <ol style="list-style-type: none">1. DAS should conduct affirmative action plan reviews every five years, and equal employment opportunity (EEO) compliance reviews annually, to ensure that sponsors are meeting the goals established in their affirmative action plans.2. DAS should assess what additional resources, if any, it needs to perform its affirmative action plan reviews and EEO compliance reviews in accordance with applicable requirements and should seek to obtain these resources.3. DAS should develop and implement written policies and procedures regarding conducting AAP and EEO reviews, as well as monitoring controls to ensure that these policies and procedures are adhered to. |

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| Finding 3 Page <u>12</u> | DAS did not properly administer apprentice agreements. |
| Recommendations Page <u>14</u> | <ol style="list-style-type: none">1. DAS should develop a new apprentice agreement to include all requirements described in Section 26.06(4) of Title 454 of the Code of Massachusetts Regulations.2. DAS management should develop monitoring controls to ensure that all regulatory requirements are included on the apprentice agreements and that program applicants and sponsors submit all required information. |

OVERVIEW OF AUDITED ENTITY

The Executive Office of Labor and Workforce Development (EOLWD) was established by Section 1 of Chapter 23 of the Massachusetts General Laws. According to its website, the agency aims to “ensure that workers, employers, and the unemployed have the tools and training needed to succeed in the Massachusetts economy.” EOLWD has five divisions: the Department of Unemployment Assistance, the Department of Career Services, the Department of Industrial Accidents, the Department of Labor Relations, and the Department of Labor Standards (DLS). The Division of Apprentice Standards (DAS) is a division within DLS.

According to Section 26.02 of Title 454 of the Code of Massachusetts Regulations, a registered apprentice program is “a plan registered with [DAS] containing all terms and conditions for the qualification, recruitment, selection, employment and training of apprentices” as required by state and federal regulations. The National Apprenticeship Act of 1937 created registered apprentice programs¹ for workers primarily in the manufacturing, construction, and utility industries and later expanded to include police officers, firefighters, and other health and safety workers. In June 2017, the “Presidential Executive Order Expanding Apprenticeships in America” called for the promotion of apprentice programs in several critical industries, including manufacturing, infrastructure, cybersecurity, and healthcare. The Office of Apprenticeship within the US Department of Labor’s Employment and Training Administration administers the program. States can choose whether to participate in the federal apprentice program or administer their own apprentice programs, which must comply with the federal standards. Massachusetts is one of the 25 states that have chosen to administer their own programs; it does so through DAS.

DAS

DAS employs seven staff members to administer the state’s apprentice program: a deputy director, two project coordinators, two compliance officers, one office support specialist, and one administrative assistant. The director of DLS oversees the operation of DAS.

1. The National Apprenticeship Act of 1937, also known as the Fitzgerald Act, established a registered apprentice system to provide protections for both the apprentice and the sponsor to ensure that basic standards and requirements of the apprentice programs are met. In 1941, the Massachusetts Legislature established the state’s apprentice training program.

DAS's duties include providing guidance and support to sponsors² to operate their apprentice programs, monitoring sponsors to ensure that they provide apprentices with the training and on-the-job experience needed to be successful in their fields, ensuring that there is an active agreement for each apprentice involved in an apprentice program, ensuring that sponsors with five or more apprentices have active affirmative action programs (AAPs),³ and promoting the apprentice program to industries that have not traditionally offered apprenticeships.

Apprenticeship Guidance

DAS is responsible for staying current on new apprenticeship guidance from the federal government and understanding how it affects sponsors' apprentice programs. DAS is also responsible for providing support to sponsors and helping them update their apprentice programs based on the new guidance. DAS also responds to information requests from apprentices and from sponsors seeking clarity on issues such as how best to administer a program.

Sponsor Oversight

DAS monitors sponsors in two phases. When a new sponsor establishes an apprentice program, DAS enters the sponsor in its Access database and collects the annual \$300 sponsor application fee. The sponsor then begins a one-year probationary period as a provisional sponsor. At the end of that period, DAS performs a quality assurance assessment (QAA) to ensure that (1) the apprentice program was administered according to regulations and (2) the sponsor has at least one active apprentice. After a provisional sponsor has passed the QAA and achieved "permanent sponsor" status, DAS is responsible for performing a QAA of the sponsor and its administration of its apprentice program no less than once every five years.

Apprentice Agreement Management

DAS ensures that every apprentice in a sponsor's apprentice program has a signed apprentice agreement on file and is entered in DAS's database. The apprentice agreement should incorporate all the terms and conditions required by federal and state regulations. DAS also ensures that all

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2. According to Section 11H of Chapter 23 of the General Laws, an apprentice program sponsor is "a person, association, committee, organization, corporation, partnership, trust or other entity operating an apprentice program and in whose name the program is registered with [DAS]."
 3. Section 30.4 of Title 29 of the Code of Federal Regulations requires sponsors to design AAPs to "ensure equal opportunity and prevent discrimination in apprenticeship programs."

apprentices have paid their annual \$35 fees for their apprentice identification cards, which they are required to carry when working.

AAP Compliance

Each sponsor with five or more apprentices in its program is required by state and federal law to develop an AAP. The controlling document of the program is the affirmative action plan. Each plan must include statistical analysis comparing the composition of the sponsor's apprentice workforce with the population of the county where the sponsor is located. Using federal census data and DAS technical assistance as needed, each sponsor must perform a workforce analysis that determines whether its apprentice workforce employs a lower percentage of members of any specific minority population than the county in which it operates. If the percentage of any specific minority in the sponsor's apprentice workforce is lower than the percentage in the county's overall workforce, the sponsor must prepare an affirmative action plan to address the underrepresentation by hiring a minority from the underrepresented group. DAS is responsible for performing a review of each sponsor's affirmative action plan at least once every five years. In addition, DAS conducts equal employment opportunity compliance reviews, which DAS calls maintenance reviews, annually to monitor each sponsor's efforts to correct the underrepresentation identified in the affirmative action plan.

Apprentice Program Promotion

Traditionally, apprentice programs have been strong in trade industries such as electrical work and plumbing. In recent years, apprenticeship proponents have worked to expand programs into industries that have not traditionally offered apprenticeships, such as healthcare. DAS has received grant funds to create a position to focus on expanding into these industries and others that may benefit from having apprentice programs.

AUDIT OBJECTIVES, SCOPE, AND METHODOLOGY

In accordance with Section 12 of Chapter 11 of the Massachusetts General Laws, the Office of the State Auditor has conducted a performance audit of certain activities of the Department of Labor Standards' (DLS's) Division of Apprentice Standards (DAS) for the period July 1, 2015 through December 31, 2017.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Below is a list of our audit objectives, indicating each question we intended our audit to answer, the conclusion we reached regarding each objective, and where each objective is discussed in the audit findings.

| Objective | Conclusion |
|---|--|
| 1. Did DAS conduct performance evaluations of registered apprentice programs as required by Sections 29 and 30 of Title 29 of the Code of Federal Regulations (CFR) and Section 26 of Title 454 of the Code of Massachusetts Regulations (CMR)? | No; see Findings <u>1</u> and <u>2</u> |
| 2. Do DAS apprentice agreements contain all required terms, conditions, and other information in accordance with state standards? | No; see Finding <u>3</u> |

We gained an understanding of internal controls we deemed significant to our audit objectives through inquiries and observations. We evaluated the design and effectiveness of controls over apprentice agreement registration and assessed whether these controls operated as management intended during our audit period. In addition, we performed the following procedures to obtain sufficient, appropriate audit evidence to address our audit objectives.

- We examined program sponsor files to determine whether DAS conducted quality assurance assessments (QAAs) of all new (i.e., provisionally registered) programs at the end of their first year of operation in compliance with 454 CMR 26.03(3) during the audit period. We selected a nonstatistical random sample of 35 provisionally registered program sponsors out of a population of 239. We reviewed the files for originally prepared QAAs and field reports.
- We examined program sponsor files to determine whether QAAs of all permanently registered programs were conducted at least once every five years, as required by 454 CMR 26.03(4),

during the audit period. We selected a nonstatistical random sample of 40 permanently registered program sponsors out of a population of 496. We reviewed the files for originally prepared QAAs and field reports.

- We examined program sponsor files to determine whether DAS conducted equal employment opportunity (EEO) compliance reviews of all apprentice programs registered with DAS that had five or more apprentices as required by 29 CFR 30 during the audit period. We tested the entire population of 90 program sponsors that were required to comply with this regulation. We reviewed the files for the originally prepared compliance review checklists (29 CFR 30).
- We selected a statistical random sample of apprentice agreements, using a 95% confidence level and a tolerable error rate of 10%. We sampled 30 apprentice agreements from the 7,437 total active agreements from the audit period. To determine whether the apprentice agreements were executed in accordance with 454 CMR 26.06, we inspected them and each apprentice's file to determine whether they contained the following:
 - the occupational training approaches and required training hours and/or skills for time-based, competency-based, or hybrid training programs
 - the total number of hours of hands-on training required of the apprentice for completion of a time-based program
 - a description of the work processes in which the apprentice would participate and an approximation of the proportion of time to be spent in each major process
 - the contact information of the individual/s designated by the apprentice program sponsor to receive, investigate, and resolve complaints and concerns raised by apprentices about the apprentice program
 - an acknowledgment that the apprentice had been advised that DAS's deputy director is also available to receive, investigate, and resolve complaints or concerns
 - the names and signatures of the sponsor's representatives
 - the number of hours of instruction that the apprentice would receive in technical subjects related to his/her occupation
 - a statement of the graduated scale of wages to be paid to the apprentice
 - an acknowledgement that the apprentice had been advised that the apprentice program was governed by Sections 11E through 11L of Chapter 23 of the General Laws and 454 CMR 26, which describe the purpose and goals of the apprentice program
 - the amount of credit the apprentice had already earned toward program completion from previous related job training and instruction
 - an acknowledgment that the apprentice had received a complete copy of the apprentice agreement and a copy of the "Apprentice Rights and Responsibilities"

Whenever nonstatistical sampling was used, we could not project our results to the population.

Data Reliability

We determined the reliability of the DLS Apprentice Standards database by (1) performing electronic testing of the data elements, including testing for missing data, either entire missing records or missing values in key data elements, duplicate records, and values outside a designated range; (2) reviewing existing information about the data and the system that produced them; and (3) interviewing agency officials who were knowledgeable about the data. We verified the completeness and accuracy of three tables in the database: the Permanent Program table, the EEO Compliance table, and the Apprentice Agreement table.

We ensured the completeness of the Permanent Program table of active sponsors by judgmentally selecting 20 sponsorship approval letters and apprentice agreements from a DAS file cabinet and then verifying that the information they contained corresponded to the program name, sponsor number, and status in the Permanent Program table. In addition, we randomly selected 20 sponsors from the Permanent Program table and traced the program name, sponsor number, and status to the hardcopy sponsorship approval letter and apprentice agreement on file.

We ensured the completeness of the EEO Compliance table of active sponsors with at least five active apprentices by judgmentally selecting 10 sponsor files from a DAS file cabinet and verifying that the total number of apprentice agreements corresponded to the number listed in the EEO Compliance table. In addition, we randomly selected 10 sponsors from the EEO Compliance table and traced them to the hard copies of the apprentice agreements on file.

We ensured the completeness of the Apprentice Agreement table of apprentice agreements by judgmentally selecting 20 apprentice agreements from a DAS file cabinet and verifying that the apprentice identification number, apprentice name, sponsor name, and date of hire corresponded to the data in the Apprentice Agreement table. In addition, we randomly selected 20 apprentice agreements from the Apprentice Agreement table and traced the apprentice identification numbers, apprentice names, sponsor names, and dates of hire to the hardcopy apprentice agreements on file.

We determined that the three data tables from the DLS Apprentice Standards database were sufficiently reliable for the purposes of this audit.

DETAILED AUDIT FINDINGS WITH AUDITEE'S RESPONSE

1. The Division of Apprentice Standards did not ensure that its sponsors' apprentice programs met established quality standards.

During our audit period, the Department of Labor Standards' Division of Apprentice Standards (DAS) did not perform quality assurance assessments (QAAs) in accordance with accepted standards, and did not use the "Apprenticeship Program Quality Assurance Assessment" form, for any of our sampled 35 sponsors' apprentice programs after their first full year of operation as provisional sponsors. In addition, in a second sample we selected, representing 40 sponsors' apprentice programs, DAS did not review any of the programs within five years after they were granted "permanent sponsor" status. As a result, there is inadequate assurance that people participating in apprentice programs are receiving the training they need in order to compete successfully for employment in their fields of study.

Authoritative Guidance

Section 26.03(4) of Title 454 of the Code of Massachusetts Regulations (CMR) states that DAS will "review all programs for quality and conformity" to state regulations governing apprentice standards at the end of the first year of the program and at least once every five years thereafter. The US Department of Labor's (DOL's) "Office of Apprenticeship Circular 2013-01" provides the proper form, the "Apprenticeship Program Quality Assurance Assessment" form, to perform QAAs.

Reasons for Noncompliance

The DAS personnel responsible for conducting QAAs stated that they did not have the policies, procedures, and forms needed to perform the reviews.

DAS officials stated that the division's current staff of two compliance officers provides ongoing technical support to sponsors and that therefore the division is insufficiently staffed to also schedule, conduct, and monitor all required QAAs for the approximately 634 apprentice sponsors that were active during the audit period.

DAS does not have written policies and procedures regarding scheduling and conducting QAAs or monitoring the QAA process to ensure that sponsors' programs meet all the training quality standards established by state regulations.

Recommendations

1. DAS should conduct QAAs, using the "Apprenticeship Program Quality Assurance Assessment" form, after the first year of a sponsor's apprentice program and at least once every five years thereafter.
2. DAS personnel responsible for conducting the QAAs should have the proper policies, procedures, and forms to complete them.
3. DAS management should identify existing financial resources that could be allocated to enable DAS to increase its number of compliance officers in order to conduct all required QAAs and, if necessary, should request additional funding from the Legislature for this purpose.
4. DAS should develop and implement written policies and procedures to schedule, conduct, and monitor the performance of QAAs.

Auditee's Response

DAS's current practices include performing quality assurance assessments. Refresher training has been provided to DAS staff, including on the use of "Apprenticeship Program Quality Assurance Assessment" forms as guidance and the proper documentation of assessment results. DAS will review, update, and/or develop and implement written policies regarding all aspects of Quality Assurance Assessments by 12/31/2019. Staff will be trained to ensure that QAAs are conducted after the first year of the program and at least every five years after that.

Additionally, funding has been requested within the FY20 budget to support an increase in staff and approval is pending. DAS is also exploring how to leverage existing financial and operational resources to ensure compliance with regulatory requirements to schedule and perform quality assurance assessments.

2. DAS did not perform compliance reviews of apprentice program sponsors to ensure that they had developed and implemented affirmative action programs and met established hiring goals.

DAS did not perform compliance reviews of its apprentice program sponsors' affirmative action plans every five years as required to determine whether they had developed, and were following, their affirmative action plans. It also did not conduct equal employment opportunity (EEO) compliance reviews annually to ensure that sponsors had met the hiring goals established in their affirmative action plans. Specifically, for 89 of 90 apprentice program sponsors operating apprentice programs during our audit period that were required to develop affirmative action programs (AAPs), which require affirmative action plans, DAS had not conducted an affirmative action plan or EEO compliance review in the past five years. Without performing these compliance reviews, DAS cannot be certain that the entities it registers to operate apprentice programs are complying with EEO regulations to prevent

discrimination in apprentice programs and ensure equal opportunities for apprentices throughout their apprenticeships and training.

Authoritative Guidance

According to 454 CMR 26.07(3),

[DAS] is required to evaluate performance of registered apprenticeship programs. The tools and factors to be used must include . . .

(b) Equal Employment Opportunity (EEO) Compliance Reviews.

Section 30.13(a) of Title 29 of the Code of Federal Regulations states,

The Registration Agency [in this case, DAS] will regularly conduct EEO compliance reviews to determine if the sponsor maintains compliance with this part [of the regulation], and will also conduct EEO compliance reviews when circumstances so warrant.

DOL officials told us that they interpret “regularly” to mean at least once every five years, in line with the five-year QAA reviews required for permanent sponsors.

DAS has established a system control in its Access database that alerts the agency when a sponsor's AAP is due for its five-year review. DAS's practices also require it to prepare an EEO Maintenance Review Form annually to monitor each sponsor's efforts to meet the hiring goals identified in its affirmative action plan.

Reasons for Noncompliance

DAS officials stated that because of limited staff resources, management decided to prioritize other agency activities, such as processing veterans' benefits, over conducting affirmative action plan and EEO compliance reviews. DAS officials also stated that they had been acting for many years under an informal agreement with DOL to suspend affirmative action plan and EEO compliance reviews until DAS had adequate staffing to perform these reviews. However, DAS did not provide us with any documentation to substantiate that assertion. Moreover, any such agreement would be contrary to state regulations, which require these reviews to be conducted. In addition, DAS does not have any policies and procedures regarding conducting and monitoring these reviews.

Recommendations

1. DAS should conduct affirmative action plan reviews every five years, and EEO compliance reviews annually, to ensure that sponsors are meeting the goals established in their affirmative action plans.
2. DAS should assess what additional resources, if any, it needs to perform its affirmative action plan reviews and EEO compliance reviews in accordance with applicable requirements and should seek to obtain these resources.
3. DAS should develop and implement written policies and procedures regarding conducting AAP and EEO reviews, as well as monitoring controls to ensure that these policies and procedures are adhered to.

Auditee's Response

As the draft audit findings note, DAS has established a system control in the Access database that notifies the agency when a sponsor's affirmative action plan is due for its five-year review. Current DAS practice includes use of EEO Maintenance Review Forms for monitoring the progress sponsors make with respect to the hiring goals in their affirmative action plans. By 12/31/2019, DLS will review, create, and/or update policies and appropriately train and monitor staff regarding those policies to ensure that system controls are effective, and that EEO compliance reviews occur annually and AAPs are reviewed at least once every five years.

3. DAS did not properly administer apprentice agreements.

We found problems in the way DAS administered apprentice agreements. DAS develops standard apprentice agreements that it gives to its program sponsors, which use them to enroll people in their programs. However, in many cases the sponsor and/or apprentice did not provide the following information in the agreement:

- Three of the 30 agreements did not include the names and signatures of the sponsors' representatives.
- Fourteen of the 30 agreements did not specify the number of hours of instruction that the apprentice would receive annually in technical subjects related to his/her occupation.
- One of the 30 agreements did not include a statement of the graduated scale of wages to be paid to the apprentice.
- Twelve of the 30 agreements did not indicate whether the apprentice had been advised that DAS's deputy director is available to receive, investigate, and resolve complaints or concerns.
- Twelve of the 30 agreements lacked an acknowledgement that the apprentice had been advised that the apprentice program is governed by Sections 11E through 11L of Chapter 23 of the Massachusetts General Laws and 454 CMR 26, which describe the purpose and goals of the apprentice program.

- Fourteen of the 30 agreements did not include the amount of credit the apprentice had already earned toward program completion from previous related job training and instruction.
- Twelve of the 30 agreements did not include an acknowledgment that the apprentice had received a complete copy of the apprentice agreement and a copy of the "Apprentice Rights and Responsibilities."

If apprentices are not fully informed of all program requirements and of their right to obtain proper training, they might not receive the full benefits and training to which they are entitled.

Authoritative Guidance

According to 454 CMR 26.06(4),

The apprentice agreement shall contain the following terms, conditions, and information: . . .

(a) The names and signatures of the contracting parties . . .

(g) A statement showing . . .

- 2. The number of hours per year of instruction in technical subjects related to the occupation that the apprentice will receive . . .*
- 5. A statement of the graduated scale of wages to be paid to the apprentice . . .*
- 9. A statement that if the apprentice has a complaint or concern relative to the apprentice program which, after fully exhausting all internal procedures, is not resolved by the apprentice program sponsor to the apprentice's satisfaction, then the Deputy Director is available to receive, investigate, and resolve the complaint or concern . . .*
- 10. A statement that the apprentice's participation in the apprentice program is governed by M.G.L. c. 23, §§ 11E through 11L and 454 CMR 26.00;*
- 11. The amount of credit which the apprentice program sponsor will give to the apprentice towards completion of the program, if any, for any relevant hands-on training or related instruction which the apprentice may have obtained while previously participating in other apprentice programs or while employed by previous employers; and*
- 12. An acknowledgement that the apprentice has received a complete copy of the apprentice agreement, and a copy of the "Apprentice Rights and Responsibilities."*

Reasons for Noncompliance

DAS's deputy director acknowledged that the division's staff could be more vigilant about making sure that apprentice agreements comply with all regulatory requirements and that program applicants and

program sponsors submit all required information. DAS has not established any monitoring controls to ensure that all regulatory requirements regarding apprentice agreements are met.

Recommendations

1. DAS should develop a new apprentice agreement to include all requirements described in 454 CMR 26.06(4).
2. DAS management should develop monitoring controls to ensure that all regulatory requirements are included on the apprentice agreements and that program applicants and sponsors submit all required information.

Auditee's Response

Since the period covered by the audit, DAS has developed two new apprentice agreements, one for the building trades and one for so-called expansion industries. Both applications will fully comply with the requirements described in 454 CMR 26.06(4).

To ensure that apprentice applicants and sponsors submit all required information, DAS's current practice requires peer review of all submissions for completeness first by a Program Coordinator and then by an Office Support Specialist who enters data into required fields in a Microsoft Access database.

Auditor's Reply

Based on its response, DAS is taking measures to address our concerns regarding this matter.