

State of California

Plan for Equal Opportunity in Apprenticeship

Summary of Proposed Amendments and Issues

1. Scope and Purpose

The scope and purpose of the Federal Regulations for Equal Employment Opportunity in Apprenticeship (federal regulations) have been restated to use language that emphasizes the mandatory nature of the applicable requirements.

The proposed amendment to the State of California Plan for Equal Opportunity in Apprenticeship (CalPlan) adopts the new federal language in its entirety, *except* the CalPlan includes all of the categories protected under the California Fair Employment and Housing Act (FEHA).

Issues:

Whereas the federal language protects against discrimination on the basis of only:

“race, color, religion, national origin, sex, sexual orientation, age (40 or older), genetic information, and disability.”

FEHA protects against discrimination 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.”

The proposed amendment adopts FEHA’s more protective language. An alternative is to have the language refer directly to FEHA (Government Code section 12940, et seq.) in case the Legislature amends or expands the protected categories.

2. Definitions

New definitions of terms have been adopted from the federal regulations, except in instances where the Shelley-Maloney Apprentice Labor Standards Act of 1939 (Shelley-Maloney Act) or other state law already have specific statutory definitions. For example, the definition of “apprentice” is taken from the Shelley-Maloney Act rather than from the federal regulations. Another example can be found in the definitions of “disability” and other related terms, which are taken from FEHA and its implementing state regulations. Other California-specific definitions from the 1986 CalPlan that never had a federal equivalent are retained (e.g. “Chief” and “Administrator of Apprenticeship”). Some definitions have been excluded, because they are either inconsistent or not expressly recognized terms in California law (e.g., “Direct threat” is a defense for employers

recognized under the American with Disabilities Act (ADA), but has not been expressly adopted in California as a defense under FEHA).

The proposed amendment adopts California's more specific language.

Issues:

Suggested Revisions:

Some of the old CalPlan definitions should be deleted as the terms are no longer used, or used only in one or two instances, in the federal regulations (e.g., "good faith efforts" and "utilization of minorities"). Some of the new definitions in the federal regulations are unclear and confusing, and the Council may consider formulating its own definitions as opposed to adopting the federal definitions verbatim. Additionally, some of the definitions in the federal regulations are inconsistent with the Labor Code, so the Council may consider working to ensure the CalPlan does not conflict with the Labor Code. The Council also should consider rewriting definitions that include the use of "his or her" to ensure that the definitions apply to gender-nonconforming individuals.

3. Authority to Adopt and to Implement the State Plan

No change. This section does not appear in the federal regulations.

4. Equal Opportunity Standards Applicable to All Sponsors

The former version of the federal regulation for this section (29 CFR § 30.3) was divided into six paragraphs and set forth the equal opportunity standards for registered apprenticeship programs: a sponsor's obligation not to discriminate on the basis of race, color, religion, national origin, and sex and to engage in affirmative action (former § 30.3(a)); and a sponsor's obligation to incorporate an equal opportunity pledge into its apprenticeship program standards (former § 30.3(b)). The remaining four paragraphs of the former section set the effective date of the federal equal opportunity regulations for programs currently registered (former § 30.3(c)), the registration requirements for sponsors seeking registration of new programs (former § 30.3(d)); and the bases for exemption from the requirement to develop an affirmative action program (former § 30.3(e) and (f)).

The amended federal regulation reorganized this section by focusing on the equal opportunity standards in § 30.3(a) and (b) and removed § 30.3(c) through (f), the substance of which was incorporated into other parts of the rule for the sake of clarity. § 30.3(a) and (b) built upon the equal employment opportunity standards that are contained in former § 30.3(a). The standards have been significantly expanded and impose substantially more equal opportunity requirements on apprenticeship program sponsors.

The amended federal regulation at § 30.3 has been imported wholesale into the proposed amendment to this section (Section 4) of the CalPlan, except that the protected categories have been expanded to include those protected under FEHA. Any references to federal agencies, officials, laws and regulations have been changed to refer to California agencies, officials, laws and regulations, where appropriate.

Note: The amended federal equal opportunity standards have largely been incorporated into the Shelley-Maloney Act at Labor Code section 3073.9 (A.B. 2358), which applies exclusively to building and construction trades programs.

Issues:

The amended federal regulation at § 30.3 requires anti-discrimination information be conveyed at “orientation” and “periodic” information sessions, but does not specify when the “orientation” must occur or what frequency is considered to be “periodic.” The amended regulation also requires anti-discriminatory training with a broad range of subjects to be covered. The Council could consider clarifying.

5. Affirmative Action Programs (AAPs)

The former version of the federal regulation for this section (29 CFR § 30.4) set forth the regulatory requirements with respect to AAPs and addressed the following: The adoption of an AAP in § 30.4(a) (CalPlan Section 3(a)); the definition of affirmative action in § 30.4(b) (CalPlan Section 3(b)); the requirements for broad outreach and recruitment in § 30.4(c) (CalPlan Section 3(c)); the mandate that a sponsor include goals and timetables where underutilization occurs in § 30.4(d) (CalPlan Section 3(d)); the factors for determining whether goals and timetables are needed in § 30.4(e) (CalPlan Section 3(e)); the establishment and attainment of goals and timetables in § 30.4(f) (CalPlan Section 3(f)); and that the Secretary of Labor will make available to program sponsors data and information on minority and female labor force characteristics in § 30.4(g) (CalPlan Section 3(g)). Exemptions from the requirement to adopt an AAP were found in former § 30.3(e) and (f) (current CalPlan section 4(e) and (f).)

The amended federal regulation restructured this section to clarify the purpose of an AAP and who must adopt an AAP, to list the required elements of AAPs, to explain the exemptions for maintaining an AAP, and to lay out the proposed new timing for internal review of AAPs.

The amended federal regulation at § 30.4 has been imported verbatim into the proposed amendment to this section (Section 5) of the CalPlan, except that the protected categories have been expanded to include those protected under FEHA. Any references to federal agencies, officials, laws and regulations have been changed to refer to California agencies, officials, laws and regulations, where appropriate.

Issues:

The proposed amendment to this section of the CalPlan includes the additional categories protected under FEHA. However, the protected categories for which utilization analyses and goals are required track those in the federal regulations and are limited to race, sex, ethnicity, and disability (Sections 6 to 8, below). The targeted outreach, recruitment, and retention required when there is underutilization is also limited to underutilization in the categories of race, sex, ethnicity, and disability (Section 9, below). However, the annual review of personnel processes includes a review of all the categories protected under FEHA (Section 10, below).

The Council should note these differences.

6. Utilization analysis for race, sex, and ethnicity

The amended federal regulations added a new section (29 CFR § 30.5.) for utilization analysis for race, sex, and ethnicity that provides guidelines 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 the population available for apprenticeship by race, sex, and ethnicity in the sponsor's relevant recruitment area. This section clarifies and expands upon the former federal regulations at 29 CFR § 30.4(e), "Analysis to determine if deficiencies exist," which requires the sponsor to compute availability for minorities and women in its program. Former § 30.4(e) (current CalPlan Section 5(e)) required that sponsors take at least five factors into account when determining whether deficiencies exist. It did not, however, explain how these factors relate to the availability of qualified individuals for apprenticeship, nor did it indicate how a sponsor should consider or weigh each of these factors when determining availability.

The amended federal regulation was intended to incorporate elements of the existing process for analyzing race, sex, and ethnicity utilization while clarifying and streamlining the process for determining availability and utilization. This was to be accomplished by decreasing the number of data sources sponsors must analyze in determining the labor market composition, clarifying the steps required to do the utilization analysis, and providing clear directions for establishing goals.

The added federal regulation at § 30.5 has been imported verbatim into the proposed amendment to this section (Section 5) of the CalPlan. Any references to federal agencies, officials, laws and regulations have been changed to refer to California agencies, officials, laws and regulations, where appropriate.

Issues:

The utilization analysis of this section is only for race, sex, and gender. This replaces the former terminology that focused on minorities and women. It is unclear whether the Council wants to expand the utilization goals to other categories protected under FEHA.

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

The amended federal regulations adds a new section (29 CFR § 30.6) that describes procedures for the establishment of utilization goals for race, sex, and ethnicity. This section clarifies and expands upon the procedures set forth in former § 30.4(f), which required a sponsor to establish goals and timetables based on the outcome of the sponsor's analyses of its underutilization of minorities in the aggregate and women. The former regulations, however, did not provide specific instructions on how to set a goal, and the form of the goal depended on the nature of the selection procedure used. The amended federal regulations: (1) set one type of goal regardless of the selection procedure used; (2) eliminate references to timetables; (3) specify that the utilization goal for a particular underutilized group must be equal to the availability figure derived for that group in the utilization analysis in the above section; (4) require goals be set for each individual underutilized racial or ethnic group as opposed to such groups in the aggregate; and (5) clarified that quotas and set-asides are explicitly forbidden and that merit principles must serve as the basis for admission of an applicant to a program.

The added federal regulation at § 30.6 has been imported verbatim into the proposed amendment to this section (Section 7) of the CalPlan. Any references to federal agencies, officials, laws and regulations have been changed to refer to California agencies, officials, laws and regulations, where appropriate.

Issues:

Proposition 209 (1996) added a section in the California Constitution that provides that public entities "shall not discriminate against, or grant preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education, or public contracting." For civil service apprenticeship programs or other similar programs with public entity employers, there is a question of whether the utilization goals for race, sex, and ethnicity in this section (as well as the "Affirmative Action Programs" (Section 5) and "Targeted Outreach, Recruitment, and Retention" (Section 9) sections of the proposed CalPlan run afoul of Proposition 209.

This section does contain an express bar against quotas. In addition, several affirmative statements make clear that utilization goals: (1) cannot be the basis for extending a preference to an individual on account of that individual's race, sex, or ethnicity; (2) do not create set-asides for specific groups; and (3) do not require programs to "select a less-qualified person in preference to a more qualified one." However, the California Supreme Court has held: "A participation goal differs from a quota or set-aside only in degree; by whatever label, it remains 'a line drawn on the basis of race and ethnic status' as well as sex. [citations omitted.] Thus understood, such a goal plainly runs counter to the express intent of the historic Civil Rights Act and, concomitantly, the intent of Proposition 209." (*Hi-Voltage Wire Works, Inc. v. City of San Jose* (2000) 24 Cal.4th 537, 563.)

This summary does not explore the many nuances in Proposition 209 jurisprudence, but merely points out that this is likely an area of concern for public entity apprenticeship programs.

Proposition 16 (2020), currently on the November ballot, would repeal Proposition 209. The passage of Proposition 16 will eliminate any potential problems with utilization goals associated with Proposition 209.

8. Utilization Goals for Individuals with Disabilities

The amended federal regulations add a new section (29 CFR § 30.7.) that describes utilization goals for individuals with disabilities and set a single, national utilization goal of 7 percent. A utilization analysis must be conducted to determine whether the 7 percent utilization goal is met, and if it is not, the program must engage in targeted outreach efforts in proposed Section 9 of the CalPlan.

The added federal regulation at § 30.7 has been imported verbatim into the proposed amendment to this section (Section 8) of the CalPlan. Any references to federal agencies, officials, laws and regulations have been changed to refer to California agencies, officials, laws and regulations, where appropriate. In particular, the Council has replaced the Administrator of OA, and the 7 percent national utilization goal for individuals with disabilities set forth by the federal regulations will be adopted statewide by the Council in the proposed amendment.

Issues:

The Council should consider whether a statewide 7 percent utilization goal for individuals with disabilities makes sense for California's apprenticeship programs.

9. Targeted Outreach, Recruitment, and Retention

The amended federal regulations at 29 CFR § 30.8¹ replaced the former requirements related to outreach and positive recruitment described in § 30.4(c) of the former regulation. The current regulation addresses the regulatory requirements related to targeted outreach, recruitment, and retention activities likely to generate an increase in applications for apprenticeship and improve retention from targeted groups, which are required when a program underutilizes a specific group of individuals or the program determines that there are impediments to equal opportunity for individuals with disabilities. These targeted activities would be in addition to the sponsor's universal outreach and recruitment activities required under § 30.3(b)(3) (Section 4(b)(3) of the CalPlan).

¹ The former 29 CFR § 30.8 (current Section 9 of the CalPlan) that dealt with records has been moved to § 30.12 (proposed Section 13 of the CalPlan).

The amended federal regulation at § 30.8 has been imported verbatim into the proposed amendment to this section (Section 9) of the CalPlan. Any references to federal agencies, officials, laws and regulations have been changed to refer to California agencies, officials, laws and regulations, where appropriate.

10. Review of Personnel Processes

The amended federal regulation at 29 CFR § 30.9 requires that any sponsor subject to the AAP requirements must review its personnel processes on at least an annual basis to ensure that it is meeting its obligations under the equal opportunity regulations.

The added federal regulation at § 30.9 has been imported verbatim into the proposed amendment to this section (Section 10) of the CalPlan, except that the protected categories have been expanded to include those protected under FEHA.

Issues:

The Council should consider whether an annual review of personnel processes makes sense for California programs. The Council could also consider whether the annual review of processes should include review of the expanded protected categories under FEHA in light of the fact that the utilization goals in the federal regulations and the CalPlan are limited to only the categories of race, sex, gender, and disability.

11. Invitation to Self-Identify as an Individual with a Disability

The amended federal regulations added a new section (29 CFR 30.11)² entitled “Invitation to Self-Identify as an Individual with a Disability.” This section mandates those programs required to maintain an AAP to invite applicants for apprenticeship to voluntarily self-identify as an individual with a disability at certain stages. After indenture, the regulation requires the program to remind apprentices on an annual basis to voluntarily self-identify. The language of the invitation is specified by the Administrator of OA and available on the OA website.

The added federal regulation at § 30.11 has been imported almost verbatim into the proposed amendment to this section (Section 11) of the CalPlan, except that selection procedures must be facially neutral as to not only the protected categories identified in the federal regulation, but also those categories protected under FEHA. Any references to federal agencies, officials, laws and regulations have been changed to refer to California agencies, officials, laws and regulations, where appropriate.

Issues:

² The former 29 CFR § 30.11 (current Section 11 of the CalPlan) that dealt with complaints has been moved to § 30.14 (proposed Section 16 of the CalPlan).

The Council should consider whether it wants to develop its own language regarding the invitation to self-identify, rather than relying on the Administrator of OA's language.

12. Selection of Apprentices

Under the former section of the federal regulations covering selection of apprentices (former 29 CFR § 30.5/current Section 6 of the CalPlan), programs could select any one of four methods of selecting apprentices: (1) selection on the basis of rank from pool of eligible applicants; (2) random selection from pool of eligible applicants; (3) selection from pool of current employees; or (4) an alternative selection method which allows the program to select apprentices by means of any other method, subject to approval by the state apprenticeship agency.

The amended federal regulations at 29 CFR § 30.10 (renumbered due to reorganization) streamline the selection procedures and allow programs to adopt any method for selection of apprentices, provided that the method used: (1) Complies with the Uniform Guidelines on Employee Selection Procedures (UGESP) at 41 CFR part 60-3; (2) is uniformly and consistently applied to all applicants for apprenticeship and apprentices; (3) complies with the qualification standards set forth in title I of the ADA; and (4) is facially neutral in terms of race, color, religion, national origin, sex, sexual orientation, age (40 or older), genetic information, and disability.

The added federal regulation at § 30.10 has been imported verbatim into the proposed amendment to this section (Section 12) of the CalPlan. Any references to federal agencies, officials, laws and regulations have been changed to refer to California agencies, officials, laws and regulations, where appropriate.

Issues:

The Council should consider whether it wants to develop its own standards for the selection of apprentices, rather than relying on the Uniform Guidelines on Employee Selection Procedures for federal purposes.

13. Records

Former federal regulations at 29 CFR 30.8 (current Section 8 of the CalPlan) required programs to keep records for each applicant, 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, and other data. The former regulation also required records to be maintained for other purposes related to AAPs and equal opportunity.

The amended federal regulation at 29 CFR § 30.12 largely retains the recordkeeping requirements in the former regulation, but updates them to reflect the development and use of electronic recordkeeping. The amended federal regulation also expressly states

that failure to keep accurate records constitutes actionable noncompliance enforceable under 29 CFR § 30.15 (proposed Section 18 of the CalPlan).

The amended federal regulation has been imported verbatim into the proposed amendment to this section (Section 13) of the CalPlan. Any references to federal agencies, officials, laws and regulations have been changed to refer to California agencies, officials, laws and regulations, where appropriate.

Issues:

The Council could consider further clarifying the types of records that could demonstrate compliance with the proposed CalPlan, as the proposed requirements are numerous and varied.

14. Equal Employment Opportunity Compliance Reviews

The former federal regulation at 29 CFR § 30.9 was entitled “Compliance Reviews” and did not describe the specific nature of the reviews nor did it spell out the process for conducting a review and the review agency’s actions following such a review. The amended federal regulation (29 CFR § 30.13) seeks to clarify exactly what is intended by EEO compliance reviews, with more specific accountabilities articulated for the program and the reviewing agency. The amended federal regulation outlines how compliances are to be conducted, how programs are notified of compliance review findings, how programs can come into compliance if there is a finding, and under what circumstances enforcement actions under 29 CFR § 30.15 may occur.

The amended federal regulation has been imported verbatim into the proposed amendment to this section (Section 14) of the CalPlan. Any references to federal agencies, officials, laws and regulations have been changed to refer to California agencies, officials, laws and regulations, where appropriate.

Issues:

If it deemed the matter appropriate for consideration, the Council could consider whether the program should be afforded some right to appeal an adverse finding from the Division of Apprenticeship Standards. The Division’s adverse finding must progress to an enforcement action under proposed Section 18 of the CalPlan before concrete measures can be taken against the program, so an appeal at that early stage may not be desirable or necessary. An appeal to the Council is available if the Division moves to deregister the program.

15. Noncompliance with Federal and State Equal Opportunity Requirement

This section was eliminated in the federal regulations. The current CalPlan adopted this language from former 29 CFR § 30.10. There are no proposed changes to this section.

Issues:

Because the federal regulations have eliminated this section, the Council could consider eliminating as well if it believes the section to be superfluous. Concepts embodied in this section have been incorporated into other sections of the proposed CalPlan.

16. Complaints

The amended federal regulation for complaints (29 CFR § 30.14) incorporated the former section dealing with the complaint procedure (former 29 CFR § 30.11, current Section 11 of the CalPlan). The amended federal regulation provides a more detailed complaint procedure, establishes certain requirements for program sponsors to implement policies and procedures for the acceptance, processing, and disposition of internal complaints, and sets forth the procedure that the Registration Agency must follow when it receives complaints. Notably, the amended federal regulation did away with “private review bodies” described in the former federal regulation, as the Department of Labor found that most programs generally did not use or have private review bodies.

The amended federal regulation has been imported verbatim into the proposed amendment to this section (Section 16) of the CalPlan except for the following: Any references to federal agencies, officials, laws and regulations have been changed to refer to California agencies, officials, laws and regulations, where appropriate. The proposed amendment to this section of the CalPlan includes the additional categories protected under FEHA.

The federal regulation sets the timeline within which to file a complaint at 300 days, which is the deadline to file a complaint with the EEOC in states that have their own employment antidiscrimination laws. Under the proposed amendment, the timeline within which to file a complaint under the CalPlan is, instead, 3 years, which matches the current filing period prescribed in FEHA (Assembly Bill 9 (2019) codified at Gov. Code, § 12960, subd. (e), eff. Jan. 1, 2020).

Issues:

The Council could consider whether the filing period for complaints should be tied directly to FEHA, in case the timeline is statutorily changed. The Council might also consider providing additional detail on the required internal “policies and procedures” for the acceptance, processing, and disposition of internal complaints that each program must develop.

17. Adjustment in Schedule for Compliance Review or Complaint Processing

No change.

18. Enforcement Actions

Under the former section of the federal regulations covering “Sanctions” (former 29 CFR § 30.13/current Section 13 of the CalPlan), when the oversight agency has reasonable cause to believe that an apprenticeship program is not operating in accordance with part 30, and where the sponsor fails to voluntarily take corrective action, the oversight agency can initiate deregistration proceedings or refer the matter to the EEOC or the United States Attorney General with a recommendation for initiation of a court action. The rest of the section describes the procedures for deregistration proceedings.

The amended federal regulation (29 CFR § 30.15) introduces a new enforcement procedure by which the oversight agency can suspend registration of new apprentices when the agency issues written findings of violations of part 30, and the program fails to submit a compliance plan to address those violations within 30 days. Any suspension is lifted if the agency does not institute deregistration proceedings within 45 days of the suspension. The amended federal regulation also includes some alternative actions that the agency can take in addition to suspension (referral to EEOC, state employment antidiscrimination agency, or DOL’s Office of Federal Contract Compliance Programs.)

The amended federal regulation has been imported verbatim into the proposed amendment to this section (Section 18) of the CalPlan except for the following: Any references to federal agencies, officials, laws and regulations have been changed to refer to California agencies, officials, laws and regulations, where appropriate. Also, the alternative actions have been expanded to include: (1) referral to EEOC; (2) referral to DFEH; (3) evaluation (formerly audit) under Labor Code section 3073.1; (4) seeking a court injunction under Labor Code section 3084.5; and (5) initiation of deregistration proceedings.

Issues:

The Council may consider whether to include initiation of deregistration proceedings as a separate enforcement action available in addition to suspending registration of new apprentices, given that such suspension is an intermediate step to deregistration. Including deregistration makes it explicit that the Division need not suspend new registrations in order to move directly to deregistration proceedings.

The Council might also consider amending its other regulations to provide the Division with the express right to suspend registration of new apprentices when it issues findings against apprenticeship programs for violations unrelated to equal opportunity standards.

19. Reinstatement of Program Registration

The amended federal regulation includes only minor stylistic changes. These stylistic changes are incorporated into the proposed amendment for the CalPlan.

20. Intimidation and Retaliation Prohibited

The amended federal regulation at 29 CFR § 30.17 expands upon the former section that dealt with intimidation and retaliation and brings the section more in line with federal equal opportunity law. The amended federal regulation also expressly states that programs which allow intimidation and retaliation will be subject to enforcement action by the oversight agency.

The amended federal regulation has been imported verbatim into the proposed amendment to this section (Section 18) of the CalPlan except for the following: Any references to federal agencies, officials, laws and regulations have been changed to refer to California agencies, officials, laws and regulations, where appropriate. The enforcement actions available also specifically point to the actions that the Division is authorized to take under California law.

Issues:

The Council may consider whether to include language that specifically tracks the standards used in FEHA, implementing regulations, and relevant case law in determining whether an individual has been subject to intimidation and retaliation.

21. Non-Discrimination

The amended federal regulations eliminated this former non-discrimination section (former 29 CFR § 30.18) and moved the entirety of its language into 29 CFR § 30.4(a)(5). The proposed amendment to this section of the CalPlan includes the additional categories protected under FEHA.

Issues:

The Council should consider whether to eliminate this section, considering the fact that nearly identical language is included in proposed Section 5(a)(5) of the CalPlan.

22. Exemptions

The amended federal regulation (29 CFR § 30.19) includes some minor stylistic changes. The amendment also directs exemption requests be made to the state oversight agency as opposed to the Secretary of Labor, and requires the state oversight agency to report any exemptions to the Department of Labor.

The stylistic changes are incorporated into the proposed amendment for the CalPlan. However, the requests for exemptions in the proposed CalPlan are sent to the Chief of the Division of Apprenticeship Standards and the Division will seek approval to grant such exemptions from the Administrator of Apprenticeship. These modifications from

the amended federal regulations are consistent with how the current CalPlan treats these exemptions.

Issues:

The Council should consider which agency should grant the exemptions and whether the Chief needs to seek approval from the Council or from the Administrator to grant exemptions. Given that the Council meets only quarterly, administratively it might make more sense to have the Administrator grant the Chief the authority to approve exemptions.

23. Severability

No change. This section does not appear in the federal regulations.

24. Alternative Plan Approach

No change. This section does not appear in the federal regulations.

Issues:

The Council should consider whether to amend this section to change the date to the effective date of the adoption of this amendment to the CalPlan. The Council may also consider whether this section should be eliminated.

25. Compliance with California Government Code

No change. This section does not appear in the federal regulations.

26. Effective Date

This section will reflect whatever date the Council chooses as the effective date. This section does not appear in the federal regulations.