

APPENDIX

CALIFORNIA CODE OF REGULATIONS, TITLE 8

CHAPTER 2, PART 1, SECTION 215

STATE OF CALIFORNIA PLAN

FOR

EQUAL OPPORTUNITY IN APPRENTICESHIP

STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF APPRENTICESHIP STANDARDS
CALIFORNIA APPRENTICESHIP COUNCIL

~~APRIL 1986~~

NOTE: Whenever the term "California Administrative Code" appears in any law, official legal paper, or legal publication, it means the "California Code of Regulations."

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1. Scope and Purpose

~~This plan sets forth policies and procedures to promote equality of opportunity in apprenticeship programs registered with the State Apprenticeship Agency. These policies and procedures apply to the recruitment and selection of apprentices, and to all conditions of employment and training during apprenticeship. The procedures established provide for review of apprenticeship programs, for registering apprenticeship programs, for processing complaints, and for deregistering non-complying apprenticeship programs. The purpose of this plan is to promote equality of opportunity in apprenticeship—equal opportunity for apprentices and applicants for apprenticeship in registered apprenticeship programs by prohibiting discrimination based on race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age for individuals over forty years of age, military or veteran status, or sexual orientation. ~~race, color, religion, national origin or sex~~ This plan also prescribes affirmative action efforts sponsors must take to ensure equal opportunity for apprentices and applicants for apprenticeship. The plan sets forth the equal opportunity obligations of sponsors, the contents of affirmative action programs, procedures for the filing and processing of complaints, and enforcement procedures. This plan also establishes procedures for deregistration of an apprenticeship program in the event of noncompliance with this plan in apprenticeship programs, by requiring affirmative action to provide equal opportunity in such programs, and by coordinating this part with other equal opportunity programs.~~

2. Definitions

For the purposes of this plan:

- (a) "Administrator" means Administrator of Apprenticeship or his/her duly authorized representative. The Director of Industrial Relations is ex officio the Administrator of Apprenticeship. The Director of Industrial Relations has jurisdiction over laws and regulations governing wages, hours and working conditions of employees working in the State of California.
- (b) ~~(a)~~ "Agency" means the Department of Industrial Relations, Division of Apprenticeship Standards.
- (c) "Applicant" means an individual, either male or female, who has formally applied for an apprenticeship opportunity with a program sponsor.
- (d) "Apprentice" means a person at least 16 years of age who has entered into a written apprentice agreement under Labor Code section 3078 with an employer or program sponsor.

- (e) "Apprenticeship Program" means a program registered with the Agency and evidenced by a Certificate of Registration or other appropriate document as meeting the apprenticeship standards of the Agency.
- (f) "Chief" means the Chief of the Division of Apprenticeship Standards or his/her duly authorized representative
- (g) "Department" means the U.S. Department of Labor.
- (h) "Disability" and other terms relevant to defining disability and disability discrimination standards, including "major life activities", "reasonable accommodation", and "undue hardship," have the same meaning as defined in section 11065 of title 2 of the California Code of Regulations.
- (i) "Employer" means any person or organization employing an apprentice whether or not such person or organization is a party to a written apprenticeship agreement under Labor Code section 3078 with the apprentice.
- (j) "Good Faith Efforts" mean a program sponsor's actions to fulfill its commitment to equal opportunity in the recruitment, selection, employment and training of apprentices, its actions to comply with the provisions of its written affirmative plan and, when appropriate, to make necessary changes to obtain the maximum effectiveness toward the attainment of its goals. Each case in which good faith efforts are in question shall be considered separately since there is no inflexible definition under which good faith efforts can be applied to all cases.
- (k) "Journeyworker" means a worker who has attained a level of skill, abilities and competencies recognized within an industry as having mastered the skills and competencies required for the occupation. (Use of the term may also refer to a mentor, technician, specialist or other skilled worker who has documented sufficient skills and knowledge of an occupation, either through formal apprenticeship or through practical on-the-job experience and formal training).
- (l) "Office of Apprenticeship (OA)" means the office designated by the Employment and Training Administration of the U.S. Department of Labor to administer the National Registered Apprenticeship System or its successor organization.
- (m) "Pre-apprenticeship program" means a training model designed to assist individuals who do not currently possess the minimum requirements for selection into an apprenticeship program to meet the minimum selection criteria established in a program sponsor's apprenticeship standards required under section 212 of title 8 of the California Code of Regulations and which maintains at least one documented partnership with a Registered

Apprenticeship program. It involves a form of structured workplace education and training in which an employer, employer group, industry association, labor union, community-based organization, or educational institution collaborates to provide formal instruction that will introduce participants to the competencies, skills, and materials used in one or more apprenticeable occupations.

(n) "Race/Ethnic" Designations are as follows:

-WHITE (Not of Hispanic Origin)-A person having origins in any of the original peoples of Europe, North Africa, or the Middle East.

BLACK (Not of Hispanic Origin) -A person having origins in any of the Black racial groups of Africa.

HISPANIC-A person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race.

ASIAN OR PACIFIC ISLANDER-A person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands. The area includes, for example, China, Japan, Korea, and Samoa.

FILIPINO-A person having origins in any of the original people of the Philippine Islands.

AMERICAN INDIAN OR ALASKAN NATIVE-A person having origins in any of the original peoples of North America, and who maintains cultural identification through tribal affiliation or community recognition.

(o) "Secretary" means the Secretary of Labor, the Assistant Secretary of Labor for Employment and Training, or any person specifically designated by either of them.

(p) "Selection procedure" means any measure, combination of measures, or procedure used as a basis for any decision in apprenticeship. Selection procedures include the full range of assessment techniques from traditional paper and pencil tests, performance tests, training programs, or probationary periods and physical, educational, and work experience requirements through informal or casual interviews and unscored application forms.

(q) "Sponsor" means any person, association, committee, or organization operating an apprenticeship program, and in whose name the program is (or is to be) registered or approved.

(r) "Sponsor's Labor Market Area" means:

(1) The geographical area from which the program sponsor normally draws upon for its work force and for which statistics are gathered; or

(2) Any other geographical boundary for which statistics are gathered, that can be reasonably justified and agreed to by the Agency.

(s) "Utilization of minorities" means the percentage of minority apprentices by ethnic group in crafts represented by a program sponsor equal to the

percentage that each ethnic group bears to the ethnic population of the appropriate statistical area but in no case shall the percentage be less than the total minority population.

~~(a)(t) "Utilization of women" means 50 percent of the proportion of women in the work force in the program sponsor's labor market area irrespective of the ethnic group represented, subject to the provisions of Section 6(d) of this plan.~~

~~(b) "Department" means the U.S. Department of Labor.~~

~~(c) "Employer" means any person or organization employing an apprentice whether or not the apprentice is enrolled with such person or organization or with some other person or organization.~~

~~(d) "Apprenticeship Program" means a program registered with the Agency and evidenced by a Certificate of Registration or other appropriate document as meeting the apprenticeship standards of the Agency.~~

~~(e) "Sponsor" means any person or organization operating an apprenticeship program, irrespective of whether such person or organization is an employer. "Sponsor's Labor Market Area" means:~~

~~(1) The geographical area from which the program sponsor normally draws upon for its work force and for which statistics are gathered; or~~

~~(2) Any other geographical boundary for which statistics are gathered, that can be reasonably justified and agreed to by the Agency.~~

~~(f) "Administrator" means Administrator of Apprenticeship or his duly authorized representative. The Director of Industrial Relations is ex officio the Administrator of Apprenticeship. The Director of Industrial Relations has jurisdiction over laws and regulations governing wages, hours and working conditions of employees working in the State of California.~~

~~(g) "Chief" means the Chief of the Division of Apprenticeship Standards or his/her duly authorized representative.~~

~~(h) "Secretary" means the Secretary of Labor, the Assistant Secretary of Labor for Employment and Training, or any person specifically designated by either of them.~~

~~(i) "Applicant" means an individual, either male or female, who has formally applied for an apprenticeship opportunity with a program sponsor.~~

~~(j) "Journeyman" means a worker, either male or female, who has acquired sufficient skills to be recognized as a qualified craftworker.~~

~~(k) "Race/Ethnic" Designations are as follows:~~

~~WHITE (Not of Hispanic Origin) A person having origins in any of the original peoples of Europe, North Africa, or the Middle East.~~

~~BLACK (Not of Hispanic Origin) A person having origins in any of the Black racial groups of Africa.~~

~~HISPANIC A person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race.~~

~~ASIAN OR PACIFIC ISLANDER A person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands. The area includes, for example, China, Japan, Korea, and Samoa.~~

~~FILIPINO A person having origins in any of the original people of the Philippine Islands.~~

~~AMERICAN INDIAN OR ALASKAN NATIVE A person having origins in any of the original peoples of North America, and who maintains cultural identification through tribal affiliation or community recognition.~~

~~(l) "Sponsor's Labor Market Area" means:~~

~~(1) The geographical area from which the program sponsor normally draws upon for its work force and for which statistics are gathered; or~~

~~(2) Any other geographical boundary for which statistics are gathered, that can be reasonably justified and agreed to by the Agency.~~

~~(m) "Utilization of minorities" means the percentage of minority apprentices by ethnic group in crafts represented by a program sponsor equal to the percentage that each ethnic group bears to the ethnic population of the appropriate statistical area but in no case shall the percentage be less than the total minority population.~~

~~(n) "Utilization of women" means 50 percent of the proportion of women in the work force in the program sponsor's labor market area irrespective of the ethnic group represented, subject to the provisions of Section 5 (f) of this plan.~~

~~(o) "Good Faith Efforts" mean a program sponsor's actions to fulfill its commitment to equal opportunity in the recruitment, selection, employment and training of apprentices, its actions to comply with the provisions of its written affirmative plan and, when appropriate, to make necessary changes to obtain the maximum effectiveness toward the attainment of its goals. Each case in which good faith efforts are in question shall be considered separately since there is no inflexible definition under which good faith efforts can be applied to all cases.~~

3. Authority to Adopt and to Implement the State Plan

The authority for the adoption of these policies and procedures affecting the registration of apprenticeship programs in the State of California is vested in the

California Apprenticeship Council under authority of Chapter 4 of Division 3 of the State of California Labor Code. Authority for the implementation of these policies and procedures (affecting the registration of apprenticeship programs in the State of California) is vested in the Chief of the Division of Apprenticeship Standards under authority of Chapter 4 of Division 3 of the State of California Labor Code.

4. Equal Opportunity Standards Applicable to All Sponsors

~~(a) Obligation of Sponsors. Each sponsor of an apprenticeship program shall:~~

(a)

~~(1) Recruit, select, employ, and train apprentices during their Discrimination prohibited. It is unlawful for a sponsor of a registered apprenticeship, without discrimination because program to discriminate against an apprentice or applicant for apprenticeship on the basis of race, color, religion, national origin or sex; and religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age for individuals over forty years of age, military or veteran status, or sexual orientation with regard to all of the following:~~

~~(A) Recruitment, outreach, and selection procedures.~~

~~(B) Hiring or placement, upgrading, periodic advancement, promotion, demotion, transfer, layoff, termination, right of return from layoff, and rehiring.~~

~~(C) Rotation among work processes.~~

~~(D) Imposition of penalties or other disciplinary action.~~

~~(E) Rates of pay or any other form of compensation and changes in compensation.~~

~~(F) Conditions of work.~~

~~(G) Hours of work and hours of training provided.~~

~~(H) Job assignments.~~

~~(I) Leaves of absence, sick leave, or any other leave.~~

~~(J) Any other benefit, term, condition, or privilege associated with apprenticeship.~~

~~(2) Uniformly apply rules and regulations concerning apprentices, including but not limited to, equality of wages, periodic advancement, promotion, assignment of work, job performance, rotation among all work processes of the trade, imposition of penalties or other disciplinary action, and all other aspects of the apprenticeship program administration by the program sponsor; and Discrimination standards and defenses. In implementing this section, the Agency and the Administrator of Apprenticeship will look to the legal standards, defenses, and exceptions applied under the Fair Employment and Housing Act, its implementing regulations, and any interpretive guidance issued by the Department of Fair Employment and Housing, as applicable, in determining whether a sponsor has engaged in a practice unlawful under paragraph (a)(1).~~

~~(3) Take affirmative action to provide equal opportunity in apprenticeship, including adoption of an affirmative action plan as required by this State Plan.~~

(b) General duty to engage in affirmative action. For each registered apprenticeship program, a sponsor is required to take affirmative steps to provide equal opportunity in apprenticeship. These steps must include:

(1) Assignment of responsibility. The sponsor will designate an individual or individuals with appropriate authority under the program, such as an apprenticeship coordinator, to be responsible and accountable for overseeing its commitment to equal opportunity in registered apprenticeship, including the development and implementation of an affirmative action program as required by section 5. The individual(s) must have the resources, support of, and access to the sponsor leadership to ensure effective implementation. The individual(s) will be responsible for:

(A) Monitoring all registered apprenticeship activity to ensure compliance with the nondiscrimination and affirmative action obligations required by this plan;

(B) Maintaining records required under this plan; and

(C) Generating and submitting reports as may be required by the Agency.

(2) Internal dissemination of equal opportunity policy. The sponsor must inform all applicants for apprenticeship, apprentices, and individuals connected with the administration or operation of the registered apprenticeship program of its commitment to equal opportunity and its affirmative action obligations. In addition, the sponsor must require that individuals connected with the administration or operation of the apprenticeship program take the necessary action to aid the sponsor in meeting its nondiscrimination and affirmative action obligations under this plan. A sponsor, at a minimum, is required to:

(A) Publish its equal opportunity pledge - set forth in paragraph (c) of this section - in the apprenticeship standards required under section 212 of title 8 of the California Code of Regulations, and in appropriate publications, such as apprentice and employee handbooks, policy manuals, newsletters, or other documents disseminated by the sponsor or that otherwise describe the nature of the sponsorship;

(B) Post its equal opportunity pledge from paragraph (c) of this section on bulletin boards, including through electronic media, such that it is accessible to all apprentices and applicants for apprenticeship;

(C) Conduct orientation and periodic information sessions for individuals connected with the administration or operation of the apprenticeship program, including all apprentices and journeyworkers who regularly work with apprentices, to inform and remind such individuals of the sponsor's equal employment opportunity policy with regard to

apprenticeship, and to provide the training required by paragraph (b)(4)(i) of this section; and

(D) Maintain records necessary to demonstrate compliance with these requirements and make them available to the Agency upon request.

(3) Universal outreach and recruitment. The sponsor will implement measures to ensure that its outreach and recruitment efforts for apprentices extend to all persons available for apprenticeship within the sponsor's relevant recruitment area without regard to race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age for individuals over forty years of age, military or veteran status, or sexual orientation. In furtherance of this requirement, the sponsor must:

(A) Develop and update annually a list of current recruitment sources that will generate referrals from all demographic groups within the relevant recruitment area. Examples of relevant recruitment sources include: The public workforce system's One-Stop Career Centers and local workforce investment boards; community-based organizations; community colleges; vocational, career and technical schools; pre-apprenticeship programs; and Federally-funded, youth job-training programs such as YouthBuild and Job Corps or their successors;

(B) Identify a contact person, mailing address, telephone number, and email address for each recruitment source; and

(C) Provide recruitment sources advance notice, preferably 30 days, of apprenticeship openings so that the recruitment sources can notify and refer candidates. Such notification must also include documentation of the sponsor's equal opportunity pledge specified in paragraph (c) of this section.

(4) Maintaining apprenticeship programs free from harassment, intimidation, and retaliation. The sponsor must develop and implement procedures to ensure that its apprentices are not harassed because of their race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age for individuals over forty years of age, military or veteran status, or sexual orientation and to ensure that its apprenticeship program is free from intimidation and retaliation as prohibited by section 20. To promote an environment in which all apprentices feel safe, welcomed, and treated fairly, the sponsor must ensure the following steps are taken:

(A) Providing anti-harassment training to all individuals connected with the administration or operation of the apprenticeship program, including all apprentices and journeyworkers who regularly work with apprentices. This training must not be a mere transmittal of information, but must include participation by trainees, such as attending a training session in person or completing an interactive training online. The training content must include, at a minimum, communication of the following:

(i) That harassing conduct will not be tolerated;

(ii) The definition of harassment and the types of conduct that constitute unlawful harassment on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age for individuals over forty years of age, military or veteran status, or sexual orientation; and

(iii) The right to file a harassment complaint under section 16 of this plan.

(B) Making all facilities and apprenticeship activities available without regard to race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age for individuals over forty years of age, military or veteran status, or sexual orientation except that if the sponsor provides restrooms or changing facilities, the sponsor must provide separate or single-user restrooms and changing facilities to assure privacy between the sexes;

(C) Establishing and implementing procedures for handling and resolving complaints about harassment and intimidation based on race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age for individuals over forty years of age, military or veteran status, or sexual orientation, as well as complaints about retaliation for engaging in protected activity described section 20 of this plan.

(5) Compliance with Federal and State equal employment opportunity laws. The sponsor must comply with all other applicable Federal and State laws and regulations that require equal employment opportunity without regard to race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age for individuals over forty years of age, military or veteran status, or sexual orientation. Failure to comply with such laws if such noncompliance is related to the equal employment opportunity of apprentices and/or graduates of such an apprenticeship programs under this plan is grounds for deregistration or the imposition of other enforcement actions in accordance with section 18.

~~(b)~~(c) Equal Opportunity Pledge.

(1) Each sponsor of an apprenticeship program shall include in its apprenticeship standards and apprenticeship opportunity announcements the following equal opportunity pledge:

[Name of program] will not discriminate against apprenticeship applicants or apprentices based on race, religious creed, color, national origin, ancestry,

~~physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age for individuals over forty years of age, military or veteran status, or sexual orientation. [Name of program] will take affirmative steps to provide equal opportunity in apprenticeship. "The recruitment, selection, employment, and training of apprentices during their apprenticeship, shall be without discrimination because of race, color, religion, national origin or sex. The sponsor will take affirmative action to provide equal opportunity in apprenticeship for both minorities and women and will operate the apprenticeship program as required under Title 29 of the Code of Federal Regulations, Part 30, and equal employment opportunity regulation of the State of California."~~

~~(c) Sponsors Seeking New Registration. A sponsor of a program seeking new registration with the Agency shall submit copies of its proposed standards, affirmative action plan, selection procedures, and such other information as may be required. The program shall be registered if such standards, affirmative action plan, and selection procedure meet the requirements of this plan.~~

(d) Compliance.

~~Programs Subject to Approved Equal Employment Opportunity Plans. A sponsor shall not be required to adopt an affirmative action plan under Section 5 or a selection procedure under Section 6 if it submits to the Agency satisfactory evidence that it is subject to an equal opportunity program providing for the selection of apprentices and for affirmative action in apprenticeship including goals and timetables for women and minorities which has been approved as meeting the requirements of Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.) and its implementing regulations published in Title 29 of the Code of Federal Regulations, Chapter XIV or Executive Order 11246, as amended and its implementing regulations in Title 41 of the Code of Federal Regulations, Chapter 60. Provided that the programs approved, modified or renewed subsequent to the effective date of this amendment will qualify for this exception only if the goals and timetables for minorities and women for the selection of apprentices provided for in such programs are equal to or greater than the goals required under this plan.~~

~~(1) Current sponsors: A sponsor that has a registered apprenticeship program as of the effective date of this regulation must comply with all obligations of this section within 180 days of the effective date of this plan.~~

~~(2) New sponsors: A sponsor registering with the Agency after the effective date of this plan shall comply with all obligations of this section upon registration or 180 days after the effective date of this plan, whichever is later.~~

~~(e) Programs with Fewer Than Five Apprentices. A sponsor of a program in which fewer than five apprentices are indentured shall not be required to adopt an affirmative action~~

~~plan under Section 5 or a selection procedure under Section 6 provided, that such program was not adopted to circumvent the requirements of this plan.~~

5. ~~Equal Affirmative Action Plans~~Programs

(a) Definition and purpose. As used in this plan:

(1) An affirmative action program is designed to ensure equal opportunity and prevent discrimination in apprenticeship programs. An affirmative action program is more than mere passive nondiscrimination. Such a program requires the sponsor to take affirmative steps to encourage and promote equal opportunity, to create an environment free from discrimination, and to address any barriers to equal opportunity in apprenticeship. An affirmative action program is more than a paperwork exercise. It includes those policies, practices, and procedures, including self-analyses, that the sponsor implements to ensure that all qualified applicants and apprentices are receiving an equal opportunity for recruitment, selection, advancement, retention and every other term and privilege associated with apprenticeship. An affirmative action program should be a part of the way the sponsor regularly conducts its apprenticeship program.

(2) A central premise underlying affirmative action is that, absent discrimination, over time a sponsor's apprenticeship program, generally, will reflect the sex, race, ethnicity, and disability profile of the labor pools from which the sponsor recruits and selects. Consistent with this premise, affirmative action programs contain a diagnostic component which includes quantitative analyses designed to evaluate the composition of the sponsor's apprenticeship program and compare it to the composition of the relevant labor pools. If women, individuals with disabilities, or individuals from a particular minority group, for example, are not being admitted into apprenticeship at a rate to be expected given their availability in the relevant labor pool, the sponsor's affirmative action program must include specific, practical steps designed to address any barriers to equal opportunity that may be contributing to this underutilization.

(3) Effective affirmative action programs include internal auditing and reporting systems as a means of measuring the sponsor's progress toward achieving an apprenticeship program that would be expected absent discrimination.

(4) An affirmative action program also ensures equal opportunity in apprenticeship by incorporating the sponsor's commitment to equality in every aspect of the apprenticeship program. Therefore, as part of its affirmative action program, a sponsor must monitor and examine its employment practices, policies and decisions and evaluate the impact such practices, policies and decisions have on the recruitment, selection and advancement of apprentices. It must evaluate the impact of its employment and personnel policies on minorities, women, and persons with disabilities, and revise such policies accordingly where such policies or practices are found to create a barrier to equal opportunity.

(5) The commitments contained in an affirmative action program are not intended and must not be used to discriminate against any qualified applicant or apprentice on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age for individuals over forty years of age, military or veteran status, or sexual orientation.

(b) Adoption of affirmative action programs. Sponsors other than those identified in paragraph (d) of this section must develop and maintain an affirmative action program, setting forth that program in a written plan. The components of the written plan, as detailed in sections 6 through 10, must be developed in accordance with the respective compliance dates and made available to the Agency any time thereafter upon request.

(c) Contents of affirmative action programs. An affirmative action program must include the following components in addition to those required of all sponsors by section 4(a):

(1) Utilization analysis for race, sex, and ethnicity, as described in section 6;

(2) Establishment of utilization goals for race, sex, and ethnicity, as described in section 7;

(3) Utilization goals for individuals with disabilities, as described in section 8;

(4) Targeted outreach, recruitment, and retention, as described in section 9;

(5) Review of personnel processes, as described in section 10; and

(6) Invitations to self-identify, as described in section 11

(d) Exemptions -

(1) Programs with fewer than five apprentices. A sponsor is exempt from the requirements of paragraphs (b) and (c) of this section if the sponsor's apprenticeship program has fewer than five apprentices registered, unless such program was adopted to circumvent the requirements of this section.

(2) Programs subject to approved equal employment opportunity programs. A sponsor is exempt from the requirements of paragraphs (b) and (c) of this section if the sponsor both submits to the Agency satisfactory evidence that it is in compliance with an equal employment opportunity program providing for affirmative action in apprenticeship, including the use of goals for any underrepresented group or groups of individuals, which has been approved as meeting the requirements of either title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000e et seq.) and agrees to extend such program to include individuals with disabilities, or if the sponsor submits to the Agency satisfactory evidence that it is in compliance with an equal employment

opportunity program providing for affirmative action in apprenticeship, including the use of goals for any underrepresented group or groups of individuals, which has been approved as meeting the requirements of both Executive Order 11246, as amended, and section 503 of the Rehabilitation Act, as amended (29 U.S.C. 793), and their implementing regulations at title 41 of the Code of Federal Regulations, Chapter 60: Provided, That programs approved, modified or renewed subsequent to the effective date of this amendment will qualify for this exception only if the goals for any underrepresented group for the selection of apprentices provided for in such programs are likely to be equal to or greater than the goals required under this plan.

(e) Written affirmative action plans. Sponsors required to undertake an affirmative action program must create and update a written document memorializing and discussing the contents of the program set forth in paragraph (c) of this section.

(1) Compliance -

(A) Apprenticeship programs existing as of the effective date of this plan. The initial written affirmative action plan for such programs must be completed within two years of the effective date of this plan. The written affirmative action plan for such programs must be updated every time the sponsor completes workforce analyses required by section 6(b) and section 8(d)(2).

(B) Apprenticeship programs registered after the effective date of this plan. The initial written affirmative action plan for such programs must be completed within two years of registration. The written affirmative action plan for such programs must be updated every time the sponsor completes workforce analyses required by section 6(b) and section 8(d)(2).

~~(a) Adoption of Affirmative Action Plans. A sponsor's commitment to equal opportunity in recruitment, selection, employment and training of apprentices shall include the adoption of a written affirmative action plan.~~

~~— Definition of Affirmative Action. Affirmative action is not mere passive nondiscrimination. It includes procedures, methods and programs for the identification, positive recruitment, training, and motivation of present and potential minority group and female (minority and nonminority) apprentices including the establishment of goals and timetables. It is action which will equalize opportunity in apprenticeship so as to allow full utilization of the work potential of minorities and women. The overall result to be sought is equal opportunity in apprenticeship for all individuals participating in or seeking entrance to the nation's labor force.~~

~~(b) Outreach and Positive Recruitment. An acceptable affirmative action plan must also include adequate provision for outreach and positive recruitment that would reasonably be expected to increase minority and female participation in apprenticeship by expanding the opportunity of minorities and women to become~~

~~eligible for apprenticeship selection. In order to achieve these objectives, sponsors shall undertake activities such as those listed below. It is not contemplated that each sponsor necessarily will include all of the listed activities in its affirmative action program. The scope of the affirmative action program will depend on all the circumstances including the size and type of program and its resources. However, the sponsor will be required to undertake a significant number of appropriate activities in order to enable it to meet its obligations under this plan. The affirmative action plan shall set forth the specific steps the sponsor intends to take in the areas listed below.~~

- ~~(0) Dissemination of information concerning the nature of apprenticeship, requirements for admission to apprenticeship, availability of apprenticeship opportunities, sources of apprenticeship application, and the equal opportunity policy of the sponsor. For programs accepting applications only at specified intervals, such information shall be disseminated at least 45 calendar days in advance of the closing date for taking applications at each interval. For programs customarily receiving applications throughout the year, such information shall be regularly disseminated but not less than semi-annually. Such information shall be given to the Agency, local schools, employment service offices, women's centers, outreach programs and community organizations which can effectively reach minorities and women, and shall be published in newspapers which are circulated in the minority community and among women as well as the general areas in which the program sponsor operates.~~
- ~~(0) Participate in annual workshops conducted by employment service agencies and minority and women's groups concerned with employment for the purpose of familiarizing school, employment service and other appropriate personnel with the apprenticeship system and current opportunities therein.~~
- ~~(0) Cooperation with local school boards and vocational education systems to develop programs for preparing all interested students including minorities and women to meet the standards and criteria required to qualify for entry into apprenticeship programs.~~
- ~~(0) Internal communication of the sponsor's equal opportunity policy in such manner as to foster understanding, acceptance and support among the sponsor's various officers, supervisors, employees and members and to encourage such persons to take the necessary action to aid the sponsor in meeting its obligations under this plan.~~
- ~~(0) Engaging in programs such as outreach for the positive recruitment and preparation of potential applicants for apprenticeship; where appropriate and feasible, such programs shall provide for protesting experience and training. If no such programs are in existence, the sponsor shall seek to initiate these programs, or when available to obtain financial assistance from the~~

~~Department. In initiating and conducting these programs, the sponsor may be required to work with other sponsors and appropriate community organizations. The sponsor shall also initiate programs to prepare women and encourage women to enter traditionally male programs.~~

~~(0) To encourage the establishment and utilization of programs of preapprenticeship, preparatory trade training, or others designed to afford related work experience or to prepare candidates for apprenticeship, a sponsor shall make appropriate provision in its affirmative action plan to assure that those who complete such programs are afforded full and equal opportunity for admission into the apprenticeship program.~~

~~(0) Utilization of journeymen to assist in the implementation of the sponsor's affirmative action program.~~

~~(0) Granting advance standing or credit on the basis of previously acquired experience, training, skills or aptitude for all applicants equally.~~

~~(0) Other appropriate action as to ensure that the recruitment, selection, employment, and training of apprentices during apprenticeship shall be without discrimination because of race, color, religion, national origin, or sex; such as, general publication of apprenticeship opportunities and advantages in advertisements, industry reports, articles, etc.; use of present minority and female apprentices and journeymen as recruiters; career counseling; periodic auditing of affirmative action programs and activities; and development of reasonable procedures between the sponsors and employers of apprentices to ensure that equal opportunity is being granted including reporting systems, on-site reviews, briefing sessions, etc. The affirmative action program shall set forth the specific steps the sponsor intends to take, in the above areas, under this paragraph (c). Whenever special circumstances warrant, the Department may provide such financial or other assistance as it deems necessary to implement the above requirements.~~

~~(0) The collection and maintenance of applicant flow statistics to facilitate implementation of the California Plan.~~

~~(b) Goals and Timetables:~~

~~(1) A sponsor adopting a selection method under Section 6 (b) (1) or (2) which determines on the basis of the analysis described in paragraph (c) of this section that it has deficiencies in terms of underutilization of minorities and/or women (minority and non-minority) in the craft or crafts represented by the program shall include in its affirmative action plan percentage goals and timetables for the admission of minority and/or female (minority and non-minority) applicants into the eligibility pool.~~

~~(1) A sponsor adopting a selection method under Section 6 (b)(3) or (4) which determines on the basis of the analysis described in paragraph (e) of this section that it has deficiencies in terms of the underutilization of minorities and/or women in the craft or crafts represented by the program shall include in its affirmative action plan percentage goals and timetables for the selection of minority and/or female (minority and non-minority) applicants for the apprenticeship program.~~

~~(1) "Underutilization" as used in this paragraph refers to the situation where there are fewer minorities and/or women (minority and non-minority) in the particular craft or crafts represented by the program than would reasonably be expected in view of an analysis of the specific factors in subparagraphs (1) through (5) in paragraph (e) of this section. Where on the basis of the analysis, the sponsor determines that it has no deficiencies, no goals and timetables need be established. However, where no goals and timetables are established, the affirmative action plan shall include a detailed explanation why no goals and timetables have been established.~~

~~(1) Where the sponsor fails to submit goals and timetables as part of its affirmative action plan or submits goals and timetables which are unacceptable, and the Agency determines that the sponsor has deficiencies in terms of underutilization of minorities or women (minority and nonminority) within the meaning of this section, the Agency shall establish goals and timetables applicable to the sponsor for the admission of minority and female (minority and nonminority) applicants into the eligibility pool for selection of apprentices, as appropriate. The sponsor shall make good faith efforts to attain these goals and timetables in accordance with the requirements of this section.~~

~~(b) Analysis to Determine if Deficiencies Exist. — The sponsor's determination as to whether goals and timetables shall be established, shall be based on an analysis of at least the following factors, which analysis shall be set forth in writing as part of the affirmative action plan.~~

~~(0) The size of the working age minority and female (minority and nonminority) population in the program sponsor's labor market area;~~

~~(0) The size of the minority and female (minority and nonminority) labor force in the program sponsor's labor market area;~~

~~(0) The percentage of minority and female (minority and nonminority) participation as apprentices in the particular craft as compared with the percentage of minorities and women (minority and nonminority) in the labor force in the program sponsor's labor market area;~~

~~(0) The percentage of minority and female (minority and non-minority) participation as journeymen employed by the employer or employers participating in the program as compared with the percentage of minorities and women (minority and non-minority) in the sponsor's labor market area~~

~~and the extent to which the sponsor should be expected to correct any deficiencies through the achievement of goals and timetables for the selection of apprentices.~~

- ~~(0) The general availability of minorities and women (minority and non-minority) with present or potential capacity for apprenticeship in the program sponsor's labor market area.~~
- ~~(0) Each sponsor shall prepare a written analysis of its program in order to determine whether or not the program meets the requirements of this plan. Statistical information should be broken down as follows:~~
 - ~~Ratio of each ethnic group population to the total population of the appropriate statistical area.~~
 - ~~Ratio of apprentices to journeymen allowable in the standards.~~
 - ~~Actual ratio of apprentices to journeymen.~~
 - ~~Ratio of minority apprentices by ethnic group against total number of apprentices in program.~~
 - ~~Applicable female statistics.~~

~~(b) Establishment and Attainment of Goals and Timetables. The goals and timetables shall be established on the basis of the sponsor's analysis of its underutilization of minorities and women and its entire affirmative action program. A single goal for minorities and a separate single goal for women is acceptable unless a particular group is employed in a substantially disparate manner in which case separate goals shall be established for such group. Such separate goals would be required, for example, if a specific minority group of women were underutilized even though the sponsor had achieved its standards for women generally. In establishing the goals, the sponsor should consider the results which could be reasonably expected from its good faith efforts to make its overall affirmative action program work. Compliance with these requirements shall be determined by whether the sponsor has met its goals within its timetables, or failing that, whether it has made good faith efforts to meet its goals and timetables. Its good faith efforts shall be judged by whether it is following its affirmative action program and attempting to make it work, including evaluation and changes in its program where necessary to obtain the maximum effectiveness toward the attainment of its goals. However, in order to deal fairly with program sponsors and with women who are entitled to protection under the goals and timetables requirements, during the first 12 months after the effective date of these regulations, the program sponsor would generally be expected to set a goal for women for the entering year class at a rate which is not less than 50 percent of the proportion women are of the work force in the program sponsor's labor market area and set a percentage goal for women in each class beyond the entering class which is not less than the participation rate of women currently in the preceding class. At the end of the first 12 months after the effective date of these regulations, sponsors are expected to make appropriate adjustments in goal levels.~~

~~(b) Data and Information. The Secretary or designated person or agency shall make available to program sponsors data and information on minority and female~~

~~(minority and nonminority) labor force characteristics for each Standard Metropolitan Statistical Area, and for other special areas as appropriate.~~

6. Utilization analysis for race, sex, and ethnicity

(a) Purpose. The purpose of the utilization analysis is to provide sponsors with a method for assessing whether possible barriers to apprenticeship exist for particular groups of individuals by determining whether the race, sex, and ethnicity of apprentices in a sponsor's apprenticeship program is reflective of persons available for apprenticeship by race, sex, and ethnicity in the relevant recruitment area. Where significant disparity exists between availability and representation, the sponsor will be required to establish a utilization goal pursuant to section 7.

(b) Analysis of apprenticeship program workforce -

(1) Process. Sponsors must analyze the race, sex, and ethnic composition of their apprentice workforce. This is a two-step process. First, each sponsor must group all apprentices in its registered apprenticeship program by occupational title. Next, for each occupation represented, the sponsor must identify the race, sex, and ethnicity of its apprentices within that occupation.

(2) Schedule of analyses. Each sponsor is required to conduct an apprenticeship program workforce analysis at each compliance review, and again if and when three years have passed without a compliance review. This updated workforce analysis should be compared to the utilization goal established at the sponsor's most recent compliance review to determine if the sponsor is underutilized, according to the process in paragraph (d) of this section.

(3) Compliance date.

(A) Sponsors registered with the Agency as of the effective date of this plan: A sponsor must conduct its first workforce analysis, pursuant to this section, no later than two years after the effective date of this plan.

(B) New sponsors: A sponsor registering with the Agency after the effective date of this plan must conduct its initial workforce analysis pursuant to this section no later than two years after the date of registration.

(c) Availability analysis –

(1) The purpose of the availability analysis is to establish a benchmark against which the demographic composition of the sponsor's apprenticeship program can be compared in order to determine whether barriers to equal opportunity may exist with regard to the sponsor's apprenticeship program.

(2) Availability is an estimate of the number of qualified individuals available for apprenticeship by race, sex, and ethnicity expressed as a percentage of all qualified persons available for apprenticeship in the sponsor's relevant recruitment area.

(3) In determining availability, the following factors must be considered for each major occupation group represented in the sponsor's registered apprenticeship program standards:

(A) The percentage of individuals who are eligible for enrollment in the apprenticeship program, within the sponsor's relevant recruitment area broken down by race, sex, and ethnicity; and

(B) The percentage of the sponsor's employees who are eligible for enrollment in the apprenticeship program broken down by race, sex, and ethnicity.

(4) In determining availability, the relevant recruitment area is defined as the geographical area from which the sponsor usually seeks or reasonably could seek apprentices. The sponsor must identify the relevant recruitment area in its written affirmative action plan. The sponsor may not draw its relevant recruitment area in such a way as to have the effect of excluding individuals based on race, sex, or ethnicity from consideration, and must develop a brief rationale for selection of that recruitment area.

(5) Availability will be derived from the most current and discrete statistical information available. Examples of such information include census data, data from local job service offices, and data from colleges or other training institutions.

(6) Sponsors, working with the Agency, will conduct availability analyses at each compliance review.

(d) Rate of utilization. To determine the rate of utilization, the sponsor, working with the Agency, must group each occupational title in its apprenticeship workforce by major occupation group and compare the racial, sex, and ethnic representation within each major occupation group to the racial, sex, and ethnic representation available in the relevant recruitment area, as determined in paragraph (c) of this section. When the sponsor's utilization of women, Hispanics or Latinos, or a particular racial minority group is significantly less than would be reasonably expected given the availability of such individuals for apprenticeship, the sponsor must establish a utilization goal for the affected group in accordance with the procedures set forth in section 7. Sponsors are not required or expected to establish goals where no significant disparity in utilization rates has been found.

7. Establishment of utilization goals for race, sex, and ethnicity

(a) Where, pursuant to section 6, a sponsor is required to establish a utilization goal for a particular racial, sex, or ethnic group in a major occupation group in its apprenticeship

program, the sponsor, working with the Agency, must establish a percentage goal at least equal to the availability figure derived under section 6(c) for that major occupation group.

(b) A sponsor's determination under section 6 that a utilization goal is required constitutes neither a finding nor an admission of discrimination.

(c) Utilization goals serve as objectives or targets reasonably attainable by means of applying every good faith effort to make all aspects of the entire affirmative action program work. Utilization goals are used to measure the effectiveness of the sponsor's outreach, recruitment, and retention efforts.

(d) In establishing utilization goals, the following principles apply:

(1) Utilization goals may not be rigid and inflexible quotas, which must be met, nor are they to be considered either a ceiling or a floor for the selection of particular groups as apprentices. Quotas are expressly forbidden.

(2) Utilization goals may not provide a sponsor with a justification to extend a preference to any individual, select an individual, or adversely affect an individual's status as an apprentice, on the basis of that person's race, sex, or ethnicity.

(3) Utilization goals do not create set-asides for specific groups, nor are they intended to achieve proportional representation or equal results.

(4) Utilization goals may not be used to supersede eligibility requirements for apprenticeship. Affirmative action programs prescribed by the regulations of this plan do not require sponsors to select a person who lacks qualifications to participate in the apprenticeship program successfully, or select a less-qualified person in preference to a more qualified one.

8. Utilization goals for individuals with disabilities

(a) Utilization goal. The Council has established a utilization goal of 7 percent for employment of qualified individuals with disabilities as apprentices for each major occupation group within which the sponsor has an apprenticeship program.

(b) Purpose. The purpose of the utilization goal established in paragraph (a) of this section is to establish a benchmark against which the sponsor must measure the representation of individuals with disabilities in the sponsor's apprentice workforce by major occupation group. The goal serves as an equal opportunity objective that should be attainable by complying with all of the affirmative action requirements of this plan.

(c) Periodic review of goal. The Council will periodically review and update, as appropriate, the utilization goal established in paragraph (a) of this section.

(d) Utilization analysis -

(1) Purpose. The utilization analysis is designed to evaluate the representation of individuals with disabilities in the sponsor's apprentice workforce grouped by major occupation group. If individuals with disabilities are represented in the sponsor's apprentice workforce in any given major occupation group at a rate less than the utilization goal, the sponsor must take specific measures outlined in paragraphs (e) and (f) of this section.

(2) Apprentice workforce analysis -

(A) Process. Sponsors are required to analyze the representation of individuals with disabilities within their apprentice workforce by occupation. This is a two-step process. First, as required in section 6, each sponsor must group all apprentices in its registered apprenticeship program according to the occupational titles represented in its registered apprenticeship program. Next, for each occupation represented, the sponsor must identify the number of apprentices with disabilities.

(B) Schedule of evaluation. The sponsor must conduct its apprentice workforce analysis at each compliance review, and again if and when three years have passed without a compliance review. This updated workforce analysis, grouped according to major occupation group, should then be compared to the utilization goal established under paragraph (a) of this section.

(C) Compliance date.

(i) Sponsors currently registered with the Agency: A sponsor must conduct its first workforce analysis, pursuant to this section, no later than two years after the effective date of this plan.

(ii) New sponsors: A sponsor registering with the Agency after the effective date of this plan must conduct its initial workforce analysis pursuant to this section no later than two years after the date of registration.

(e) Identification of problem areas. When the sponsor, working with the Agency, determines that the percentage of individuals with disabilities in one or more major occupation groups within which a sponsor has apprentices is less than the utilization goal established in paragraph (a) of this section, the sponsor must take steps to determine whether and/or where impediments to equal opportunity exist. When making this determination, the sponsor must look at the results of its assessment of personnel processes required by section 10 and the effectiveness of its outreach and recruitment efforts required by section 9 of this plan, if applicable.

(f) Action-oriented programs. The sponsor must undertake action-oriented programs, including targeted outreach, recruitment, and retention activities identified in section 9, designed to correct any problem areas that the sponsor identified pursuant to its review of personnel processes and outreach and recruitment efforts.

(g) Utilization goal relation to discrimination. A determination that the sponsor has not attained the utilization goal established in paragraph (a) of this section in one or more major occupation groups does not constitute either a finding or admission of discrimination in violation of this plan.

(h) Utilization goal not a quota or ceiling. The utilization goal established in paragraph (a) of this section must not be used as a quota or ceiling that limits or restricts the employment of individuals with disabilities as apprentices.

9. Targeted outreach, recruitment, and retention

(a) Minimum activities required. Where a sponsor has found underutilization and established a utilization goal for a specific group or groups pursuant to section 7 and/or where a sponsor has determined pursuant to section 8(f) that there are problem areas resulting in impediments to equal employment opportunity, the sponsor must undertake targeted outreach, recruitment, and retention activities that are likely to generate an increase in applications for apprenticeship and improve retention of apprentices from the targeted group or groups and/or from individuals with disabilities, as appropriate. In furtherance of this requirement, the sponsor must:

(1) Set forth in its written affirmative action plan the specific targeted outreach, recruitment, and retention activities it plans to take for the upcoming program year. Such activities must include at a minimum:

(A) Dissemination of information to organizations serving the underutilized group regarding the nature of apprenticeship, requirements for selection for apprenticeship, availability of apprenticeship opportunities, and the equal opportunity pledge of the sponsor. These organizations may include: Community-based organizations; local high schools; local community colleges; local vocational, career and technical schools; and local workforce system partners including One Stop Career Centers;

(B) Advertising openings for apprenticeship opportunities by publishing advertisements in appropriate media which have wide circulation in the relevant recruitment areas;

(C) Cooperation with local school boards and vocational education systems to develop and/or establish relationships with pre-apprenticeship programs targeting students from the underutilized group to prepare them to meet the

standards and criteria required to qualify for entry into apprenticeship programs; and

(D) Establishment of linkage agreements or partnerships enlisting the assistance and support of pre-apprenticeship programs, community-based organizations, advocacy organizations, or other appropriate organizations, in recruiting qualified individuals for apprenticeship;

(2) Evaluate and document after every selection cycle for registering apprentices the overall effectiveness of such activities;

(3) Refine its targeted outreach, recruitment, and retention activities as needed; and

(4) Maintain records of its targeted outreach, recruitment, and retention activities and records related to its evaluation of these activities.

(b) Other activities. In addition to the activities set forth in paragraph (a) of this section, as a matter of best practice, sponsors are encouraged but not required to consider other outreach, recruitment, and retention activities that may assist sponsors in addressing any barriers to equal opportunity in apprenticeship. Such activities include but are not limited to:

(1) Enlisting the use of journeyworkers from the underutilized group or groups to assist in the implementation of the sponsor's affirmative action program;

(2) Enlisting the use of journeyworkers from the underutilized group or groups to mentor apprentices and to assist with the sponsor's targeted outreach and recruitment activities; and

(3) Conducting exit interviews of each apprentice who leaves the sponsor's apprenticeship program prior to receiving a certificate of completion to understand better why the apprentice is leaving the program and to help shape the sponsor's retention activities.

10. Review of personnel processes

(a) As part of its affirmative action program, the sponsor must, for each registered apprenticeship program, engage in an annual review of its personnel processes related to the administration of the apprenticeship program to ensure that the sponsor is operating an apprenticeship program free from discrimination based on race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age for individuals over forty years of age, military or veteran status, or sexual orientation. This annual review is required regardless of whether the sponsor is underutilized as described in section 6(d). The review must be a careful, thorough, and

systematic one and include review of all aspects of the apprenticeship program at the program, industry and occupation level, including, but not limited to, the qualifications for apprenticeship, application and selection procedures, wages, outreach and recruitment activities, advancement opportunities, promotions, work assignments, job performance, rotations among all work processes of the occupation, disciplinary actions, handling of requests for reasonable accommodations, and the program's accessibility to individuals with disabilities (including to the use of information and communication technology). The sponsor must make any necessary modifications to its program to ensure that its obligations under this part are met.

(1) Compliance date.

(A) Current sponsors: A sponsor that has a registered apprenticeship program as of the effective date of this plan must comply with the obligations of paragraph (a) of this section within two years of the effective date of this rule.

(B) New sponsors: A sponsor registering with the Agency after the effective date of this plan shall comply with the obligations of paragraph (a) of this section within two years after the date of registration.

(b) The sponsor must include a description of its review in its written affirmative action plan and identify in the written plan any modifications made or to be made to the program as a result of its review.

11. Invitation to self-identify as an individual with a disability

(a) Pre-offer.

(1) A sponsor adopting an affirmative action program pursuant to section 5 must invite applicants for apprenticeship to inform the sponsor whether the applicant believes that that he or she is an individual with a disability as defined in section 11065 of title 2 of the California Code of Regulations. This invitation must be provided to each applicant when the applicant applies or is considered for apprenticeship. The invitation may be included with the application materials for apprenticeship, but must be separate from the application.

(2) The sponsor must invite an applicant to self-identify as required in paragraph (a) of this section using the language and manner prescribed by the Administrator of the Office of Apprenticeship and published on the OA Web site.

(b) Post offer.

(1) At any time after acceptance into the apprenticeship program, but before the applicant begins his or her apprenticeship, the sponsor must invite the applicant to inform the sponsor whether the applicant believes that he or she is an individual with a disability as defined in section 11065 of title 2 of the California Code of Regulations..

(2) The sponsor must invite an applicant to self-identify as required in paragraph (b) of this section using the language and manner prescribed by the Administrator of the Office of Apprenticeship and published on the OA Web site.

(c) Apprentices.

(1) Within the timeframe specified in paragraph (h) below, the sponsor must make a one-time invitation to each current apprentice to inform the sponsor whether he or she is an individual with a disability as defined in section 11065 of title 2 of the California Code of Regulations. The sponsor must make this invitation using the language and manner prescribed by the Administrator of the Office of Apprenticeship and published on the OA Web site.

(2) Thereafter, the sponsor must remind apprentices yearly that they may voluntarily update their disability status.

(d) Voluntary self-identification for apprentices. The sponsor may not compel or coerce an individual to self-identify as an individual with a disability.

(e) Confidentiality. The sponsor must keep all information on self-identification confidential, and must maintain it in a data analysis file (rather than the medical files of individual apprentices) as required under section 13(e). The sponsor must provide self-identification information to the Agency upon request. Self-identification information may be used only in accordance with this part.

(f) Affirmative action obligations. Nothing in this section may relieve the sponsor of its obligation to take affirmative action with respect to those applicants and apprentices of whose disability the sponsor has knowledge.

(g) Nondiscrimination obligations. Nothing in this section may relieve the sponsor from liability for discrimination in violation of this part.

(h) Compliance dates.

(1) Sponsors currently registered with the Agency: A sponsor must begin inviting applicants and apprentices to identify as individuals with disabilities, pursuant to this section, no later than two years after the effective date of this plan. A sponsor must also invite each of its current apprentices to voluntarily inform the sponsor whether the apprentice believes that he or she is an individual with a disability, as defined in section 11065 of title 2 of the California Code of Regulations., no later than two years after the effective date of this plan.

(2) New sponsors: A sponsor registering with the Agency after the effective date of this plan must begin inviting applicants and apprentices to identify as individuals with disabilities, pursuant to this section, no later than two years after the date of registration.

A sponsor covered by this subparagraph must also invite each of its current apprentices to voluntarily inform the sponsor whether the apprentice believes that he or she is an individual with a disability, as defined in section 11065 of title 2 of the California Code of Regulations, no later than two years after the date of registration.

7.12. Selection of Apprentices

~~(a) **Obligation of Sponsors.** In addition to the development of a written affirmative action plan to ensure that minorities and women have an equal opportunity. A sponsor's procedures for selection as of apprentices and otherwise ensure the prompt achievement of full and equal opportunity in apprenticeship, each sponsor shall further provide in its affirmative action program that the selection of apprentices shall be made under one of the methods specified must be included in the following subparagraphs (1) through (4) of paragraph (b).~~ written plan for apprenticeship standards submitted to and approved by the Agency, as required under section 212 of title 8 of the California Code of Regulations.

~~(b) **Selection Methods.** The sponsor shall adopt one of the following methods for selecting apprentices.~~ Sponsors may utilize any method or combination of methods for the selection of apprentices, provided that the selection method(s) used meets the following requirements:

~~(b) **General Provisions Regarding Selection Procedures.**~~

~~(2)(1) **Approval of Selection Procedures.** Prior to implementation, selection procedures or amendments thereto, regardless of the selection method chosen under subparagraphs (1) through (4) of this paragraph (b), shall be submitted to the Chief for approval.~~ The use of the selection procedure(s) must comply with the Uniform Guidelines on Employee Selection Procedures (UGESP) (41 CFR part 60-3), including the requirements to evaluate the impact of the selection procedure on race, sex, and ethnic groups (Hispanic or Latino/non-Hispanic or Latino) and to demonstrate job-relatedness and business necessity for those procedures that result in adverse impact in accordance with the requirements of UGESP.

~~(2) **Preference Points for Completion of Approved Pre-Apprenticeship Courses.** Where a selection method adopted by a sponsor utilizes an overall score as a qualified standard for selection (10) percentage points of the maximum possible score may be uniformly granted for purpose of giving preference to applicants who have satisfactorily completed prescribed pre-apprenticeship courses which are approved by the Chief.~~ (2) The selection procedure(s) must be uniformly and consistently applied to all applicants and apprentices within each selection procedure utilized.

~~(3) The selection procedure(s) must comply with title I of the ADA, EEOC's implementing regulations at 29 CFR part 1630, the Fair Employment and Housing Act, and the Fair Employment and Housing Council's implementing regulations at sections 11064, et seq. of title 2 of the California Code of~~

Regulations. This procedure(s) must not screen out or tend to screen out an individual with a disability or a class of individuals with disabilities, on the basis of disability, unless the standard, test or other selection criteria, as used by the program sponsor, is shown to be job-related for the position in question and is consistent with business necessity.

(4) The selection procedure(s) must be facially neutral in terms of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age for individuals over forty years of age, military or veteran status, or sexual orientation.

~~0. Selection on Basis of Rank from Pool of Eligible Applicants.~~

~~(-) Selection. A sponsor may select apprentices from a pool of eligible applicants created in accordance with the requirements of subdivision (iii) of this subparagraph on the basis of the rank order of scores of applicants on one or more qualification standards where there is a significant statistical relationship between rank order of scores and performance in the apprenticeship program. In demonstrating such relationship, the sponsor shall follow the procedures set forth in Guidelines on Employee Selection Procedures published at 41 CFR Part 60-3.~~

~~(-) Requirements. The sponsor adopting this method of selecting apprentices shall meet the requirements of subdivision (iii) through (vii) of this subparagraph.~~

~~(-) Creation of Pool of Eligibles. A pool of eligibles shall be created from applicants who meet the qualifications of minimum legal working age or from applicants who meet the qualification standards in addition to minimum legal working age, provided that any additional qualification standards conform with the following requirements:~~

~~(-) Qualification Standards. The qualification standards and the procedures for determining such qualification standards shall be stated in detail and shall provide criteria for the specific factors and attributes to be considered in evaluating applicants for admission to the pool. The score required under each qualification standard for admission to the pool shall also be specified. All qualification standards, and the score required on any standard for admission to the pool, shall be directly related to job performance, as shown by a significant statistical relationship between the score required for admission to the pool, and performance in the apprenticeship program. In demonstrating such relationships, the sponsor shall follow the procedures set forth in 41 CFR Part 60-3. Qualifications shall be considered as separately required so that the failure of an applicant to attain the specified score under a single qualification standard shall disqualify the applicant from admission to the pool.~~

~~(-) Aptitude Tests. Any qualification standard for admission to the pool consisting of aptitude test scores shall be directly related to job performance, as shown by a significant statistical relationship between the score on the aptitude test required for admission to the pool, and~~

~~performance in the apprenticeship program. In determining such relationships, the sponsor shall follow the procedures set forth in 41 CFR Part 60-3. The requirements of this subparagraph (b) shall also be applicable to aptitude tests utilized by a program sponsor which are administered by a State Employment Service Agency, or any other person, agency or organization engaged in the selection or evaluation of personnel. A national test developed and administered by a national joint apprenticeship committee will not be approved by the Agency unless such test meets the requirements of this subsection.~~

- ~~(-) Educational Attainments. All educational attainments or achievements as qualifications for admission to the pool shall be directly related to job performance, as shown by a significant statistical relationship between the score required for admission to the pool, and performance in the apprenticeship program. In demonstrating such relationships, the sponsor shall meet the requirements of 41 CFR Part 60-3. School records or a passing grade on the General Education Development tests or the California High School Proficiency Examination recognized by the State or local public instruction authority shall be evidence of educational achievement. Education requirements shall be applied uniformly to all applicants.~~
- ~~(-) Oral Interview. Oral interviews shall not be used as a qualification standard for admission into an eligibility pool. However, once an applicant is placed in the eligibility pool, and prior to selection for apprenticeship from the pool, the applicant may be required to submit to an oral interview. Oral interviews shall be limited only to such objective questions as may be required to determine the fitness of applicants to enter the apprenticeship program, but shall not include questions relating to qualifications previously determined in gaining entrance to the eligibility pool. When an oral interview is used, each interviewer shall record his questions, the general nature of answers, and shall prepare a summary of any conclusions. The questions, general nature of answers and summary of any conclusions shall be kept on file pursuant to Sec. 8 (d) of this plan and made available to any subject applicant upon his or her request. Each applicant rejected from the pool of eligibles on the basis of an oral interview shall be given a written statement of such rejection, the reasons therefor, and the appeal rights available to the applicant.~~
- ~~(-) Notification of Applicants. All applicants who meet the requirements for admission shall be notified and placed in the eligibility pool. The program sponsor shall give notice of rejection to each rejected applicant, including the reasons, the requirements for admission to the pool of eligibles, and the appeal rights available to the applicant.~~
- ~~(-) Goals and Timetables. The sponsor shall establish, where required by Section 5 (d), percentage goals and timetable for the admission of minorities and women (minority and non-minority) into the pool of eligibles in accordance with the provisions of Section 5 (d), (e) and (f).~~
- ~~(-) Compliance. A sponsor shall be deemed to be in compliance with its commitments under subdivision (vi) of this subparagraph if it meets its goals~~

~~and timetables or if it makes a good faith effort to meet these goals and timetables. In the event of the failure of the sponsor to meet its goals and timetables, it shall be given an opportunity to demonstrate that it has made every good faith effort to meet its commitment (See Section 5(f). All the actions of the sponsor shall be reviewed and evaluated in determining whether such good faith efforts have been made.~~

~~0. Random Selection from Pool of Eligible Applicants:~~

- ~~(-) Selection. A sponsor may select apprentices from a pool of eligible applicants on a random basis. The method of random selection is subject to approval by the Agency. Supervision of the random selection process shall be by an impartial person or persons selected by the sponsor, but not associated with the administration of the apprenticeship program. The time and place of the selection, and the number of apprentices to be selected, shall be announced. The place of the selection shall be open to all applicants and the public. The names of apprentices drawn by this method shall be posted immediately following the selection at the program sponsor's place of business.~~
- ~~(-) The sponsor adopting this method of selecting apprentices shall meet the requirements of subdivision (iii) through (v) of subparagraph (1) of this paragraph relating to the creation of pool of eligibles, oral interviews and notification of applicants.~~
- ~~(-) Goals and Timetables. The sponsor shall establish, where required by Section 5 (d), percentage goals and timetables for the admission of minorities and women (minority and non-minority) into the eligibles in accordance with the provisions of Section 5 (d), (e) and (f).~~
- ~~(-) Compliance. Determinations as to the sponsor's compliance with its obligations under these regulations shall be in accordance with the provisions of subdivision (vii) of subparagraph (1) of this paragraph (b).~~

~~0. Selection from Pool of Current Employees:~~

- ~~(-) Selection. A sponsor may select apprentices from an eligibility pool of the workers already employed by the program sponsor in a manner prescribed by a collective bargaining agreement where such exists, or by the sponsor's established promotion policy. The sponsor adopting this method of selecting apprentices shall establish goals and timetables for the selection of minority and female apprentices, unless the sponsor concludes, in accordance with the provisions of Section 5 (d), (e) and (f) that it does not have deficiencies in terms of under utilization of minorities and / or women (minority and nonminority) in the apprenticeship of journeymen crafts represented by the program.~~
 - ~~(a) Dissemination of information for apprentice openings shall be within the plant or limits of the restricted pool of eligibles 45 days before the closing of the taking of applications. Additional information is to be disseminated regarding entry into the pool on a broad basis as part of the affirmative action program.~~
 - ~~(a) Any educational requirements must be job related. Educationally, job related requirements may be waived by adequate examination but not by requiring a formal education.~~

~~(a) Written selection procedures must name any tests, indicate who administers them along with the cut-off scores, if any. Tests and interviews must be job related. Relative weight is pass or fail and ranked by plantwide seniority unless otherwise determined through analysis and agreement.~~

~~(-) Compliance. Determination as to the sponsor's compliance with its obligations under these regulations shall be in accordance with the provisions of subdivision (vii) of subparagraph (1) of this paragraph (b).~~

~~9. Alternative Selection Methods.~~

~~(-) Selection. The sponsor may select apprentices by means of any other method, including its present selection methods, provided that the sponsor meets the following requirements:~~

~~(-) Selection Method and Goals and Timetables. Within 90 days of the effective date of this amendment, the sponsor shall submit to the Agency a detailed statement of the selection method it proposes to use along with the rest of its written affirmative action program including, where required by Section 5 (d), its percentage goals and timetable for the selection of minority and /or female (minority and non-minority) applicants for apprenticeship and its written analysis, upon which such goals and timetables, or lack thereof, are based. The establishment of goals and timetables shall be in accordance with the provisions of Section 5 (d), (e) and (f). The sponsor may not implement any such selection method until the Agency has approved the selection method as meeting the requirements of subunit (b) of this subdivision and has approved the remainder of its affirmative action program including its goals and timetables. If the Agency fails to act upon the selection method and the affirmative action program within 30 days of its submission, the sponsor then may implement the selection method.~~

~~(-) Qualification Standards. Apprentices shall be selected on the basis of objective and specific qualification standards. Examples of such standards are fair aptitude tests, school diplomas, or equivalent, occupationally essential physical requirements, fair interviews, school grades and previous work experience. Where interviews are used, adequate records shall be kept including a brief summary of each interview and the conclusions on each of the specific factors, e.g., motivation, ambition, and willingness to accept direction which are a part of the total judgment. In applying any such standards, the sponsor shall meet the requirements of 41 CFR Part 60-3.~~

~~(-) Compliance. Determination as to the sponsor's compliance with its obligations under these regulations shall be in accordance with the provisions of subdivision (vii) of subparagraph (1) (b) of this paragraph. Where a sponsor, despite its good faith efforts, fails to meet its goals and timetables within a reasonable period of time, the sponsor may be required to make appropriate changes in its affirmative action program to the extent necessary to obtain maximum effectiveness towards the attainment of its goals. The sponsor may also be required to develop and adopt an alternative~~

~~selection method, including a method prescribed by the Agency, where it is determined that failure of the sponsor to meet its goals is attributable in substantial part to the selection method. Where the sponsor's failure to meet its goals is attributable in substantial part to its use of a qualification standard which has adversely affected the opportunities of minorities and / or women (minority and nonminority) for apprenticeship, the sponsor may be required to demonstrate that such qualification standard is directly related to job performance, in accordance with the provisions of subparagraph (1) (iii) (a) of this paragraph.~~

~~— General Provisions Regarding Selection Procedures.~~

~~0) Approval of Selection Procedures. Prior to implementation, selection procedures or amendments thereto, regardless of the selection method chosen under subparagraphs (1) through (4) of this paragraph (b), shall be submitted to the Administrator for approval.~~

~~0) Preference Points for Completion of Approved Pre-Apprenticeship Courses.~~

~~Where a selection method adopted by a sponsor utilizes an overall score as a qualification standard for selection, ten (10) percentage points of the maximum possible score may be uniformly granted for purpose of giving preference to applicants who have satisfactorily completed prescribed pre-apprenticeship courses which are approved by the Administrator.~~

~~**8. Existing List of Eligibles and Public Notice**~~

~~A sponsor adopting a selection method under Section 6 (b) (1) or (2), and a sponsor adopting a selection method under Section 6 (b) (4) who determines that there are fewer minorities and/or women (minority and nonminority) on its existing lists of eligibles than would reasonably be expected in view of the analysis described in Section 5 (c) shall discard all existing eligibility lists upon adoption of the selection methods required by this plan. New eligibility pools shall be established and lists of eligibility pools shall be posted at the sponsor's place of business. Sponsors shall establish a reasonable period of not less than ten (10) working days for accepting applications for admission to an apprenticeship program. There shall be at least 45 calendar days of public notice in advance of the closing date for taking applications for admission to the apprenticeship program. (See Section 5 (c) on affirmative action with respect to dissemination of information.) Applicants who have been placed in a pool of eligibles shall be retained on lists of eligibles subject to selection for a period of two years. Applicants may be removed from the list at an earlier date by their request or following their failure to respond to an apprentice job opportunity given by certified mail, return receipt requested. Applicants who have been accepted in the program shall be afforded a reasonable period of time in light of the customs and practices of the industry for reporting for work. All applicants shall be treated equally in determining such period of time. It shall be the responsibility of the~~

~~applicant to keep the sponsor informed of his or her current mailing address. A sponsor may restore to the list of eligibles an applicant who has been removed from the list at the applicant's request or who has failed to respond to an apprenticeship job opportunity.~~

9.13. Records

(a) General obligation. Each sponsor must collect such data and maintain such records as the Agency finds necessary to determine whether the sponsor has complied or is complying with the requirements of this plan. Such records must include, but are not limited to records relating to:

(1) Selection for apprenticeship, including applications, tests and test results, interview notes, bases for selection or rejection, and any other records required to be maintained under the Uniform Guidelines on Employee Selection Procedures (UGESP);

(2) The invitation to self-identify as an individual with a disability;

~~Obligations of Sponsors. Each sponsor shall keep adequate records including a summary of the qualifications of each applicant, the basis for evaluation and for selection or rejection of each applicant, the records pertaining to interviews of applicants, the original application for each applicant, information~~ (3) Information relative to the operation of the apprenticeship program, including but not limited to job ~~assignment~~ assignments in all components of the occupation as required under section 212(a)(1) of title 8 of the California Code of Regulations, promotion, demotion, transfer, lay-off, or termination, rates of pay, or other forms of compensation, or conditions of work, hours of work, hours of training provided, and any other records pertinent to determination of compliance with these regulations, as may be required by the Agency. The personnel records pertaining to individual applicants, whether selected EEO complaints filed with the Agency under section 11 or rejected shall be maintained in such manner as to permit identification of minority and female (minority and nonminority) participants, with other enforcement agencies;

(4) Compliance with the requirements of section 4;

(5) Requests for reasonable accommodation; and

(6) Any other records pertinent to a determination of compliance with these regulations, as may be required by the Agency.

~~(b) Affirmative Action Plans. Each Sponsor identification of record. For any record the sponsor maintains pursuant to this plan, the sponsor must retain a statement of its affirmative action plan required by Section 5 for the prompt achievement of full and equal opportunity in apprenticeship, including all data and analyses made pursuant to the requirements of Section 5. Sponsors shall annually review their affirmative action plan and update it where necessary and~~

~~shall have their affirmative action plan subjected to review by~~ be able to identify the race, sex, ethnicity (Hispanic or Latino/non-Hispanic or Latino), and when known, disability status of each apprentice, and where possible, race, sex, ethnicity, and disability status of each applicant to apprenticeship and supply this information upon request to the Agency.

~~(c) Qualification Standards. Affirmative action programs. Each sponsor must required under section 5 to develop and maintain evidence that its qualification standards have been validated in accordance with the requirements~~ an affirmative action program must retain both the written affirmative action plan and documentation of its component elements set forth in ~~Section 6 (b)~~ sections 6, 7, 8, 9, 10 and 11.

~~(d) Maintenance of Records. The records required by this plan and any other information relevant to compliance with these regulations shall~~ must be maintained for five years from the date of the making of the record or the personnel action involved, whichever occurs later, and must be made available upon request to the Agency, Department or other authorized representatives in such form as the Agency may determine is necessary to enable it to ascertain whether the sponsor has complied or is complying with this plan. Failure to preserve complete and accurate records as required by paragraphs (a), (b), and (c), of this section constitutes noncompliance with this plan.

~~Records of the Agency. The Agency will keep adequate records, including registration requirements, approved individual program standards, registration actions, deregistration actions, program compliance reviews and investigations, individual program ethnic and female count, total apprenticeship ethnic and female count and any other records pertinent to a determination of compliance with this plan as may be required by the Department, and shall report such to the Department, through the Office of the State Director of the Bureau of Apprenticeship and Training, U.S. Department of Labor, semi-annually.~~

(e) Confidentiality and use of medical information.

(1) Any information obtained pursuant to this plan regarding the medical condition or history of an applicant or apprentice must be collected and maintained on separate forms and in separate medical files and treated as a confidential medical record, except that:

(A) Supervisors and managers may be informed regarding necessary restrictions on the work or duties of the applicant or apprentice and necessary accommodations;

(B) First aid and safety personnel may be informed, when appropriate, if the disability might require emergency treatment; and

(C) Government officials engaged in enforcing this plan, the laws administered by Department of Fair Employment and Housing, or the Fair Employment and Housing Act, must be provided relevant information on request.

(2) Information obtained under this plan regarding the medical condition or history of any applicant or apprentice may not be used for any purpose inconsistent with this part.

(f) Access to records. Each sponsor must permit access during normal business hours to its places of business for the purpose of conducting on-site EEO compliance reviews and complaint investigations and inspecting and copying such books, accounts, and records, including electronic records, and any other material the Agency deems relevant to the matter under investigation and pertinent to compliance with this part.

The sponsor must also provide the Agency access to these materials, including electronic records, off-site for purposes of conducting EEO compliance reviews and complaint investigations. Upon request, the sponsor must provide the Agency information about all format(s), including specific electronic formats, in which its records and other information are available. Information obtained in this manner will be used only in connection with the administration of this plan or other applicable EEO laws.

40.14. Equal Employment Opportunity Compliance Reviews

(a) Conduct of Compliance Reviews. The Agency will regularly conduct ~~systematic review of apprenticeship programs in order to determine the extent to which sponsors are complying with these regulations.~~ EEO compliance reviews to determine if the sponsor maintains compliance with this plan, and will also conduct EEO compliance reviews when circumstances so warrant. ~~The Agency will also conduct compliance reviews when circumstances warrant, and take appropriate action regarding programs which are not in compliance with the requirements of this plan. Compliance reviews will consist of comprehensive analyses and evaluations of each aspect of the apprenticeship program, including on-site investigations and audits.~~ An EEO compliance review may consist of, but is not limited to, comprehensive analyses and evaluations of each aspect of the apprenticeship program through off-site reviews, such as desk audits of records submitted to the Agency, and on-site reviews conducted at the sponsor's establishment that may involve examination of records required under this plan; inspection and copying of documents related to recordkeeping requirements of this plan; and interviews with employees, apprentices, journeyworkers, supervisors, managers, and hiring officials.

(b) ~~Reregistration. Sponsors seeking reregistration shall be subject to a compliance review as described in paragraph (a) of this section by the Agency as part of the reregistration process.~~ Notification of compliance review findings. Within 45 business days of completing an EEO compliance review, the Agency must present a written Notice of Compliance Review Findings to the sponsor's contact person through registered or certified mail, with return receipt requested. If the compliance review indicates a failure to comply with this plan, the Agency will so inform the sponsor in the Notice and will set forth in the Notice the following:

- (1) The deficiency(ies) identified;
- (2) How to remedy the deficiency(ies);
- (3) The timeframe within which the deficiency(ies) must be corrected;

(4) Enforcement actions may be undertaken if compliance is not achieved within the required timeframe.

~~(c) New Registration. Sponsors seeking new registration shall be subject to a compliance review as described in paragraph (a) of this section by the Agency as part of the registration process. Compliance.~~

(1) When a sponsor receives a Notice of Compliance Review Findings that indicates a failure to comply with this plan, the sponsor must, within 30 business days of notification, either implement a compliance action plan and notify the Agency of that plan or submit a written rebuttal to the Findings. Sponsors may also seek to extend this deadline one time by up to 30 days for good cause shown. If the Agency upholds the Notice after receiving a written response, the sponsor must implement a compliance action plan within 30 days of receiving the notice from the Agency upholding its Findings. The compliance action plan must include, but is not limited to, the following provisions:

(A) A specific commitment, in writing, to correct or remediate identified deficiency(ies) and area(s) of noncompliance;

(B) The precise actions to be taken for each deficiency identified;

(C) The time period within which the cited deficiency(ies) will be remedied and any corrective program changes implemented; and

(iv) The name of the individual(s) responsible for correcting each deficiency identified.

(2) Upon the Agency's approval of the compliance action plan, the sponsor may be considered in compliance with this plan provided that the compliance action plan is implemented.

(d) Enforcement actions. Any sponsor that fails to implement its compliance action plan within the specified timeframes may be subject to an enforcement action under section 18.

~~Voluntary Compliance. Where the compliance review indicates that the sponsor is not operating in accordance with this plan, the Agency shall notify the sponsor in writing of the results of the review and make a reasonable effort to secure voluntary compliance on the part of the program sponsor within a reasonable time before undertaking sanctions under Section 13. In the case of sponsors seeking new registration, the Agency will provide appropriate recommendations to the sponsor to enable it to achieve compliance for registration purposes.~~

44.15. Noncompliance with Federal and State Equal Opportunity Requirement

A pattern or practice of noncompliance by a sponsor (or where the sponsor is a joint apprenticeship committee, by one of the parties represented on such committee) with Federal or State Laws or regulations requiring equal opportunity administered by the Agency, may be grounds for the imposition of sanctions upon the sponsor in accordance with Section ~~43~~18. If such noncompliance is

related to the equal employment opportunity of apprentices and /or applicants of such an apprenticeship program under this plan, the Agency shall refer the matter to the Department of Fair Employment and Housing or other appropriate authority. The sponsor shall take affirmative steps to assist and cooperate with employers and unions in fulfilling their equal opportunity obligations.

12.16. Complaint ProcedureComplaints

a. Discrimination.

~~Any apprentice or applicant for apprenticeship~~Any individual who believes that he or she has been discriminated against on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age for individuals over forty years of age, military or veteran status, or sexual orientation with regard to apprenticeship, or who believes he or she has been retaliated against as described in section 20, may, personally or through an authorized representative, file a complaint with the Department of Fair Employment and Housing in accordance with Section 12960 of the Government Code of the State of California or file a written complaint with the Administrator of Apprenticeship.

b. Equal Opportunity Standards.

~~Any apprentice or applicant for apprenticeship~~Any individual who believes that the equal opportunity standards established with respect to his or her selection have not been followed in the operation of an apprenticeship program may, personally or ~~by~~through an authorized representative, file a written complaint with the Administrator of Apprenticeship.

c. Processing of Complaints.

~~1) The complaint shall be in writing and shall be signed by the complainant. It must include the name, address and telephone number of the person allegedly aggrieved, the program sponsor involved and a brief description of the circumstances of the failure to apply the equal opportunity standards provided for in this plan.~~Contents of the complaint. Each complaint to the Administrator of Apprenticeship must be made in writing and must contain the following information:

(i) The complainant's name, address and telephone number, or other means for contacting the complainant;

(ii) The identity of the respondent (the individual or entity that the complainant alleges is responsible for the discrimination);

(iii) A short description of the events that the complainant believes were discriminatory, including but not limited to when the events took place, what occurred, and why complainant believes the actions were discriminatory (for example, because of his or her race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age for

individuals over forty years of age, military or veteran status, or sexual orientation);

(iv) The complainant's signature or the signature of the complainant's authorized representative.

~~4)2) The complaint must be filed not later than 180 days from the date of the alleged violation of the equal opportunity standards. Time period for filing a complaint. Generally, a complaint must be filed within 3 years of the alleged discrimination or specified failure to follow the equal opportunity standards. However, for good cause shown, the Administrator of Apprenticeship may extend the filing time. The time period for filing is for the administrative convenience of the Administrator of Apprenticeship and does not create a defense for the respondent.~~

~~1) Sponsors are required to establish fair, speedy and effective procedures to review and adjust disputes based on complaints of the alleged violation of the equal opportunity standards. A review body may be established by the program sponsor for this purpose and should include three or more responsible persons from the community serving in this capacity without compensation but such bodies shall in no way abridge or abrogate the rights of a complainant. Sponsors may join together in establishing a review body to serve the needs of programs within the community.~~

~~1) When the sponsor has designated a review body for reviewing complaints, and if the Agency determines that such review body will effectively enforce the equal opportunity standards, the Agency, upon receiving a complaint shall refer the complaint to the review body.~~

~~1) The review body shall hold at least one open hearing relative to the complaint within 30 days of the receipt of the complaint. The Agency shall obtain reports from the complainant and the review body as to the disposition of the complaint. If the complaint has been satisfactorily adjusted, and there is no other indication of violation of the equal opportunity standards, the case shall be closed and the parties appropriately informed.~~

~~1) When a complaint has not been resolved by the review body within 90 days or where, despite satisfactory resolution of the particular complaint by the review body, there is evidence that the equal opportunity practices of the apprenticeship program are not in accordance with this plan, the Agency may conduct such compliance review as found necessary, and may take all necessary steps to resolve the complaint.~~

~~1) Where no review body exists, the Agency may conduct such compliance review in accordance with the investigation and hearing procedures contained in Title 8, California Administrative Code, Section 202.~~

i.d. Appeals.

Appeals from the decision of the Administrator of Apprenticeship to the California Apprenticeship Council shall be conducted in accordance with Title 8, California Administrative Code, Section 203.

e. Requirements of Program Sponsors –

(1) Program sponsors must establish and implement procedures for handling and resolving internal complaints about harassment or discrimination, including, but not limited to, the following:

(A) Designation of an individual or individuals responsible to receive complaints by apprentices of harassment or discrimination.

(B) Procedures for prompt, thorough, and impartial investigation of complaints.

(C) Procedures to protect the confidentiality of complaints to the extent possible and consistent with law.

(D) Policies for immediate and appropriate corrective action when the program determines that harassment or discrimination has occurred, including policies for denying the dispatch of apprentices to, or revoking the training certification of, contractors that have been found by the apprenticeship program to have engaged in or permitted harassment of or discrimination against apprentices.

(E) Protections against retaliation for apprentices who have reported instances of harassment or discrimination.

(2) Filing of an internal complaint about harassment or discrimination is not a prerequisite for filing a complaint with the Department of Fair Employment and Housing or with the Administrator of Apprenticeship.

(3) Program sponsors must provide written notice to all applicants for apprenticeship and all apprentices of their right to file an internal complaint about harassment or discrimination, their right to file a complaint with the Department of Fair Employment and Housing, their right to file a complaint with the Administrator of Apprenticeship, and the procedures for doing so. The notice must include the address, phone number, and other contact information for the designated individuals of the program and the state agencies that will receive and investigate complaints filed under this plan. The notice must be provided in the application for apprenticeship and must also be displayed in a prominent, publicly available location where all apprentices will see the notice.

f. Requirements of the Agency -

(1) Conduct investigations. The investigation of a complaint filed under this plan will be undertaken by the Administrator of Apprenticeship or the Agency on behalf of the Administrator of Apprenticeship, and will proceed as expeditiously as possible. In conducting complaint investigations, the Administrator or Agency must:

(A) Provide written notice to the complainant acknowledging receipt of the complaint;

(B) Contact the complainant, if the complaint form is incomplete, to obtain full information necessary to initiate an investigation;

(C) Initiate an investigation upon receiving a complete complaint;

(D) Complete a thorough investigation of the allegations of the complaint and develop a complete case record that must contain, but is not limited to, the name, address, and telephone number of each person interviewed, the interview statements, copies, transcripts, or summaries (where appropriate) of pertinent documents, and a narrative report of the investigation with references to exhibits and other evidence which relate to the alleged violations; and

(E) Provide written notification of the Administrator's findings to both the respondent and the complainant.

(2) Seek compliance. Where a report of findings from a complaint investigation indicates a violation of the nondiscrimination requirements of this plan, the Administrator or Agency should attempt to resolve the matter quickly at the Administrator or Agency level whenever appropriate. Where a complaint of discrimination cannot be resolved at the Administrator or Agency level to the satisfaction of the complainant, the Administrator or Agency must refer the complaint to other Federal, State or local EEO agencies, as appropriate.

(3) Referrals to other EEO agencies. The Administrator or Agency, at their discretion, may choose to refer a complaint immediately upon its receipt or any time thereafter to:

(A) The Equal Employment Opportunity Commission; or

(B) The Department of Fair Employment and Housing;

13.17. Adjustment in Schedule for Compliance Review or Complaint Processing

If, in the judgment of the Agency, a particular situation warrants and requires special processing and either expedited or extended determination, it shall take the steps necessary to permit such determination if it finds that no person or party affected by such determination will be prejudiced by such special processing.

14.18. Sanctions Enforcement Actions

Where the Agency, as a result of a compliance review, complaint investigation, or other reason, determines that ~~there is reasonable cause to believe that an~~ the sponsor is not operating its apprenticeship program ~~is not operating in~~ accordance with this plan ~~and voluntary corrective action has not been taken by the program sponsor~~, the Agency ~~shall institute proceedings to enforce applicable provisions of Chapter 4, Division 3 of the Labor Code of the State of California, or it shall refer the matter to the Department for referral to the Attorney General with recommendations for the institution of a court action by the Attorney General under Title VII of the Civil Rights Act of 1964,~~ must notify the sponsor in writing of the specific violation(s) identified and may:

- a) Offer the sponsor technical assistance to promote compliance with this plan.
 - b) Suspend the sponsor's right to register new apprentices if the sponsor fails to implement a compliance action plan to correct the specific violation(s) identified within 30 business days from the date the sponsor is so notified of the violation(s), or, if the sponsor submits a written response to the findings of noncompliance, fails to implement a compliance action plan within 30 days of receiving the Agency's notice upholding its initial noncompliance findings. If the sponsor has not implemented a compliance action plan within 30 business days of notification of suspension, the Agency may institute proceedings to deregister the program in accordance with the deregistration proceedings set forth in section 212.4 of title 8 of the California Code of Regulations, or if the Agency does not institute such proceedings within 45 days of the start of the suspension, the suspension is lifted.
 - c) Take any other action authorized by law. These other actions may include, but are not limited to:
 - (1) Referral to the Equal Employment Opportunity Commission;
 - (2) Referral to the Department of Fair Employment and Housing;
 - (3) Evaluation under Labor Code section 3073.1;
 - (4) Commencement of an action under Labor Code section 3084.5; or
 - (5) Institution of deregistration proceedings in accordance with the procedures set forth in section 212.4 of title 8 of the California Code of Regulations.
- ~~Enforcement proceedings shall be conducted in accordance with (a) above, including but not limited to, the following procedures:~~
- ~~(1) The Agency shall notify the sponsor, in writing, that a determination of reasonable cause has been made under subparagraph (a) of this section and that the apprenticeship program may be deregistered unless, within 15 days of the receipt of the notice, the sponsor requests a hearing. The notification shall specify the facts on which the determination is based.~~
 - ~~(1) If within 15 days of the receipt of the notice provided for in subparagraph (1) of this paragraph the sponsor mails a request for a hearing, the Administrator shall convene a hearing in accordance with paragraph (c) of this section.~~

~~(1) The Administrator shall make a decision on the basis of the record, which shall consist of the compliance review file and other evidence presented and, if a hearing was conducted pursuant to paragraph (c), the proposed findings and recommended decision of the hearing officer. At the Administrator's discretion, a sponsor may be allowed reasonable time to achieve voluntary corrective action. When the Administrator's decision becomes a legal order of the California Apprenticeship Council, the Administrator shall institute appropriate enforcement procedures. In each case, the Administrator shall make public notice of the order and shall notify the sponsor and the complainant, if any, and the Department. The Agency shall inform any sponsor whose program has been deregistered that it may appeal such deregistration to the Department in accordance with procedures of 29 CFR, Section 30.15.~~

~~Hearing shall be conducted in accordance with the following procedures:~~

~~(0) Within 10 days of receipt of a request for a hearing, the Administrator shall designate a hearing officer. The hearing officer shall give reasonable notice of such hearing by registered mail, return receipt requested, to the sponsor. Such notice shall include a reasonable time and place of hearing; a statement of the provisions of this plan pursuant to which the hearing is to be held; and a concise statement of the matters pursuant to which the action forming the basis of the hearing is proposed to be taken.~~

~~(0) The hearing officer shall regulate the course of the hearing. Hearings shall be informally conducted. Each party shall have the right to counsel, and a fair opportunity to present his or her case including such cross examination as may be appropriate in the circumstances. Hearing officers shall make their proposed findings and recommended decisions to the Administrator upon the basis of the record before them.~~

15.19. Reinstatement of Program Registration

~~Any An~~ apprenticeship program that has been deregistered pursuant to this plan may be reinstated by the Agency upon presentation of adequate evidence to the Administrator that the apprenticeship program is operating in accordance with this plan.

16.20. Intimidatory or Retaliatory Acts Intimidation and Retaliation Prohibited

~~(b) A participant in an apprenticeship program may not be intimidated, threatened, coerced, retaliated against, or discriminated against because the individual has:~~

~~(1) Filed a complaint alleging a violation of this plan;~~

~~(2) Opposed a practice prohibited by the provisions of this plan or any other Federal or State equal opportunity law;~~

~~(3) Furnished information to~~

~~Any intimidation, threat, coercion, or retaliation by or with the approval of any sponsor against any person for the purpose of interfering with any right or~~

~~privilege secured by Title VII of the Civil Rights Act of 1964, as amended, Executive Order 11246, as amended, or because an applicant or apprentice has made a complaint, testified, assisted, or participated in any manner, in an investigation, compliance review, proceeding, or hearing under this plan shall be considered noncompliance with the or any Federal or State equal opportunity law; standards of this plan. The identity of complainants shall be kept confidential except to the extent necessary to carry out the purpose of this plan, including the conduct of any investigation, hearing or judicial proceeding arising therefrom.~~

~~(4) Otherwise exercised any rights and privileges under the provisions of this plan.~~

- (c) ~~Any sponsor that permits such intimidation or retaliation in its apprenticeship program, including by participating employers, and fails to take appropriate steps to prevent such activity will be subject to enforcement action in accordance with Labor Code section 3073.1, a complaint to the Administrator of Apprenticeship in accordance with section 201 of title 8 of the California Code of Regulations, or other actions in accordance with section 212.4 of title 8 of the California Code of Regulations.~~

~~17-21.~~ Non-Discrimination

The commitments contained in the sponsor's affirmative action program are not intended and shall not be used to discriminate against any qualified applicant or apprentice on the basis of ~~race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age for individuals over forty years of age, military or veteran status, or sexual orientation. race, color, religion, national origin or sex.~~

~~18-22.~~ Exemptions

Requests for exemption from these regulations, or any part thereof, ~~shall~~ must be made in writing to the Chief and ~~shall~~ must contain a statement of reasons supporting the request. Exemptions may be granted for good cause by the Chief. The Agency ~~will immediately notify the Department of any such exemptions granted affecting a substantial number of employees and the reasons therefor. must receive approval to grant an exemption from the Administrator, prior to granting an exemption from these regulations.~~

~~19-23.~~ Severability

If any provision of this Plan or the application thereof to any person, individual, party, entity, or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this Plan which can be given effect without the invalid provision or application, and to this and the provisions of this Plan are severable.

20-24. Alternative Plan Approach

It is the intent and purpose of this Council that should those sections of this Plan relating to goals and timetables be rescinded, changed or amended in any manner, by entities other than this Council, and if their feasibility or applicability in California is at issue the action of this Council in January 1976 that goals and timetables for women based upon interest and availability shall at least serve as the basis for affirmative action for minorities and women in California, unless a court of competent jurisdiction shall declare them invalid.

21-25. Compliance with California Government Code

It is the purpose and intent of the California Apprenticeship Council, and further pursuant to advice of legal counsel, that this plan is and shall be considered as a rule and/ or regulation, the promulgation, amendment, repeal and/ or adoption of which shall require the procedures as set forth in Government Code Section 11371 et seq.

22-26. Effective Date

This plan shall be effective July 30, 1971
Month Day Year

Adopted this 30 day of July, 1971.

Signed at Long Beach, California
City State

/s/ Richard M. Lane
Chairman
CALIFORNIA APPRENTICESHIP COUNCIL

/s/ James E. Stratten
Secretary
CALIFORNIA APPRENTICESHIP COUNCIL

Approved by the United States Department of Labor this 19th day of August, 1971

/s/ Paul J. Fassler, Jr.
Deputy Assistant Secretary for
Manpower and Manpower Administrator

Amendment Adopted January 30 1976
Month Day Year

/s/ S. R. Mccann
Chairman

CALIFORNIA APPRENTICESHIP COUNCIL

/s/ Edward W. Wallace
Secretary
CALIFORNIA APPRENTICESHIP COUNCIL

Approved by the United States Department of Labor this 24th Day of March, 1976.

/ s/ Hugh C. Murphy
Administrator B.A.T.
Title

Amendment adopted September 14, 1978
Month Day Year

/s/ Allen W. Jones, Jr.
Chairman
CALIFORNIA APPRENTICESHIP COUNCIL

/s/ Charles T. Gorrill
Secretary
CALIFORNIA APPRENTICESHIP COUNCIL

Approved by the United States Department of Labor this 18th Day of October, 1978.

/s/ Hugh C. Murphy
Administrator B.A.T.
Title

Amendment adopted November 28 1983
Month Day Year

/ s / George A. Harter
Chairman
CALIFORNIA APPRENTICESHIP COUNCIL

/ s / Eugene P. Janvier
Secretary
CALIFORNIA APPRENTICESHIP COUNCIL

Approved by the United States Department of Labor this 28th Day of December, 1983.

/ s/ Thomas J. Hague
Administrator, B.A.T.
Title

Amendment adopted April 26 1986
Month Day Year

/ s / Hans Wachsmuth, Jr.
Chairman
CALIFORNIA APPRENTICESHIP COUNCIL

/ s / Gail W. Jesswein
Secretary
CALIFORNIA APPRENTICESHIP COUNCIL

Approved by the United States Department of Labor this _ day of , 1988.

Administrator B.A.T.
Title

Amendment adopted _____
Month Day Year

/ s /
Chairman
CALIFORNIA APPRENTICESHIP COUNCIL

/ s /
Secretary
CALIFORNIA APPRENTICESHIP COUNCIL