

TOTAL AVAILABLE WORKFORCE GEOGRAPHIC CONSIDERATIONS, DATA ACCESS, AND BENCHMARKING

Provided to CALEA by the Police Foundation

Background

A top priority of local law enforcement managers is ensuring that the agency retains qualified workers and is well-positioned and prepared to recruit new officers and professional staff into the agency. Managers face several challenges¹ in this regard, including managing the supply and demand difficulties that come with a profession in a competitive job market and making strides to recruit a workforce that is as diverse as the community served by the agency while meeting equal employment opportunity (EEO) requirements. EEO processes and requirements can be challenging for those not accustomed to working on the issues.

A key factor in recruiting, and in managing the EEO process within law enforcement agencies, is understanding the current workforce characteristics and defining and benchmarking against the total available workforce “TAW” or labor market. Identifying the geographic area that provides the workforce and then establishing the TAW is the subject of this document. This topic was identified to assist agencies in earning and maintaining CALEA compliance and in following best practices in human resource management. This paper may also assist agencies in complying with federal EEO requirements that become mandatory for certain agencies that receive funding from the U.S. Department of Justice.

Of Note...

While research has been conducted on law enforcement recruitment, affirmative action, and diversity, there is essentially no research to be found on the subject of determining TAW and development benchmarks in this regard. Substantial case law does exist that is relevant to establishing an appropriate geographic area and for identifying TAW or the relevant local workforce, however we have not conducted a legal analysis or attempted to provide legal advice here.

As previously stated, not all agencies are required by federal law to produce an analysis of minority and female utilization that involves the establishment of TAW. Even in cases where agencies are required, it has been noted that many agencies are not sufficiently thorough in their analysis of the data to establish a relevant benchmark.

CALEA Standard

31.2.1 Recruitment Plan

The agency has a recruitment plan for full-time sworn personnel. The recruitment plan shall outline agency steps to achieve the goal of an ethnic, racial, and gender workforce composition in the sworn law enforcement ranks in approximate proportion to the makeup of the available workforce in the law enforcement agency's service community. The recruitment plan shall include the following:

- *statement of objectives;*
- *plan of action designed to achieve the objectives identified in bullet a;*
- *identify employees, inside or outside the agency, responsible for plan administration.*

Commentary

Recruitment steps should be directed toward the goal of approximating within the sworn ranks the demographic workforce composition of the community that it serves with regards to ethnic, cultural, racial, and gender makeup. The recruitment plan should be very specific with regards to the stated objectives and should clearly outline specific steps to be taken to achieve the objectives. The recruitment plan should also identify agency employees/position responsible

for the administration of the recruitment process or identify other employees or positions with recruitment responsibility (i.e. civil service commissions, police commissions, human resources department, etc.).

The recruitment plan should be written so that it can be easily understood and followed. The foundation of a successful recruitment drive should include strong management commitments, and analysis of demographic/geographic features of the agency's service area, and specific knowledge of past recruitment efforts by similar agencies. The recruitment plan may be a part of the written directive system or a separate and distinct planning document. The plan should govern agency activities relating to recruitment during a specific period of time, which should not exceed three years without being reviewed and having objectives updated.

The objectives of a recruitment plan should be reasonably likely, obtainable, and directed toward the goal of achieving a sworn workforce that is representative of the composition of the available workforce it serves. The specific action steps contained in the agency's recruitment plan should be reasonable likely to cause the agency to meet the objectives identified in the plan.

Examples of specific action steps that may be identified in an agency's recruitment plan include:

- Identify impediments and articulate specific steps taken based on an analysis to overcome those impediments;
- Utilizing in the agency's recruitment activities minority personnel who are fluent in the community's non-English languages and are aware of the cultural environment, where this would be applicable;
- Depicting females and representatives of ethnic/cultural/race minority groups in law enforcement roles in the agency's recruitment literature;
- Conducting recruitment activities outside of the agency's jurisdiction to attract viable law enforcement candidates; and
- Establishing relationships with groups in and outside the community who represent targeted groups.

Statistics on the composition of the workforce in the agency's service community are available from a variety of sources, such as the U.S. Department of Labor's Bureau of Labor Statistics or national labor statistics.

For the purposes of this standard, available workforce may be determined by considering several factors; for example, the residential makeup, those working in the agency's community, applicant demographics, and the parameters of any officer residency requirements, if applicable. (M M M M) (LE1)

Summary of Key Literature and Available Research

While substantial literature exists on the subject of recruitment and selection in law enforcement, there is little published information on how TAW is defined and, to a certain extent, how to calculate it. Most commonly and generally, TAW is a statistical representation of "available community and area labor characteristics within the relevant geographical area including total population, workforce and existing unemployment by race, sex and national origin."² Within this broad definition are several determinations that will need to be made, including the geographic area of the workforce and the criteria to be applied to adjust the available workforce data to job requirements, such as minimum age, educational requirements, criminal history, physical conditions, etc.

Determining the Geographic Area of the Total Available Workforce (TAW) or "Relevant Workforce"

The specific considerations of establishing the TAW will be described later, however it is important to share what the literature does provide in terms of the geographic area that defines the workforce. Importantly, determining the geographic area that serves as the basis for determining TAW must be done carefully and a reasonable basis for determining the area must be established. Considerable case law exists at the federal level (see, for example, *EEOC v. Chicago Miniature Lamp Works*, United States Court of Appeals, Seventh Circuit, decided December 23, 1991) that

not only acknowledges the difficulties of determining the specific areas to include in the TAW analysis, but also points out the sometimes unique considerations that must be made. One thing is clear however, there is no alternative to establishing what the relevant labor market or TAW is – it is an important concept in civil rights litigation and an important factor for agencies to consider as they examine their own hiring practices.

Although it is known that many law enforcement agencies conduct recruitment efforts outside of their service area to attract qualified candidates in a competitive labor market and some have even conducted (unsuccessful) recruitment outside of the continental United States in order to recruit members of specific ethnic and cultural backgrounds³, in today's environment of strained police-community relations, many are placing a renewed emphasis on hiring from within the communities served by the agency to ensure that the workforce not only looks like the community it serves, but also knows the community and the people who live in the neighborhoods that make up the community.⁴ It has also been noted that these efforts may result in occasional hires from areas outside of an agency's service area or standard metropolitan statistical area (SMSA), but do not happen with such regularity and frequency to establish the areas that these employees are drawn from as part of the relevant labor market.

We reviewed several publicly available EEO plans that included an analysis of TAW and we reviewed the instructions provided to governmental units and agencies that receive DOJ funding directly or indirectly who are required to conduct these analyses to determine if a federal requirement or standard exists with regard to defining the geographic area used in TAW analysis. The Department of Justice's Civil Rights Division Report on the Ferguson Police Department called out the Department for lacking diversity in staffing and very clearly identified the City of Ferguson as the area of comparison, which suggests to us that the Department of Justice may generally consider the area served as the area from which the local relevant workforce is derived from, and the Department of Justice's Office of Justice Programs, through its Office of Civil Rights has relied on the area served by the agency as the relevant geographic area to use when monitoring compliance with EEO requirements related to TAW.⁵ However, a review of selected federal civil rights cases⁶ involving challenges to the workforce analysis does reveal that an analysis of the relevant local workforce sometimes involves examining one or more years of applicant data to determine where, within a SMSA for example, or from within a state or region, most applicants reside, in order to accurately capture the true relevant local workforce. Research is also available on related subjects such as factors related to commuting distances, which can help to strengthen arguments for expanding or decreasing the geographic area used to determine TAW.⁷ This can be important in larger regions or areas where factors exist (transportation/traffic, competing employers, etc.) that may substantially influence where potential members of the workforce are recruited from. However, it is important to point out that eliminating areas (cities, towns, counties) from the geographic area used to develop TAW or the relevant local workforce must be done extremely carefully so as not to eliminate groups from the workforce count that may not have historically applied due to real or perceived barriers, lack of outreach, or other factors. It is recommended that agencies examine the data in multiple ways and adopt the methodology that is most conducive to compliance with relevant civil rights and affirmative action requirements and that will assist the agency most with developing a workforce that closely resembles the demographics of the agency's service area.

Establishing Statistical Benchmarks Related to TAW

In terms of comparing agencies and departments within governmental units (e.g., counties) based on their progress in achieving a workforce that is diverse and generally mirrors the demographic composition of the workforce, a few existing efforts were identified in the literature. While the EEOC has released reports that compare entire industry hiring of minorities compared to national averages based on data that many employers are required to submit (see, for example, "Diversity In Law Firms U.S. Equal Employment Opportunity Commission," 2003 at <https://www.eeoc.gov/eeoc/statistics/reports/diversitylaw/index.html>). More specific to the law enforcement community, comparisons are often made at the national level as well, relying on data from the Bureau of Justice Statistics (BJS) in its census of state and local law enforcement agencies, which is conducted every four years, the FBI's Uniform Crime Report which includes data on employees of law enforcement agencies, and the Census Bureau's Annual Survey of Public Employment and Payroll.⁸ Scholarly research, including articles cited within the U.S. DOJ Report on the Ferguson

Police Department for example, use minority officer percentages to measure change over time and statistical comparisons of minority officers in various departments divided by minority residents in their respective cities.⁹

Local comparisons among agencies were also found to be available, but based on raw counts of minorities and women in certain positions or job classes and do not take into consideration the make-up of the communities that these agencies serve.^{10,11} Conversely, the County of Santa Cruz, California in its EEO Plan¹² relies on the minority and women utilization rate to compare progress made by each county department (including the sheriff's office) in lowering underutilization rates and to provide agencies with high underutilization rates with technical assistance. In 2007, the Transit Cooperative Research Program¹³ released a report on a project designed to explore the use of utilization rates as a benchmark in assessing transit agency employment diversity across the nation. This report found that the data collected and submitted by state and local transit agencies pursuant to federal law lacked in consistency, comprehensiveness, validity and reliability despite EEOC and other federal requirements and therefore found challenges with establishing a system of benchmarks around utilization rates. The report offers recommendations for overcoming these challenges which could be incorporated into standards (e.g., developing consistency in data collection, reliability, accountability, and training) and also provides an excellent discussion of important caveats about the limitation of agency control over some factors that influence utilization rates.

Difficulties in Comparing and Benchmarking

Agencies sometimes struggle with determining TAW and no standard practice could be applied in terms of the geographic area that serves as the basis for TAW. This creates challenges for aggregating data based on a common unit of analysis, particularly in light of the fact that CALEA agencies serve a wide variety of communities (cities, counties, states, etc.) with vast differences in demographics and populations.

What can be standardized to a certain extent is the resulting utilization rates, which are based on employment patterns and TAW. The utilization rate is determined in a consistent way because it relies on EEOC processes and national data from the Census Bureau and Labor Department. However, agencies serving extremely small or rural areas may have difficulty finding relevant data in these national sources and may be so homogeneous that developing a utilization rate across racial and ethnic categories as prescribed may not be feasible or warranted. In these cases, the utilization rate of females may be an appropriate substitute.

To determine the significance of the deviations identified in the utilization analysis, the Department of Justice's Office of Justice Programs' Office of Civil Rights has, at least in one case, used standard deviations to determine if the utilization percentages are statistically significant. With this in mind, another possible option for standardization of comparison across agencies may involve standard deviations across categories combined with positive or negative indicators that signal over- and under-representation of minorities and women.

Evidence-Based/Best Practices

No best practices were identified in the selection of the geographic area based on an analysis of TAW. While many agencies appear to select their service area as the geographic area to be used in determining TAW – and with ample good reason to do so, there may be situations where an agency is well advised to follow the local government's lead or to consider a wider geographic area based on an analysis of applicant data or other data that suggests using a wider geographic area, such as anticipated migration of certain groups from one part of the region into the service area. In some areas, government and non-governmental organizations and partnerships focused on development and workforce issues may offer assistance to agencies in identifying and describing TAW.¹⁴

It is relevant to note that agencies required by funding agreements to submit EEO plans and utilization analysis to DOJ's Office of Justice Programs can use the agency's online "wizard" to produce their report. While not identified as a best practice per se, it may be advisable to consider using the DOJ tool (although this tool may require information about the agency's grant in order to use)¹⁵. To access this tool, visit http://ojp.gov/about/ocr/eeop_comply.htm

In terms of benchmarking across agencies, the County of Santa Cruz's benchmarking and assistance process certainly appears to be a best practice in our view. Although all county agencies are assumed to have the same geographic basis (the county) for TAW, this same process could be replicated across geographic areas in light of the fact that utilization rates are expressed as percentages of over- or under-utilization that is relevant to their local workforce. While agencies may have very different contributing factors for being over or under, the percentages are all relative. It is important to point out however that not every county or agency is required to develop these analyses. Those that are not required, and those that draw applicants from a homogeneous local workforce, will not be in a position to participate in the comparison unless they participate voluntarily and with some modification needed. Voluntary participation may, in and of itself, be a best practice worthy of consideration.

Summarizing the Research & Key Findings

Although no research specific to determining the geographic area most appropriate for use in establishing the total available or relevant local workforce was identified, ample case law exists and agencies should consult with the EEO components of their governmental units in determining the most appropriate area to use, based on their local conditions and factors. It does appear, after examining DOJ Civil Rights investigative and compliance reports and considering professional and contemporary literature that the most logical geographic area to use in developing estimates of the total available workforce is the area served by (jurisdiction of) the relevant agency or the standard metropolitan statistical area that encompasses the area served.

Just because an agency conducts recruitment from outside of this area to meet hiring goals, likely does not result in enough consistency in hiring from outside of the area to change the definition of the relevant local labor market, which is generally defined as the area where most current employees and applicants to the agency reside, setting aside factors that may cause these data to be skewed, such as limited outreach/job notifications, the lack of residency requirements, and the length of time it takes for agency staff to turn over. Simply put, recruiting from areas well outside of the agency's jurisdiction does not, in our view, change the location of its relevant workforce, but can help an agency develop a more diverse workforce that is reflective of the minority representation in the local workforce. While this is beneficial to having a department that reflects the demographics of the community served and the local workforce, it does present other potential challenges in light of the unfamiliarity that individuals recruited from outside of the community may have with the neighborhoods they are policing.

Relative to CALEA's use of the CIMRS and the desire to collect data that allows benchmarking and analysis among accredited agencies, we recommend consideration of collecting data consistent with the federal EEO processes relevant to state and local government agencies, which many law enforcement agencies are already required to submit (EEO-4). This would allow for agencies to be benchmarked against their utilization rates of minorities in the relevant local labor force (percentage over- or under-utilized). By doing so, the benchmark is established relative to each agency's unique available workforce or relevant local labor market, which is a much more reasonable and objective measure than some have used to make comparisons. A major benefit of adopting this approach is the institutionalization of EEO requirements in furtherance of civil rights, incentivizing the production and use of the data, and encouraging agencies not required by EEO laws to also participate in the process on a voluntary nature, which could theoretically improve their compliance with civil rights and reduce litigation risk. It is important to note however that not all agencies will have the workforce numbers and the heterogeneity to participate as larger agencies and jurisdictions may, and therefore some adaptation and guidance will be required.

Guidance for Generating Data on Your Relevant Local Workforce

Agencies not using a local resource organization to develop their utilization analysis and not able to use the DOJ online tool or wizard for grantees can use the instructions and links below to access the data needed to generate their own utilization analysis.

Step 1: Determine the geographic area that provides your workforce. (We suggest starting with your agency's service area)

Step 2: Go to the U.S. Census Bureau tools for tabulating the data needed for the analysis. It is recommended that agencies use the American Community Survey EEO Tables available through the American FactFinder website because the data are available in a more flexible format and may include more recent data, although the Department of Justice, in its guidance to agencies that receive certain DOJ grant funds, recommends using the Census 2000 EEO Data Tables.

Step-by-step instructions are provided below for each option:

American Community Survey Data Tables	Census 2000 EEO Data Tables
Step 3: Access the ACS EEO Tabulation 2006-2010 (5-year ACS data) Data Tables using the American FactFinder's Advance Search Tool (https://data.census.gov/) Step 4: At the Advanced Search screen, an option is provided to enter a topic or table name. Enter "EEO Tabulation 2006-2010 (5-Year ACS Data)" and select "Go" Step 5: Select data set ID EEO-ALL06R, "EEO 6r. State and Local Government Job Groups by Sex, and Race/Ethnicity for Residence Geography, Total Population" Step 6: With the table now generated, users can go to the area above the table and select "Add/Remove Geographies" to select the relevant geographic area of the local workforce. Step 7: Make any additional changes to the search criteria that may be desired, then choose "Download" just above the table near the top of the screen. A .csv file can be downloaded that can be manipulated as needed to create the utilization analysis. A single chart with numbers and percentages is created.	Step 3: Access the Census 2000 EEO Data Tables (https://data.census.gov/) Step 4: Select "Employment by State and Local Occupation Groups" and "Residence" for the geography, then click "Next." Step 5: Select your geographic area determined in Step 1. If your service area is too small to provide a demographic breakdown of the workforce, gender data will be provided. Step 6: Select from the 9 available occupation types (we recommend selecting each type) (Note: Unemployed individuals should be included in your analysis as they are part of the potential labor force). Step 7: Select "Show Detailed Race/Ethnicity Labor Categories" Step 8: Select the output option needed (Note: We suggest that you select .csv file which can be saved and opened in Microsoft Excel or any other spreadsheet software). Two charts are produced by the tool – a raw number chart and a percentage chart. We recommend working with the percentage chart for the utilization analysis.

Using these percentages for the occupation types provided, agencies can compare against the job categories and workforce within the agency to identify the utilization factors, which will be a positive percentage (i.e., minorities are overrepresented in your agency for the relevant occupation type), an equal percentage, or a negative percentage (i.e., you have minority under-representation or utilization). EEO requirements may dictate that you conduct this analysis against various job actions (e.g., hiring, promotions) and may include other requirements not covered here. A sample utilization report can be found at http://ojp.gov/about/ocr/pdfs/shortform_lawenforcement.pdf

List of References and Further Reading

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