

[4510-30]

Title 29—Labor

SUBTITLE A—OFFICE OF THE
SECRETARYPART 30—EQUAL EMPLOYMENT OP-
PORTUNITY IN APPRENTICESHIP
AND TRAINING

Final Rule

AGENCY: Department of Labor.

ACTION: Final rule.

SUMMARY: The regulation published today amends the Department of Labor's regulations concerning equal employment opportunity in apprenticeship and training to include specific provisions requiring affirmative action for women.

EFFECTIVE DATE: The regulations shall take effect June 12, 1978.

FOR FURTHER INFORMATION
CONTACT:

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SUPPLEMENTARY INFORMATION: On September 30, 1977, the Office of the Secretary of Labor, U.S. Department of Labor, published in the *FEDERAL REGISTER* (42 FR 52441) a proposal to amend 29 CFR Part 30 to require specific affirmative action steps, including goals and timetables, for women. The September 30 proposal provided that comments on the proposal would be received until November 14, 1977. Subsequently, the comment period was extended to November 30, 1977. As of January 3, 1978, 1,030 separate written comments had been received. More than half (579) of these comments favored the proposed amendment; 451 of the comments opposed it. Of the 1,030 comments, 144 were from apprenticeship committees; 114 from unions; 373 from individuals; 69 from government agencies; 118 from women's organizations; 100 from employees; and 112 from other organizations. Comments were received after January 3, 1978, although they are not included in the above count. Each submission has been thoroughly reviewed and each criticism and suggestion given careful consideration.

SUMMARY OF COMMENTS

1. Some of the comments opposed the proposed amendment because of the requirement of goals and time-

tables for women. These comments expressed the opinion that goals were the same as quotas and were illegal. Some of these comments expressed the view that the Department of Labor should withhold any action on final regulations until the U.S. Supreme Court has rendered its decision in *The Regents of the University of California v. Allen Bakke*. These comments maintained that the Department's final regulation would have to be consistent with this decision.

Some of the comments from those opposed to the use of goals suggested alternative means to accomplish affirmative action for women in apprenticeship. Alternatives suggested included the use of outreach programs for women, emphasis on recruitment of women, and the development of special programs to prepare women with basic skills required to enter apprenticeship programs.

2. Some of the comments opposed goals for women because of a belief that women as a class were unable to do the work of the skilled trades and/or were not interested in doing such work. Some of these comments expressed the opinion that goals would require the hiring of unqualified people who would not be able to do the work and/or of people who were not sincerely interested in learning the trade.

3. Other comments were not opposed to the concept of goals for women but suggested that the proposed first-year goal for women in entering apprenticeship classes was unreasonable. They expressed the view that there were not enough women available who were able to do the work and/or interested in becoming apprentices to meet the proposed goal.

Some of these commentators suggested alternative methods for establishing goals and timetables for women. Included in these suggestions were proposals to base the goal on current participation of women in the skilled trades, on the number of women interested in entering apprenticeships, and/or on the number of women who apply for entrance into apprenticeship programs. Some commentators suggested that the Department delay requiring goals for women for 2 years, requiring vigorous recruitment of women during the 2-year period. Goals would then be based on the number of women who demonstrated interest in apprenticeship during this 2-year period.

4. A few comments maintained that the availability of women interested in entering apprenticeships would vary from one region to another. These comments proposed that the Department take account of this and set goals on a regional rather than a nationwide basis.

5. Other comments from those opposed to the proposed amendment in-

cluded statements that the proposal was inflationary, that it was inappropriate during a time of high unemployment in the skilled trades, and that the time allowed for making the required changes in the sponsors' affirmative action plans was too short. In addition, some comments suggested that program sponsors be allowed to set minimum physical standards for entrance into their programs.

6. Most of the comments received from women's organizations, individuals, government agencies, and public interest organizations supported the proposed amendment. These comments stated that without the specified affirmative action requirements, especially the use of goals and timetables, very little would be accomplished in increasing the participation of women in apprenticeship programs.

7. A number of those who commented in favor of the proposed amendment objected to the use of the term "qualified" modifying minorities or women in the section of the preamble entitled "Proposed Changes." These comments pointed out that the term is not used in the current regulation or the proposed amendment. They advocated as an alternative the use of the word "trainable," claiming that there was a possibility that biased program sponsors may use this language as an excuse to exclude women on the basis that they were not "qualified."

8. Others who favored the amendment generally suggested that the Department adopt the position that the ultimate goal for women in apprenticeship be work force parity, and that the goal be set at this level in 5 years.

9. Some of those favoring the amendment proposed that the use of private review panels in connection with complaints of discrimination be eliminated and/or that complainants be given an option to file their complaints with the Department.

10. Some proponents of the amendments suggested that the Bureau of Apprenticeship and Training be required to conduct compliance reviews of programs annually.

11. A few organizations favoring the amendments suggested that the complaint procedure be changed in order to permit third-party complaints.

12. Some women's organizations and government agencies were concerned about the problem of double counting minority women.

13. Other suggestions made by those who favored the amendments included the elimination of age limits, increased coordination between the Bureau of Apprenticeship and Training and the Office of Federal Contract Compliance Programs of the Department of Labor, and shortening of the time periods allowed program sponsors to come into compliance.

In the Discussion section below we will take up each of the issues listed

above as we discuss the amendment on a section-by-section basis.

BACKGROUND

Regulations published at 29 CFR Part 30 establish policies and procedures to promote equality of opportunity in apprenticeship programs registered with the U.S. Department of Labor or with recognized state apprenticeship agencies. The regulations prohibit discrimination based on race, color, religion, national origin or sex.

They also require the adoption of written affirmative action programs including the development of goals and timetables. But while the present regulations require the elimination of sex-based discrimination, they do not require that the written affirmative action plans cover women. Also, a sponsor currently is not required to establish and attain goals and timetables for women although goals and timetables are required for minorities.

Over the last several years the Department of Labor has received a number of requests to amend 29 CFR Part 30 to make the written affirmative action plan requirement, including goals and timetables, applicable to women. Most recently a group of organizations petitioned the Department of Labor pursuant to 5 U.S.C. 553(e) to initiate rulemaking proceedings to cover women in affirmative action plans relating to registered apprenticeship programs.

The Department of Labor has examined the status of women in apprenticeship programs and has concluded, based on their participation rate, that 29 CFR Part 30 should be amended to require that written affirmative action plans for apprenticeship programs cover women, including the establishment and implementation of goals and timetables.

As the petition for rulemaking states:

The percentage of women in the civilian labor force has steadily increased from 1920 to 1976, when the percentage of the workforce which is female had climbed to a new high of 40.5 percent. However, despite a continuing climb in overall labor force participation, women are generally confined to five low-paying categories of work: clerical, domestic work, teaching, nursing and sales. Women comprised only 4.5 percent of all craft and kindred workers—"The skilled trades"—in 1975. A woman working full-time, year-around, in 1974 as a clerical had a median income of \$6,827; a domestic earned \$2,876; a salesperson \$5,168; and a teacher below the college level, not a year-round worker, could expect \$7,739. In contrast, male craft workers reached a median income of \$12,028. [Footnote and reference omitted.]

Historically, women have had only limited participation in apprenticeship programs, which is how many skilled craftworkers enter their jobs.

In 1976 of the 11 million skilled blue-collar workers, only slightly over a

half million (545,038) were women. Nearly 165,000 of these women were bakers; tailors; upholsterers; and decorators and window dressers; constituting, respectively, 37.2, 32.1, 28.8, and 70.8 percent of total employed. On the other hand, the proportion of women carpenters, electricians, painters, plumbers, machinists, mechanics, stationary engineers, and a few other skilled trades ranged from less than 1 percent to about 3 percent of the total. Although the number of women apprentices increased by 74 percent in one year (1974-75), they still represented only 1.2 percent of the total number of apprentices registered.

DISCUSSION

The following sections have not been significantly affected by the regulations adopted today, other than minor conforming and editorial changes: §§ 30.1, 30.2, 30.7, 30.9, 30.10, 30.12, 30.14, 30.16, 30.17, 30.18 and 30.19. The major change in the sections affected by the regulation is the insertion of appropriate words to show that the written affirmative action plan requirement applies to women as well as to minorities. Section 30.8 has been altered in this manner as well as through minor editorial and conforming changes. Other sections significantly affected by the regulation adopted today will be discussed below.

Section 30.3. This section sets forth the equal opportunity standards applicable to sponsors of apprenticeship programs.

1. Section 30.3(e) provided that a sponsor would not be required to adopt an affirmative action plan under § 30.4 or a selection procedure under § 30.5 if it submitted to the Department satisfactory evidence that it was in compliance with an equal employment opportunity program providing for the selection of apprentices and for affirmative action in apprenticeship which had been approved as meeting the requirements of Title VII of the Civil Rights Act of 1964, as amended, or Executive Order 11246, as amended.

The proposal published in the FEDERAL REGISTER on September 30, 1977, (42 FR 52441) proposed the following addition to § 30.3(e): "except to the extent that the goals and timetables in such program are less than would be required under this part." Several comments objected to this proposed addition, claiming that meeting the requirements of Executive Order 11246 or Title VII should adequately protect the rights of women and minorities with regard to apprenticeship. After considering these comments, the Department has decided to adopt the following language as an addition to § 30.3(e):

Provided, That programs approved, modified or renewed subsequent to the effective

date of this regulation will qualify for the exception only if the goals and timetables for both minorities and women for the selection of apprentices provided for in such programs are equal to or greater than the goals required under this part.

Thus the regulation adopted today will permit sponsors with approved equal employment opportunity programs to be exempted from the requirement to adopt an affirmative action plan or a selection procedure during the duration of their currently approved program, provided such programs contain goals and timetables for women as well as for minorities. Programs approved subsequent to the effective date of this amendment will have to be consistent with this part in order for the exemption to be allowed.

2. Section 30.3(f) provided that sponsors of programs with fewer than five apprentices not be required to adopt an affirmative action plan under § 30.4 or a selection procedure under § 30.5. The proposal published in the FEDERAL REGISTER on September 30, 1977 (42 FR 52441) proposed the following addition to § 30.3(f): "provided that such program was not adopted to circumvent the requirements of this part." This proposal has been adopted.

Section 30.4. This section sets forth the requirement that program sponsors adopt a written affirmative action plan, including the establishment of goals and timetables. This section previously required the establishment of goals and timetables for minorities only. The regulation adopted today amends this section to require the establishment of goals and timetables for women as well as for minorities. A number of comments addressed the issue of goals. Some of the commentators, particularly some of the unions and joint apprenticeship councils, characterized goals as "quotas", stated that the goal requirement would require the hiring of unqualified persons, stated that women are not capable of or interested in working in the skilled trades, and stated that other workers would be displaced by women because of high unemployment in the skilled trades.

The Department of Labor's experience has demonstrated that goals and timetables are the most concrete and effective system for increasing the representation of women and minorities in employment areas from which they have previously been excluded or have not been represented in proportion to their availability. Initially, contractors subject to the requirements of Executive Order 11246, as amended, were required to implement goals and timetables for minorities only. Thereafter, non-construction contractors were required to establish goals and timetables for women also. Most recently, the Executive Order regulations were amended to require goals and ti-

metables for women working in construction.

A review of the status of women in the skilled trades shows that unless specific affirmative action steps are prescribed, employment opportunities in these trades will not reach the female workforce. For example, when these regulations were proposed last September, the preamble contained the following statement (42 FR 52442):

According to the latest available data for January through June 1976, there were 3,545 women apprentices, representing 1.4 percent of the total apprentices (249,060). A further look at the number of women employed in several occupations for which apprenticeships are available shows generally that women are making very small gains, numerically and proportionately. The gains, in fact, are so small that if women are ever to be fairly representative in the skilled crafts, their entry into apprenticeship programs must be greatly accelerated. The Department of Labor's experience has shown that the use of goals and timetables is the most effective means for increasing the number of women and minorities in employment areas from which they previously have been excluded or have not been represented in proportion to their availability. Minority participation in apprenticeship and in individual construction trades, for example, has increased measurably as a result of the minority outreach program and the goals and timetables requirements under 29 CFR Part 30. The data for the first 6 months of 1976 indicate that minorities (who constitute 11.5 percent of the work force) are 17.7 percent of all apprentices. This is a rise from 9.1 percent in 1970, the last year before 29 CFR Part 30 was issued. During the same months in 1976, women (41.1 percent of the work force) held only 1.4 percent of all apprenticeship positions.

In view of these data, affirmative action goals and timetables for women in apprenticeship programs coupled with implementing affirmative action procedures would appear to be particularly appropriate at this time.

Many of the commentators opposed to this regulation claimed that women are not available for work in the skilled trades in the numbers required to achieve the goals. These commentators maintained either that women could not do the work or were not interested in apprenticeships. Information gathered by the Department, however, reveals that when opportunities are opened up for women in the skilled trades, women are available to take advantage of the opportunities.

The experience of World War II demonstrated the ability of women to perform jobs traditionally held as "male". During that period 6.7 million women entered the labor force with 2.9 million working in the crafts, as operatives or non-farm laborers. Approximately 350,000 women served in one of the four military services, and many others served in quasi-military support units. Women worked in essentially every occupation except

direct combat. They drove trucks, repaired airplanes, rigged parachutes, were gunnery instructors, as well as air traffic controllers. Data provided to the Department by the Office of Women's Rights, Seattle, Wash., demonstrates the success in placing women in construction trades which was achieved when the City instituted a 12 percent goal for women in all levels of city-financed construction work. The Director of the Office of Women's Rights in a September 26, 1977 letter, wrote that the 12 percent overall goal has been so achievable that it is likely it will be raised to 15 percent in 1978.

The Maritime Administration, which oversees enforcement of Executive Order 11246 in the shipbuilding industry, has provided the Department with some very useful documentation on both the availability of women for construction-related jobs and the positive impact of goals and timetables in the employment of women in those jobs. A number of the jobs in the shipbuilding industry are comparable to jobs in construction; the Maritime experience therefore is particularly useful. In early 1972 the Maritime Administration began requiring goals and timetables for women by shipbuilding contractors. The experience was that as more women were employed, more women applied. Once women knew that they would be hired without regard to sex, they applied in large numbers. In at least one shipyard the applicant flow is now running at the rate of the normal workforce rate of women in that area, greatly exceeding the 20 percent entry level goal originally set. Unquestionably, the key reason for the increase of women in that industry is goals and timetables.

Significant employment increases for women have resulted in the skilled and semi-skilled crafts in the Bell System of the American Telephone and Telegraph Co. under the goals required by the consent decree entered in 1973. Goals for women were set at the percentage of women in the workforce (then 38 percent) in all job groups in which they were under-represented, except for outside skilled and semiskilled craft jobs, where the goals were set at half the female workforce figure (i.e. 19 percent in 1973). Annual targets were set at these levels and carefully monitored. From January 1, 1973, to January 1, 1977, women in outside skilled crafts in AT&T rose in actual numbers from 38 to 970. Thus, despite the fact that the company was reducing its workforce in inside skilled and outside and inside semiskilled job groups during the same years, the gains for women were marked in each of these categories. Goals were also required for women in the construction of the Alaska pipeline. Not only was the goal exceeded

but women worked in areas and under conditions where many would have thought women would not accept jobs. Better than 2,500 women worked in the bush in such jobs as operating engineers, teamsters, laborers, etc. In fact, of the 19 construction craft working on the pipeline, women were represented in all but four.

A major effort to include women in non-traditional jobs, many of them construction related, has been under taken by the Department of Defense particularly the Air Force. Between 1974 and 1976, the number of women trained by the Air Force in non-traditional areas increased from 19,465 to 29,235. By 1977, their number had reached 34,610. Also, many of the women who entered the Air Force training programs in the initial stage in 1972, are now entering the civilian labor force and would be available for apprenticeship programs. Some of the Air Force Specialty Codes open to women include: Telephone Switching, Equipment Repairman Electrical/Mechanical in which women went from zero in 1972 to 72 in 1977; Helicopter Mechanic, Jet Engine Mechanic, Aircraft Maintenance Specialist, and other related mechanic categories from zero in 1972 to 3,181 in 1977; Electrician, from one in 1972 to 105 in 1977; Pavement Maintenance Specialist, zero to 48; Carpenter, zero to 91 and Plumber, zero to 72. Air Force enlistees enter the service with a four year commitment; they receive training and perform the duties of these specialties for that period of time. The military has been and remains a primary source for apprenticeship training for many men entering the skilled trades. It should also become a source of recruitment for women.

Since 1971, the Department has funded outreach programs for non-traditional jobs for women. Apprenticeship outreach programs have special women's components in 23 cities which have been funded for recruitment and placement of women. The concept of nontraditional job development for women has now been incorporated in all apprenticeship outreach programs and is involving women in over 100 cities. These and other specialized on-the-job training programs funded by the Department's Office of National Programs have contributed to opportunities for women in trades in which they were previously unrepresented. At the same time, however, overall numbers have not shown a significant increase comparable to that of minorities. Among the most successful projects are:

Better Jobs For Women—Initiated in 1971 under the leadership of the Denver Metropolitan YWCA, this project was developed by the Bureau of Apprenticeship and Training of the Department of Labor. It is one of two

outreach programs operating specifically to get women into nontraditional jobs. The target population was female heads of households. Each year this project has surpassed its stated goal for placements. It has reported that there is greater interest in apprenticeship by women than there are opportunities. For example, as of April 1977 a yearly average of 150-200 women applied for registered apprenticeship but only 20 were placed.

Advocates For Women—A San Francisco project, funded by the Department of Labor since January 1974, this project serves nine counties in the San Francisco Bay Area. Its goal is to place women in apprenticeship training with an emphasis on construction.

The project reports that 1,100 women apply each year; 125 are placed. The project has had to stop advertising because the interest generated so far exceeds the placements available.

National Urban League, LEAP Apprenticeship Outreach Program For Women—This project was funded by the Department of Labor in May 1974 to provide for greater involvement of women in apprenticeship. It is operated in conjunction with LEAP projects already providing outreach for minorities. It has operated in 15 cities across the country. This project has placed women in more than 15 crafts. The crafts in which women are participating under this project include: Asbestos workers, bricklayers, carpenters (22.8 percent of placements), cement masons, drywall tapers, electricians, ironworkers, laborers (14.9 percent), pipe trades, roofers, sheet metal workers, tilesetters, and welders.

A number of representatives of outreach programs and women's organizations commented in favor of the proposed regulation, stating that many women are eager to enter apprenticeships but that there are insufficient openings due to lack of affirmative action goals.

Thus the Department's experience indicates that there are women available and interested in entering the skilled trades. However, the longstanding reputation of the trades for excluding women discourages many women from applying for these jobs. A study by two Stanford University psychologists demonstrates that the number of women applying for jobs in the construction trades would substantially increase were there goals for women. In that study, two groups of female job seekers were given three detailed job descriptions and were asked to rate their interest in the jobs on a scale of 1 to 5, from "not interested" to "extremely interested." Two of the three jobs described were traditionally female jobs and one was a construction job. Half of the booklets contained the following statement

under the title of the construction jobs: "Equal Opportunity for Women, Note: Federal Law Now Requires That Companies Train and Hire a Certain Percentage of Women for the Job of [carpenter] Each Year." The other half of the booklets contained no statement about affirmative action. In the affirmative action group, 33 percent of the women indicated a strong interest in the construction job, twice the percentage indicating a strong interest as in the other group. Seventy percent of the women in the affirmative action group expressed some degree of positive interest in construction jobs, one and one half as many as the other group.

Thus it is clear that women are available for apprenticeship opportunities. Furthermore, if women are to receive a fair number of these opportunities it is necessary to establish specific affirmative action requirements, including goals and timetables.

The Department of Labor recognizes and adheres to the distinction between permissible affirmative action goals and timetables and impermissible quotas. In a March 23, 1973 memorandum, the Departments of Justice and Labor and the Equal Employment Opportunity Commission and the Civil Service Commission distinguished goals and timetables from quotas:

• • • Quota systems in the past have been used in other contexts as a quantified limitation, the purpose of which is exclusion, but this is not its sole definition. A quota system, applied in the employment context, would impose a fixed number or percentage which must be attained, or which cannot be exceeded; the crucial consideration would be whether the mandatory numbers of persons have been hired or promoted. Under such a quota system, that number would be fixed to reflect the population in the area, or some other numerical base, regardless of the number of potential applicants who meet necessary qualifications. If the employer failed, he would be subject to sanction. It would be no defense that the quota may have been unrealistic to start with, that he had insufficient vacancies, or that there were not enough qualified applicants, although he tried in good faith to obtain them through appropriate recruitment methods.

Any system which requires that consideration of relative abilities and qualifications be subordinated to considerations of race, religion, sex or national origin in determining who is to be hired, promoted, etc., in order to achieve a certain numerical position has the attributes of a quota system which is deemed to be impermissible under the standards set forth herein.

A goal, on the other hand, is a numerical objective, fixed realistically in terms of the number of vacancies expected, and the number of qualified applicants available in the relevant job market. Thus, if through no fault of the employer, he has fewer vacancies than expected, he is not subject to sanction, because he is not expected to displace existing employees or to hire unneeded employees to meet his goal. Similarly, if he has demonstrated every good faith effort

to include persons from the group which was the object of discrimination into the group being considered for selection, but has been unable to do so in sufficient numbers to meet his goal, he is not subject to sanction.

The Department of Labor continues to recognize the distinction between affirmative action and impermissible quotas, and also follows the policy enunciated in the memorandum quoted above.

The Congress and the courts also have recognized and acquiesced in the affirmative action programs (including goals and timetables) required under Executive Order 11246, as amended, which is administered by the Office of Federal Contract Compliance Programs of the Department. When Congress considered the Equal Employment Opportunity Act of 1972 (Pub. L. 92-261), Senator Saxbe made the following statement (118 Cong. Rec. 1385):

The OFCCIP's affirmative action programs have tremendous impact and require that 260,000 Government contractors in all industries adopt positive programs to seek out minorities and women for new employment opportunities. To accomplish this objective, the OFCCIP has utilized the proven business technique of establishing "goals and timetables" to insure the success of the Executive Order Program. It has been the "goals and timetables" approach which is unique to the OFCCIP's efforts in equal employment, coupled with extensive reporting and monitoring procedures that has given the promise of equal employment opportunity a new credibility.

The Executive Order Program should not be confused with the judicial remedies for proven discrimination which unfold on a limited and expensive case-by-case basis. Rather, affirmative action means that all Government contractors must develop programs to insure that all share equally in the jobs generated by the Federal Government's spending. Proof of overt discrimination is not required.

Senator Saxbe's proposed amendment was adopted. (118 Cong. Rec. 1387-1398 (1972).) In addition, 2 days after hearing the comments of Senator Saxbe, quoted above, Congress rejected an amendment offered by Senator Ervin which would have proscribed the adoption of goals by Government contractors. See also *U.S. v. Elevator Constructors (IUEC) Local Union No. 5*, 538 F.2d 1012, (3rd Cir. 1976); *Constructors Ass'n of Eastern Pa. v. Shultz*, 442 F.2d 159 (3rd Cir. 1971), cert. denied, 404 U.S. 854 (1971).

Some of the comments which opposed the use of goals for women suggested alternative methods for achieving affirmative action. Alternatives suggested included the use of outreach programs, emphasis on recruitment, and the development of special programs to prepare women with basic skills required to enter apprenticeship programs. As has been discussed above, both outreach programs and re-

recruitment have been used in the past and while there has been some notable success, there continues to be serious underrepresentation of women in apprenticeship programs. It has been the Department's experience that this underrepresentation can best be remedied through the use of goals and timetables.

3. Section 30.4(e) sets forth the factors which should be analyzed in writing as part of the affirmative action plan. Item (1) in the existing regulation provides the following: "The minority population of the labor market area in which the program sponsor operates." This factor was inadvertently omitted from the September 30, 1977, proposal (42 FR 52441). Several comments were addressed to this issue, suggesting that the existing item (1) be amended to include the female population. The appropriate factor, however, is the working age minority and female (minority and nonminority) population.

4. Section 30.4(f) sets forth the method by which program sponsors are to establish and attain their goals and timetables. The proposal published on September 30, 1977, (42 FR 52441) contained two additions to § 30.4(f) which are included in the regulation adopted today. The first addition reads as follows:

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 female goals generally had been achieved.

This addition requires sponsors to establish two goals: one for women and one for minorities. In instances where a particular group of women or a particular group of minority men is employed in a substantially disparate manner, the sponsor would be required to establish separate goals for the group in question. For example, a sponsor could meet its goals for women and minorities yet have substantial underrepresentation of minority women in its apprenticeship program. In this case the sponsor would be required to set separate goals for minority women. The same would be true if there were significant underrepresentation of white women or of a particular minority group.

The second addition to § 30.4(f) reads as follows:

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 one half the proportion women

are of the workforce in the program sponsor's labor market area and set a percentage goal for women in all classes 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. See 29 CFR 30.8(b).

A number of comments, primarily from unions and joint apprenticeship committees, opposed this method of establishing goals for women in the entering class of apprenticeship programs. Their main complaint was that the method would result in a goal which was unrealistic and impossible to meet because there were not enough women with the ability and/or interest to enter the skilled trades.

As we have discussed above, however, the information collected by the Department of Labor indicates that where opportunities are extended to women, there are women available. Furthermore, from the material the Department has studied in connection with the preparation of this regulation, it appears that the goal which will result from the regulation adopted today is a reasonable one. Sponsors will not be held to an absolute standard of achieving the goal but are expected to make good faith efforts to meet the goal.

As of 1976 women constituted 40.5 percent of the national labor force. While the figures will vary from one program sponsor's labor market area to another, the entering class goal resulting from the regulation adopted today should be at least 20 percent. It is to be noted that this was the goal successfully used by the Maritime Administration for apprenticeship and comparable entry level jobs in shipbuilding. Likewise the goals for hiring women in outside skilled and semi-skilled crafts under the American Telephone and Telegraph Company Consent Decree were set at half the female workforce figure. In addition, as discussed above, Seattle, Wash., instituted a 12 percent goal for women in city financed construction work. This goal applied to all levels and types of construction work, not just apprenticeship. As we have seen the Office of Women's Rights in Seattle has indicated that the goal has been so achievable it is likely to be raised to 15 percent. Although the goals required for women in construction under the Executive Order 11246 regulations are lower than the entering class goal required by this regulation, this is appropriate in view of the fact that the Executive Order 11246 goals supply to all levels of construction work, not just apprenticeship. Thus, the goals set reflect the fact that there are few women journeypersons and advanced apprentices available.

Several alternatives were proposed by those who opposed the method of

establishing entering class goals required by this regulation. These included basing goals on the percentage of women currently working in the apprenticeable trades, on the number of women who apply for apprenticeships, and/or on the number of women interested in apprenticeship. The Department has considered these alternatives and found them to be unacceptable. To base goals on the current percentage of women in the skilled trades would serve to perpetuate the discrimination which has resulted in so few women entering the trades. Further, it would be inappropriate because apprenticeships are entry-level positions, requiring no previous skills or training. Thus the applicable labor market is not those in the labor force who have already acquired skills, but those who possess the capability to be trained. In the absence of any proof to the contrary, the Department assumes that the percentage of the female labor force capable of being trained in the skilled trades is approximately equal to the percentage of the male labor force with that capability. Thus the Department assumes that in the absence of discrimination women would be represented in the skilled trades in a fashion comparable to their representation in the total workforce in a given geographical area.

Basing goals on the numbers of women who have applied for apprenticeship or otherwise indicated interest in apprenticeship is likewise unacceptable. As a number of courts have held, people are often discouraged from applying for jobs with employers who have a reputation of not hiring members of their particular group. See *Lea v. Cone Mills Corp.*, 301 F. Supp. (M.D.N.C. 1969), *aff'd in relevant part*, 483 F.2d 86 (4th Cir. 1971); *U.S. v. Central Motor Lines, Inc.*, 338 F. Supp. 532 (W.D. N.C. 1971); *Dobbins v. Local 212, IBEW*, 292 F. Supp. 413, (S.D. Ohio 1968). Thus the number of women applying for apprenticeship should not be used as a basis for goal-setting. Basing goals on the number of women who have expressed interest in apprenticeship would be objectionable for the same reason.

Some of the comments suggested that the Department delay requiring goals for women for 2 years, requiring vigorous recruitment of women during that 2-year period. Goals would then be based on the number of women who demonstrated interest in apprenticeship during this 2-year period. It is the Department's position that this suggestion is unacceptable because women are so seriously underrepresented in the skilled trades it is necessary to begin remedial action immediately. As discussed previously, it is the Department's experience that goals and timetables are the most effective means for accomplishing such remedial

al action. Clearly vigorous recruitment is also required but experience has shown that it alone is not enough.

A few comments maintained that the availability of women would vary from one region to another and that this fact should be accounted for in the regulation. It is to be noted that goals are set based on a particular sponsor's labor market area. Thus if the percent of women is lower than the national average in a particular labor market area the entering class goal would be lower as well. Since we have no proof that the female interest in apprenticeship varies significantly from one geographic area to another, there is no reason to make any further distinctions based on region.

Some of the individuals and women's groups who commented in favor of the regulation recommended that the Department adopt workforce parity as the ultimate goal for women in apprenticeship and require that the goal be set at this level in 5 years. The regulation adopted today provides at §30.8 that the goals and timetables shall be updated annually until workforce parity is achieved.

Section 30.5. This section sets forth the obligations of sponsors in the adoption of a method for the selection of apprentices.

1. Minor changes have been made in this section to make it consistent with the Office of Federal Contract Compliance Programs Guidelines on Employee Selection Procedures, 41 CFR Part 60-3.

2. Changes have been made in §30.5(b)(1)(iii) and §30.5(b)(4)(1)(B) to eliminate minimum physical requirements as acceptable qualifications for apprenticeship. Some of those who commented against the proposed regulation suggested that minimum physical requirements be permitted. Minimum physical requirements were eliminated from the proposal and from the regulation adopted today because such requirements have traditionally been used to exclude women and some minority groups from employment opportunities. By minimum physical requirements we are referring to such things as height and weight requirements and arbitrarily applied strength requirements. We note, however, that while a sponsor could not reject applicants on their height, weight, or apparent strength, there is nothing in the regulation adopted today which would prohibit properly job-related performance and physical ability tests. Such tests must meet the requirements of 41 CFR Part 60-3 in order to be acceptable.

3. In the proposal published on September 30, 1977 (42 FR 52441), changes were made in §30.5(b)(4)(1)(A) to require that a sponsor complete development of its revised selection method along with the rest of its af-

firmative action program within 60 days of the effective date of this amendment. Some comments criticized this provision as not allowing enough time. The provision was changed from 60 to 90 days to make it consistent with §30.3(c).

Section 30.11. This section sets forth the complaint procedure.

1. A number of comments addressed the provision that allows complaints to be filed with a private review body, stating that such procedures should not be imposed on complainants but should be voluntary. We note that both the proposal and the regulation adopted today do make the use of private review bodies optional, as the complainant has the choice of filing his or her complaint with the Department or the private review body.

2. Section 30.11(b)(3) was added in both the proposal and in the regulation adopted today to require that sponsors provide written notice of the complaint procedure to all applicants for apprenticeship and all apprentices. A number of individuals and groups commented favorably on this addition, stating that it was very important since without it many applicants and apprentices would not know what recourse they had in the event they believed they had been subjected to discrimination.

Section 30.15. This section sets forth procedures to be followed by State Apprenticeship Councils. The proposal and the regulation adopted today require that each State Apprenticeship Council complete development of a revised equal opportunity plan which shall be consistent with this part within 60 days of the effective date of this regulation. The revised State plan must require all State apprenticeship programs registered with the State Apprenticeship Council to comply with the requirements of the revised State plan within 90 days of the effective date of this regulation. Some of the comments criticized the proposal on the basis that these time requirements were too short, others criticized them on the basis that they were too long. It is the Department's decision that the time periods are adequate.

OTHER COMMENTS

1. Some comments expressed the view that the Department of Labor should withhold a decision until the Supreme Court has ruled in *The Regents of the University of California v. Bakke* case. It, of course, is always difficult to predict with precision how the Supreme Court will rule in a specific case. However, it is not likely that a ruling in that case, a university admissions case, would have the type of impact on these regulations that they should be held in abeyance until the Supreme Court has ruled.

2. Some comments stated that the regulation adopted today should not

be implemented in a time of high unemployment in the skilled trades. It is to be noted, however, that this regulation does not require that any current apprentices or other workers be laid off or removed from apprenticeship programs.

3. A number of those favoring the regulation objected to the use of the word "qualified" modifying minorities or women in the section of the Preamble entitled "Proposed Changes." These comments pointed out that the term is not used in the current regulation or the proposed amendment. They advocated as an alternative the use of the word "trainable," claiming that there was a possibility that biased program sponsors may use this language as an excuse to exclude women on the basis that they are not "qualified." As stated previously, the regulation adopted today reflects the Department's determination that apprenticeships, like other entry level jobs, do not require any particular training or qualification other than the capability to be trained. The use of the word "qualified" in the Preamble to the proposed regulation was not intended to signify anything contrary to this position.

4. Neither the proposed regulations nor the regulations adopted today amended 29 CFR 30.5(b)(4)(B) which permits school diplomas as a qualification standard. Comments were invited, however, on the issue of whether the school diploma should be retained as an alternative selection method. A number of comments were received on this issue both in favor and opposed to the retaining of the school diploma as a permissible selection criteria. No change was made in this section because current law is clear that if a high school diploma requirement has an adverse impact on any group, it must be validated. *Griggs v. Duke Power Co.*, 401 U.S. 424 (1971). The current regulation requires such validation in accordance with the Guidelines on Employee Selection Procedures, 41 CFR Part 60-3.

In consideration of the foregoing, 29 CFR Part 30 is hereby amended as set forth below.

Dated: May 9, 1978.

ERNEST G. GREEN,
Assistant Secretary, Employment and Training Administration.

- Sec.
- 30.1 Scope and purpose.
- 30.2 Definitions.
- 30.3 Equal opportunity standards.
- 30.4 Affirmative action plans.
- 30.5 Selection of apprentices.
- 30.6 Existing lists of eligibles and public notice.
- 30.7 [Reserved].
- 30.8 Records.
- 30.9 Compliance reviews.
- 30.10 Noncompliance with Federal and State equal opportunity requirements.

Sec.

- 30.11 Complaint procedure.
- 30.12 Adjustment in schedule for compliance review or complaint processing.
- 30.13 Sanctions.
- 30.14 Reinstatement of program registration.
- 30.15 State Apprenticeship Councils.
- 30.16 Hearings.
- 30.17 Intimidatory or retaliatory acts.
- 30.18 Nondiscrimination.
- 30.19 Exemptions.

AUTHORITY: Sec. 1, 50 Stat. 664, as amended; 29 U.S.C. 50; 40 U.S.C. 276c; 5 U.S.C. 301; Reorganization Plan No. 14 of 1950, 64 Stat. 1267, 3 CFR 1949-53 Comp. p. 1007.

§ 30.1 Scope and purpose.

This part sets forth policies and procedures to promote equality of opportunity in apprenticeship programs registered with the U.S. Department of Labor and in state apprenticeship programs registered with recognized state apprenticeship agencies. 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 noncomplying apprenticeship programs. This part also provides policies and procedures for continuation or withdrawal of recognition of state agencies for registering of apprenticeship programs for Federal purposes. The purpose of this part is to promote equality of opportunity in apprenticeship by prohibiting discrimination based on race, color, religion, national origin, or sex in apprenticeship programs, by requiring affirmative action to provide equal opportunity in such apprenticeship programs, and by coordinating this part with other equal opportunity programs.

§ 30.2 Definitions.

(a) "Department" means the U.S. Department of Labor.

(b) "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.

(c) "Apprenticeship program" means a program registered by the Department and evidenced by a Certificate of Registration as meeting the standards of the Department for apprenticeship, but does not include a state apprenticeship program.

(d) "Sponsor" means any person or organization operating an apprenticeship program, irrespective of whether such person or organization is an employer.

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

(f) "State Apprenticeship Council" means a state apprenticeship council or other state agency in any of the 50 states, the District of Columbia, or any territory or possession of the United States, which is recognized by the Department as the appropriate agency for registering programs for Federal purposes.

(g) "State apprenticeship program" means a program registered with a State Apprenticeship Council and evidenced by a Certificate of Registration or other appropriate document as meeting the standards of the State Apprenticeship Council for apprenticeship.

(h) "State program sponsor" means any person or organization operating a State apprenticeship program, irrespective of whether such person or organization is an employer.

§ 30.3 Equal opportunity standards.

(a) *Obligations of sponsors.* Each sponsor of an apprenticeship program shall:

(1) Recruit, select, employ, and train apprentices during their apprenticeship, without discrimination because of race, color, religion, national origin, or sex; and

(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

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

(b) *Equal opportunity pledge.* Each sponsor of an apprenticeship program shall include in its standards the following equal opportunity pledge:

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 and will operate the apprenticeship program as required under Title 29 of the Code of Federal Regulations, Part 30.

(c) *Programs presently registered.* Each sponsor of a program registered with the Department as of the effective date of this part shall within 90 days of that effective date take the following action:

(1) Include in the standards of its apprenticeship program the equal opportunity pledge prescribed by paragraph (b) of this section;

(2) Adopt an affirmative action plan required by § 30.4; and

(3) Adopt a selection procedure required by § 30.5. A sponsor adopting a selection method under § 30.5(b) (1), (2), or (3) shall prepare, and have available for submission upon request, copies of its amended standards, affirmative action plans, and selection procedure. A sponsor adopting a selection method under § 30.5(b)(4) shall submit to the Department copies of its standards, affirmative action plan and selection procedure in accordance with the requirements of § 30.5(b)(4)(i)(a).

(d) *Sponsors seeking new registration.* A sponsor of a program seeking new registration with the Department 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 part.

(e) *Programs subject to approved equal employment opportunity programs.* A sponsor shall not be required to adopt an affirmative action plan under § 30.4 or a selection procedure under § 30.5 if it submits to the Department satisfactory evidence that it is in compliance with an equal employment 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, as amended (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 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 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 part.

(f) *Program 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 § 30.4 or a selection procedure under § 30.5: *Provided*, That such program was not adopted to circumvent the requirements of this part.

§ 30.4 Affirmative action plans.

(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.

(b) *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 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.

(c) *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 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 the 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 part. The affirmative action plan shall set forth the specific steps the sponsor intends to take in the areas listed below. Whenever special circumstances warrant, the Department may provide such financial or other assistance as it deems necessary to implement the requirements of this paragraph.

(1) Dissemination of information concerning the nature of the apprenticeship, requirements for admission to apprenticeship, availability of apprenticeship opportunities, sources of apprenticeship applications, and the equal opportunity policy of the sponsor. For programs accepting applications only at specified intervals, such information shall be disseminated at least 30 days in advance of the earliest date for application 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 Department, 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 in the general areas

in which the program sponsor operates.

(2) Participation in annual workshops conducted by employment service agencies for the purpose of familiarizing school, employment service and other appropriate personnel with the apprenticeship system and current opportunities therein.

(3) Cooperation with local school boards and vocational education systems to develop programs for preparing students to meet the standards and criteria required to qualify for entry into apprenticeship programs.

(4) Internal communication of the sponsor's equal opportunity policy in such a 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 part.

(5) Engaging in programs such as outreach for the positive recruitment and preparation of potential applicants for apprenticeships; where appropriate and feasible, such programs shall provide for pretesting 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.

(6) 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.

(7) Utilization of journeypersons to assist in the implementation of the sponsor's affirmative action program.

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

(9) Admitting to apprenticeship, persons whose age exceeds the maximum age for admission to the program, where such action assists the sponsor in achieving its affirmative action obligations.

(10) Other appropriate action 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 (e.g., general publication of apprenticeship opportunities and advantages in advertisements, industry reports, articles, etc.; use of present minority and female apprentices and journeypersons as recruiters; career counseling; periodic auditing of affirmative action programs and activities; and development of reasonable procedures between the sponsor and employers of apprentices to ensure that employment 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.

(d) *Goals and timetables.* (1) A sponsor adopting a selection method under § 30.5(b) (1) or (2) which determines on the basis of the analysis described in paragraph (e) of this section that it has deficiencies in terms of underutilization of minorities and/or women (minority and nonminority) 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 nonminority) applicants into the eligibility pool.

(2) A sponsor adopting a selection method under § 30.5(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 female (minority and nonminority) applicants for the apprenticeship program.

(3) "Underutilization" as used in this paragraph refers to the situation where there are fewer minorities and/or women (minority and nonminority) 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.

(4) Where the sponsor fails to submit goals and timetables as part of its affirmative action plan or submits goals and timetables which are unac-

ceptable, and the Department determines that the sponsor has deficiencies in terms of underutilization of minorities or women (minority and non-minority) within the meaning of this section, the Department shall establish goals and timetables applicable to the sponsor for the admission of minority and female (minority and non-minority) applicants into the eligibility pool or 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.

(e) *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.

(1) The size of the working age minority and female (minority and non-minority) population in the program sponsor's labor market area;

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

(3) 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;

(4) The percentage of minority and female (minority and nonminority) participation as journeypersons employed by the employer or employers participating in the program as compared with the percentage of minorities and women (minority and nonminority) 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; and

(5) 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.

(f) *Establishment and attainment of goals and timetables.* The goals and timetables shall be established on the basis of the sponsor's analyses 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 gen-

erally. 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 workforce 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. See 29 CFR 30.8(b).

(g) *Data and information.* The Secretary of Labor, or a person or agency designated by the Secretary, 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.

§ 30.5 Selection of apprentices.

(a) *Obligations of sponsors.* In addition to the development of a written affirmative action plan to ensure that minorities and women have an equal opportunity for selection as 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 in the following subparagraphs (1) through (4) of paragraph (b) of this section.

(b) *Selection methods.* The sponsor shall adopt one of the following methods for selecting apprentices:

(1) *Selection on basis of rank from pool of eligible applicants—(i) Selection.* A sponsor may select apprentices from a pool of eligible applicants created in accordance with the require-

ments 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.

(ii) *Requirements.* The sponsor adopting this method of selecting apprentices shall meet the requirements of subdivisions (iii) through (vii) of this subparagraph.

(iii) *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 qualification standards in addition to minimum legal working age: *Provided*, That any additional qualification standards conform with the following requirements:

(A) *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 relationship, 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.

(B) *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 significant statistical relationships between the score on the aptitude tests required for admission to the pool, and performance in the apprenticeship program. In determining such relationship, 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 agency, or any other person, agency, or organization engaged in the selection or evaluation of personnel. A national test developed and administered by a na-

tional joint apprenticeship committee will not be approved by the Department unless such test meets the requirements of this subsection.

(C) *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 relationship, the sponsor shall meet the requirements of 41 CFR Part 60-3. School records or a passing grade on the general education development tests recognized by the State or local public instruction authority shall be evidence of educational achievement. Education requirements shall be applied uniformly to all applicants.

(iv) *Oral interviews.* 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, he or she may be required to submit to an oral interview. Oral interviews shall be limited 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 the questions and the general nature of the applicant's answers, and shall prepare a summary of any conclusions. 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.

(v) *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 each rejected applicant who is not selected for the pool or the program notice of his or her rejection, including the reasons for the rejection, the requirements for admission to the pool of eligibles, and the appeal rights available to the applicant.

(vi) *Goals and timetables.* The sponsor shall establish where required by § 30.4(d), percentage goals and timetables for the admission of minorities and women (minority and nonminority) into the pool of eligibles, in accordance with the provisions of § 30.4 (d), (e), and (f).

(vii) *Compliance.* A sponsor shall be deemed to be in compliance with its commitments under subdivision (vi) of this subparagraph if it meets its goals or 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 commitments (see § 30.4(f)). All the actions of the sponsor shall be reviewed and evaluated in determining whether such good faith efforts have been made.

(2) *Random selection from pool of eligible applicants—(i) 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 Department. 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.

(ii) *Requirements.* The sponsor adopting this method of selecting apprentices shall meet the requirements of subdivisions (iii) through (v) of subparagraph (1) of this paragraph relating to the creation of pool of eligibles, oral interviews, and notification of applicants.

(iii) *Goals and timetables.* The sponsor shall establish, where required by § 30.4(d), percentage goals and timetables for admission of minorities and women (minority and nonminority) into the pool of eligibles in accordance with the provisions of sections 30.4 (d), (e), and (f).

(iv) *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).

(3) *Selection from pool of current employees—(i) 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 § 30.4 (d), (e), and (f) that it does not have deficiencies in terms of underutilization of minorities and/or women (minority and nonminority) in the apprenticeship of journeyperson crafts represented by the program.

(ii) *Compliance.* Determinations as to the sponsor's compliance with its

obligations under these regulations shall be in accordance with provisions of subdivision (vii) of subparagraph (1) of this paragraph (b).

(4) *Alternative selection methods—(i) Selection.* A sponsor may select apprentices by means of any other method including its present selection method: *Provided,* That the sponsor meets the following requirements:

(A) *Selection method and goals and timetables.* Within 90 days of the effective date of this amendment, the sponsor shall complete development of the revised selection method it proposes to use along with the rest of its written affirmative action program including, where required by § 30.4(d), its percentage goals and timetables for the selection of minority and/or female (minority and nonminority) 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 § 30.4 (d), (e), and (f). The sponsor may not implement any such selection method until the Department has approved the selection method as meeting the requirements of item (B) of this subdivision and has approved the remainder of its affirmative action program including its goals and timetables. If the Department 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.

(B) *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 health 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 part of the total judgement. In applying any such standards, the sponsor shall meet the requirements of 41 CFR Part 60-3.

(ii) *Compliance.* Determinations as to the sponsor's compliance with its obligations under these regulations shall be in accordance with the provisions of subdivisions (vii) of subparagraph (1) of this paragraph (b). 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 toward the attainment of its goals. The sponsor may also be required to develop and adopt an alter-

native selection method, including a method prescribed by the Department, where it is determined that the 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.

§ 30.6 Existing lists of eligibles and public notice.

A sponsor adopting a selection method under § 30.5(b) (1) or (2) and a sponsor adopting a selection method under § 30.5(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 § 30.4(e) shall discard all existing eligibility lists upon adoption of the selection methods required by this part. 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 2 weeks for accepting applications for admission to an apprenticeship program. There shall be at least 30 days of public notice in advance of the earliest date for application for admission to the apprenticeship program (see § 30.4(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 2 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. Upon request, a sponsor may restore to the list of eligibles applicants who have been removed from the list or who have failed to respond to an apprenticeship job opportunity.

§ 30.7 [Reserved]

§ 30.8 Records.

(a) *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 relative to the operation of the apprenticeship program, including but not limited to job assignment, promotion, demotion, layoff, or termination, rates of pay, or other forms of compensation or conditions of work, hours including hours of work and, separately, hours of training provided, and any other records pertinent to a determination of compliance with these regulations, as may be required by the Department. The records pertaining to individual applicants, selected or rejected, shall be maintained in such manner as to permit identification of minority and female (minority and nonminority) participants.

(b) *Affirmative action plans.* Each sponsor must retain a statement of its affirmative action plan required by § 30.4 for the prompt achievement of full and equal opportunity in apprenticeship, including all data and analyses made pursuant to the requirements of § 30.4. Sponsors shall review their affirmative action plans annually and update them where necessary, including the goals and timetables.

(c) *Qualification standards.* Each sponsor must maintain evidence that its qualification standards have been validated in accordance with the requirements set forth in § 30.5(b).

(d) *Records of State Apprenticeship Councils.* State Apprenticeship Councils shall keep adequate records, including registration requirements, individual program standards and registration records, program compliance reviews and investigations, and any other records pertinent to a determination of compliance with this part, as may be required by the Department, and shall report to the Department as may be required by the Department.

(e) *Maintenance of records.* The records required by this part and any other information relevant to compliance with these regulations shall be maintained for 5 years and made available upon request to the Department or other authorized representative.

§ 30.9 Compliance reviews.

(a) *Conduct of compliance reviews.* The Department will regularly conduct systematic reviews of apprenticeship programs in order to determine the extent to which sponsors are complying with these regulations and will also conduct compliance reviews when circumstances, including receipt of complaints not referred to a private review body pursuant to § 30.11(b)(1), so warrant, and take appropriate action regarding programs which are not in compliance with the requirements of this part. Compliance reviews

will consist of comprehensive analysis and evaluations of each aspect of the apprenticeship program, including on-site investigations and audits.

(b) *Reregistration.* Sponsors seeking reregistration shall be subject to compliance review as described in paragraph (a) of this section by the Department as part of the reregistration process.

(c) *New registrations.* Sponsors seeking new registration shall be subject to a compliance review as described in paragraph (a) of this section by the Department as part of the registration process.

(d) *Voluntary compliance.* Where the compliance review indicates that the sponsor is not operating in accordance with this part, the Department shall notify the sponsor in writing of the results of the review and make reasonable effort to secure voluntary compliance on the part of the program sponsor within a reasonable time before undertaking sanctions under § 30.13. In the case of sponsors seeking new registration, the Department will provide appropriate recommendations to the sponsor to enable it to achieve compliance for registration purposes.

§ 30.10 Noncompliance with Federal and state equal opportunity requirements.

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 may be grounds for the imposition of sanctions in accordance with § 30.13 if such noncompliance is related to the equal employment opportunity of apprentices and/or graduates of such an apprenticeship program under this part. The sponsor shall take affirmative steps to assist and cooperate with employers and unions in fulfilling their equal employment opportunity obligations.

§ 30.11 Complaint procedure.

(a) *Filing.* (1) Any apprentice or applicant for apprenticeship who believes that he or she has been discriminated against on the basis of race, color, religion, national origin, or sex with regard to apprenticeship or that the equal opportunity standards with respect to his or her selection have not been followed in the operation of an apprenticeship program may, personally or through an authorized representative, file a complaint with the Department, or, at the apprentice's or applicant's election, with a private review body established pursuant to subparagraph (3) of this paragraph. 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 discriminated against, the pro-

gram sponsor involved, and a brief description of the circumstances of the failure to apply the equal opportunity standards provided for in this part.

(2) The complaint must be filed not later than 180 days from the date of the alleged discrimination or specified failure to follow the equal opportunity standards; and, in the case of complaints filed directly with review bodies designated by program sponsors to review such complaints, any referral of such complaint by the complainant to the Department must occur within the time limitation stated above or 30 days from the final decision of such review body, whichever is later. The time may be extended by the Department for good cause shown.

(3) Sponsors are encouraged to establish fair, speedy, and effective procedures for a review body to consider complaints of failure to follow the equal opportunity standards. A private review body established by the program sponsor for this purpose should number three or more responsible persons from the community serving in this capacity without compensation. Members of the review body should not be directly associated with the administration of an apprenticeship program. Sponsors may join together in establishing a review body to serve the needs of programs within the community.

(b) *Processing of complaints.* (1)(i) When the sponsor has designated a review body for reviewing complaints, the Department, unless the complainant has indicated otherwise or unless the Department has determined that the review body will not effectively enforce the equal opportunity standards, shall upon receiving a complaint refer it to the review body.

(ii) The Department shall, within 30 days following the referral of a complaint to the review body, 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 failure to apply equal opportunity standards, the case shall be closed and the parties appropriately informed.

(iii) 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 equal opportunity practices of the apprenticeship program are not in accordance with this part, the Department may conduct such compliance review as found necessary, and will take all necessary steps to resolve the complaint.

(2) Where no review body exists, the Department may conduct such compliance review as found necessary in order to determine the facts of the complaint, and obtain such other in-

formation relating to compliance with these regulations as the circumstances warrant.

(3) Sponsors shall provide written notice of the above complaint procedure to all applicants for apprenticeship and all apprentices.

§ 30.12 Adjustments in schedule for compliance review or complaint processing.

If, in the judgment of the Department, 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.

§ 30.13 Sanctions.

(a) Where the Department, as a result of a compliance review or other reason, determines that there is reasonable cause to believe that an apprenticeship program is not operating in accordance with this part and voluntary corrective action has not been taken by the program sponsor, the Department shall institute proceedings to deregister the program or it shall refer the matter to the Equal Employment Opportunity Commission or to the Attorney General with recommendations for the institution of a court action under Title VII of the Civil Rights Act of 1964, as amended, or to the Attorney General for other court action as authorized by law.

(b) Deregistration proceedings shall be conducted in accordance with the following procedures:

(1) The Department shall notify the sponsor, in writing, that a determination of reasonable cause has been made under paragraph (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.

(2) 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 Secretary shall convene a hearing in accordance with § 30.16.

(3) The Secretary shall make a final 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 § 30.16, the proposed findings and recommended decision of the hearing officer. The Secretary may allow the sponsor a reasonable time to achieve voluntary corrective action. If the Secretary's decision is that the apprenticeship program is not operating in accordance with this part, the apprenticeship program shall be deregistered. In each case in which deregistration is ordered, the Secretary shall

make public notice of the order and shall notify the sponsor and the complainant, if any.

§ 30.14 Reinstatement of program registration.

Any apprenticeship program deregistered pursuant to this part may be reinstated upon presentation of adequate evidence to the Secretary that the apprenticeship program is operating in accordance with this part.

§ 30.15 State Apprenticeship Councils.

(a) *Adoption of consistent state plans.* (1) The Department shall encourage State Apprenticeship Councils to adopt and implement the requirements of this part.

(2) Within 60 days of the effective date of these regulations, each State Apprenticeship Council shall complete development of a revised equal opportunity plan which shall be consistent with this part. The revised State plan shall require all state apprenticeship programs registered with the State Apprenticeship Council to comply with the requirements of the revised State plan within 90 days of the effective date of these regulations. No State Apprenticeship Council shall continue to be recognized by the Department if it has not adopted within 60 days of the effective date of these regulations a plan implementing the requirements of this part.

(3) The Department retains authority to conduct compliance reviews and complaint investigations to determine whether the state plan or any state apprenticeship program registered with a State Apprenticeship Council is being administered or operated in accordance with this part.

(4) It shall be the responsibility of the State Apprenticeship Council to take the necessary action to bring a noncomplying program into compliance with the state plan. In the event the State Apprenticeship Council fails to fulfill this responsibility, the Secretary may withdraw the recognition for Federal purposes of any or all state apprenticeship programs, in accordance with the procedures of deregistration of programs registered by the Department, or refer the matter to the Equal Employment Opportunity Commission or to the Attorney General with a recommendation for the institution of a court action under Title VII of the Civil Rights Act of 1964, as amended, or to the Attorney General for other court actions as authorized by law.

(5) Each State Apprenticeship Council shall notify the Department of any state apprenticeship program deregistered by it.

(6) Any state apprenticeship program deregistered by a State Apprenticeship Council for noncompliance with requirements of this part may,

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within 15 days of the receipt of a notice of deregistration, appeal to the Department to set aside the determination of the State Apprenticeship Council. The Department shall make its determination on the basis of the record. The Department may grant the state program sponsor, the State Apprenticeship Council and the complainant(s), if any, the opportunity to present oral or written argument.

(b) *Withdrawal of recognition.* (1) Whenever the Department determines that reasonable cause exists to believe that State Apprenticeship Council has not adopted or implemented a plan in accordance with the equal opportunity requirements of this part, it shall give notice to such State Apprenticeship Council and to appropriate state sponsors of this determination, stating specifically wherein the state's plan fails to meet such requirements and that the Department proposes to withdraw recognition for Federal purposes, from the State Apprenticeship Council unless within 15 days of the receipt of the notice, the State Apprenticeship Council complies with the provisions of this part or mails a request for a hearing to the Secretary.

(2) If within 15 days of the receipt of the notice provided for in subparagraph (1) of this paragraph the State Apprenticeship Council neither complies with the provisions of this part, nor mails a request for a hearing, the Secretary shall notify the State Apprenticeship Council of the withdrawal of recognition.

(3) If within 15 days of the receipt of the notice provided for in subparagraph (1) of this paragraph the State Apprenticeship Council mails a request for a hearing, the Secretary shall proceed in accordance with § 30.16.

(4) If a hearing is conducted in accordance with § 30.16, the Secretary upon receipt of the proposed findings and recommended decision of the hearing officer shall make a final decision whether the State Apprenticeship

Council has adopted or implemented a plan in accordance with the equal opportunity requirements of this part.

(5) If the Secretary determines to withdraw recognition, for Federal purposes, from the State Apprenticeship Council, the Secretary shall notify the State Apprenticeship Council of this determination. The Secretary shall also notify the State sponsors that within 30 days of the receipt of the notice the Department shall cease to recognize, for Federal purposes, each State apprenticeship program unless the State program sponsor requests registration with the Department. Such registration may be granted contingent upon finding that the State apprenticeship program is operating in accordance with the requirements of this part.

(6) A State Apprenticeship Council whose recognition has been withdrawn pursuant to this part may have its recognition reinstated upon presentation of adequate evidence to the Secretary that it has adopted and implemented a plan carrying out the equal opportunity requirements of this part.

§ 30.16 Hearings.

(a) Within 10 days after receiving a request for a hearing, the Secretary shall designate a hearing officer. The hearing officer shall give reasonable notice of such hearing by certified mail, return receipt requested, to the appropriate sponsor (Federal or state registered), the State Apprenticeship Council, or both, as the case may be. Such notice shall include (1) a reasonable time and place of hearing, (2) a statement of the provisions of this part, pursuant to which the hearing is to be held, and (3) a concise statement of the matters pursuant to which the action forming the basis of the hearing is proposed to be taken.

(b) The hearing officer shall regulate the course of the hearing. Hearings shall be informally conducted. Every 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 Secretary upon the basis of the record before them.

§ 30.17 Intimidatory or retaliatory acts.

Any intimidation, threat, coercive or retaliation by or with the approval of any sponsor against any person for the purpose of interfering with a right or privilege secured by Title V of the Civil Rights Act of 1964, amended, Executive Order 11246, amended, or because he or she has made a complaint, testified, assisted or participated in any manner in an investigation proceeding, or hearing under this part shall be considered noncompliance with the equal opportunity standards of this part. The identity of complainants shall be kept confidential except to the extent necessary to carry out the purposes of this part, including the conduct of an investigation, hearing or judicial proceeding arising therefrom.

§ 30.18 Nondiscrimination.

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, color, religion, national origin, or sex.

§ 30.19 Exemptions.

Request for exemption from these regulations, or any part thereof, shall be made in writing to the Secretary and shall contain a statement of reasons supporting the request. Exemptions may be granted for good cause. State Apprenticeship Councils shall notify the Department of any such exemptions granted affecting a substantial number of employers and the reasons therefor.

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