

PART 600
EQUAL EMPLOYMENT OPPORTUNITY IN
APPRENTICESHIP TRAINING

(Statutory authority: Section 811 of the Labor Law)

§ Section 600.1. Scope and purpose.

This Part sets forth policies and procedures to promote equality of opportunity in apprenticeship programs registered with the New York State Department of Labor. 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 of apprenticeship programs, for processing complaints, and for deregistering noncomplying apprenticeship programs. The purpose of this Part is to promote equality of opportunity in apprenticeship by prohibiting discrimination based on race, color, religion, national origin, age, sex, or disability or marital status in apprenticeship programs, by requiring affirmative action to provide equal opportunity in such apprenticeship programs, and by coordinating the Part with other equal opportunity programs.

§ Section 600.2. Definitions

- (a) "Commissioner" means the Commissioner of Labor of the State of New York or a designated representative.
- (b) "Agency" means the New York State Department of Labor.
- (c) "Department" means the United States Department of Labor
- (d) "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.
- (e) "Apprenticeship program" means a program registered by the Commissioner and evidenced by a certificate of registration as meeting the standards of the Commissioner for apprenticeship.
- (f) "Sponsor" means any person or organization operating an apprenticeship program, irrespective of whether such person or organization is an employer.
- (g) "Disability" shall be limited to physical, mental or medical conditions which are unrelated to the apprentice's ability to perform the duties of the apprenticeable occupation.
- (h) "Apprenticeship Council" means the State Apprenticeship and Training Council established pursuant to Section 813 of the Labor Law.
- (i) "Labor market area" means the principal county or counties in which the apprenticeship program operates.

§ 600.3. Authority to adopt State plan.

The authority for the implementation and adoption of this Part affecting the registration of apprenticeship programs with the State of New York is vested in the Commissioner, under authority of Section 811 of the Labor Law.

§ 600.4. Equal opportunity standards.

(a) *Obligation 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, age, sex, disability, or marital status;

(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;

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

(4) Not require any applicant to pay any application, processing, or other similar fee unless approved by the Department. In order to receive Department approval, such fees must:

(i) Be shown through documentation to not exceed actual costs;

(ii) Include a well publicized procedure for waiving the fee for applicants who are in financial need; and

(iii) Not exceed \$25.00 per applicant.

(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, age, sex, disability or marital status. 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, and Title 12 of the Official Compilation of Codes, Rules and Regulations of the State of New York, Part 600."

(c) *Programs presently registered.* Each sponsor of a program registered with the Commissioner as of the effective date of this Part shall, within 30 days of such effective date,

take the following action:

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

(2) Adopt an affirmative action plan required by Section 600.5; and

(3) Adopt a selection procedure required by Section 600.6. A sponsor adopting a selection method under Section 600.6(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 Section 600.6(b)(4) shall submit to the Commissioner copies of its standards, affirmative action plan and selection procedure in accordance with the requirements of Section 600.6(b)(4)(i)(a).

(d) *Sponsors seeking new registration.* A sponsor of a program seeking new registration with the Commissioner 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 Section 600.5 or a selection procedure under Section 600.6 if it submits to the Commissioner 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 USC 200e, et seq.) and its implementing regulations published in Title 29 of the Code of Federal Regulations, Chapter XIV, or Federal Executive Order 11246, as amended, and its implementing regulations in Title 41 of the Code of Federal Regulations, Chapter 60; *Provided*, that programs approved, modified or renewed subsequent to the effective date of this Part shall 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.

§ 600.5. 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 timetable. 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 State'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 reasonable 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.

(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 frequently than semi-annually. Such information shall be given to the Commissioner, Employment Service offices, local schools, women's centers, outreach programs and community organizations which can effectively reach minorities and women, and shall be published in newspapers which are circulated in the minority community and among women, as well as the general areas in which the program sponsor operates.

(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. 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 pre-apprenticeship, 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) Develop and submit to the State Division of Human Rights for approval, a plan to increase the employment of members of a minority group. Subdivision 12 of Section 296 of the State Human Rights Law permits an employer, employment agency, labor organization or joint labor-management committee to carry out a plan, approved by the Division of Human Rights, to increase the employment of a minority group which has a Statewide unemployment rate that is disproportionately high in comparison with the Statewide unemployment rate of the general population. Any plan approved under this measure must be in writing and the State Division of Human Right's approval shall be for a limited period and may be rescinded at any time for a good cause.

(11) 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, age, sex, disability, or marital status; e.g., general publication of apprenticeship opportunities and advantages in advertisements, industry reports, articles, etc.; use of present minority and female apprentices and journey persons 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, onsite reviews, briefing sessions, etc.

(12) The affirmative action program shall set forth the specific steps the sponsor intends to take in the above areas, under this paragraph.

(d) *Goals and timetables.*

(1) A sponsor adopting a selection method under Section 600.6(b) (1) or (2) which on the basis of the analysis described in subdivision (e) of this Section 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 Section 600.6(b) (3) or (4) which on the basis of the analysis described in subdivision (e) of this Section 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 subdivision 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 reasonable be expected in view of an analysis of specific factors in subdivision (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 have been 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 unacceptable, and the Commissioner determines that the sponsor has deficiencies in terms of underutilization of minorities or women (minority and nonminority) within the meaning of this Section, the Commissioner 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 requirement 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 nonminority) 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 nonminority) 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 analysis of its underutilization of minorities and women and its entire affirmative action program. A single goal for minorities and a separate single goal for women is acceptable unless a particular group is employed in a substantially disparate manner in which case separate goals shall be established for such group. Such separate goals would be required, for example, if a specific minority group of women were underutilized even though the sponsor and achieved its standards for women generally. In establishing the goals, the sponsor should consider the results which could be reasonably expected from its good faith efforts to make its overall affirmative action program work. Compliance with these requirements shall be determined by whether the sponsor has met its goals within its timetables, or failing that, whether it has made good faith efforts to meet its goals and timetables. Its "good faith efforts" shall be judged by whether it is following its affirmative action program and attempting to make it work, including evaluation and changes in its program where necessary to obtain the maximum effectiveness toward the attainment of its goals. However, in order to deal fairly with program sponsors, and with women who are entitled to protection under the goals and timetables requirements, during the first 12 months after the effective date of these regulations, the program sponsor would generally be expected to set a goal for women for the entering year class at a rate which is not less than 50 percent of the proportion women are of the 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 goals levels. (See Section 600.9[b]).

(g) *Data and information.* The Commissioner 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.

§ 600.6. Selection of apprentices.

(a) *Obligation of sponsors.* In addition to the development of a written affirmative action plan to ensure that minorities and women have an equal opportunity 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 subdivision (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 requirements of subparagraph (iii) of this paragraph 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 in 41 CFR Part 60.3.

(ii) Requirements. The sponsor adopting this method of selecting apprentices shall meet the requirements of subparagraphs (iii) through (vi) of this paragraph.

(iii) Creation of pool of eligibles. A pool of eligibles shall be created from applicants who meet the qualification 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 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. These requirements shall also be applicable to aptitude tests utilized by a program sponsor which are administered by the State Employment Service or any other person, agency, or organization engaged in the selection or evaluation of personnel. A national test developed and administered by a national joint apprenticeship committee will not be approved by the Commissioner 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.

(d) 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 therefore, and the appeal rights available to the applicant.

(iv) Notification of applicants. All applicants who met 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.

(v) Goals and timetables. The sponsor shall establish where required by Section 600.5(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 Section 600.5(d), (e) and (f).

(vi) Compliance. A sponsor shall be deemed to be in compliance with its commitments under subparagraph (v) of this paragraph if it meets its goals or timetables or if it makes a good faith effort to meet those 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 Section 600.5[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 Commissioner. 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 subparagraphs (iii) through (v) of paragraph (1) of this subdivision relating to the creation of a pool of eligibles, oral interviews and notification of applicants.

iii. Goals and timetables. The sponsor shall establish, where required by Section 600.5(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 Section 600.5(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 subparagraph

(vi) of paragraph (1) of subdivision (b) of this Section.

(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 Section 600.5(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 journey person crafts represented by the programs.

ii. Compliance. Determinations as to the sponsor's compliance with its obligations under these regulations shall be in accordance with provisions of subparagraph (vi) of paragraph (1) of subdivision (b) of this section.

(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 30 days of the effective date of this Part 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 Section 600.5(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 Section 600.5(d), (e), and (f). The sponsor may not implement any such selection method until the Commissioner has approved the selection method as meeting the requirements of clause (b) of this subparagraph and has approved the remainder of its affirmative action program including its goals and timetables. If the Commissioner 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 subdivision (vi) of paragraph (1) of subdivision (b) of this section. 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 alternative selection method, including a method prescribed by the Commissioner, 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 (1)(iii)(a) of this subdivision.

§ 600.7. Existing lists of eligibles and public notice.

A sponsor adopting a selection method under Section 600.6(b)(1) or (2) and a sponsor adopting a selection method under section 600.6(b)(4) who determines that there are fewer minorities and/or women (minority and nonminority) on its existing lists of eligibles than would reasonably be expected in view of the analysis described in Section 600.5(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 two 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 Section

600.5[c] on affirmative action with respect to dissemination of information). Applicants who have been placed in a pool of eligibles shall be retained on lists of eligibles subject to selection for a period of two years. Applicants who have been placed in a pool of eligibles shall be retained on lists of eligibles subject to selection for a period of two years. Applicants may be removed from the list at an earlier date by their request or following their failure to respond to an apprentice job opportunity given by certified mail, return receipt requested. Applicants who have been accepted in the program shall be afforded a reasonable period of time in light of the customs and practices of the industry for reporting for work. All applicants shall be treated equally in determining such period of time. It shall be the responsibility of the applicant to keep the sponsor informed of his or her current mailing address. 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.

§ 600.8. (Reserved)

§ 600.9. Records.

(a) *Obligations of sponsors.* Each sponsor shall keep adequate records including a summary of the qualification 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 Commissioner. 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 Section 600.5 for the prompt achievement of full and equal opportunity in apprenticeship, including all data and analysis made pursuant to the requirements of Section 600.5. 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 Section 600.6(b).

(d) *Maintenance of records.* The records required by this Part and any other information relevant to compliance with this Part shall be maintained for five years and made available upon request to the Commissioner or his authorized representative.

(e) *Records of the agency.* The agency will keep adequate records, including registration requirements, approved individual program standards, registration actions, deregistration actions, program compliance reviews and investigations, individual program ethnic count, total apprenticeship ethnic count and any other records pertinent to a determination of compliance with

this plan as may be required by the Department, through the Office of the State Supervisor of the Bureau of Apprenticeship and Training, United States Department of Labor, semiannually.

§ 600.10. Compliance reviews.

(a) *Conduct of compliance reviews.* The Commissioner shall regularly conduct systematic reviews of apprenticeship programs in order to determine the extent to which sponsors are complying with these regulations and shall also conduct compliance reviews when circumstances, including receipt of complaints not referred to a private review body pursuant to Section 600.12(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 a compliance review as described in subdivision (a) of this Section by the Commissioner as part of the reregistration process.

(c) *New registrations.* Sponsors seeking new registration shall be subject to a compliance review as described in subdivision (a) of this Section by the Commissioner 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 Commissioner shall notify the sponsor in writing of the results of the review and make a reasonable effort to secure voluntary compliance on the part of the program sponsor within a reasonable time before undertaking sanctions under Section 600.14. In the case of sponsors seeking new registration, the Commissioner will provide appropriate recommendations to the sponsor to enable it to achieve compliance for reregistration purposes.

§ 600.11. 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 Section 600.14 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.

§ 600.12. 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, age, sex, disability, or marital status 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 State Division of Human Rights, or, at the apprentice's or applicant's election, with a private review body established pursuant to paragraph (3) of this subdivision. 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 program 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 one year 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 State Division of Human Rights 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 State Division of Human Rights 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) When the sponsor has designated a review body for reviewing complaints, the State Division of Human Rights, unless the complainant has indicated otherwise or unless the State Division of Human Rights 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.

(2) The State Division of Human Rights, 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.

(3) 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 Commissioner may conduct such compliance review as found necessary, and shall take all necessary steps to resolve the complaint.

(4) Where no review body exists, the State Division of Human Rights may conduct such compliance review as found necessary in order to determine the facts of the complaint, and obtain such other information relating to compliance with these regulations as the circumstances warrant.

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

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

If, in the judgement of the State Division of Human Rights, 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.

§ 600.14. Sanctions.

(a) *Where the Commissioner* as a result of a compliance review pursuant to Section 600.10 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 Commissioner may institute proceedings to deregister the program or refer the matter to the State Division of Human Rights or to the State Attorney General for appropriate action.

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

(1) The Commissioner shall notify the sponsor, in writing, that a determination of reasonable cause has been made under subdivision (a) of this section and that the apprenticeship program will 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 10 days of the receipt of the notice provided for in paragraph (1) of this subdivision, the sponsor mails a request for a hearing, the Commissioner shall convene a hearing in accordance with subdivision (c) of this section.

(3) The Commissioner shall make a final decision on the basis of the record before him, which shall consist of the compliance review file and other evidence presented and, if a hearing was conducted pursuant to subdivision (c), the proposed findings and recommended decision of the hearing officer. In his discretion, the Commissioner may allow the sponsor a reasonable time to achieve voluntary corrective action. If the Commissioner's decision is that the apprenticeship program is not operating in accordance with this plan, the apprenticeship program shall be deregistered. In each case in which deregistration is ordered, the Commissioner shall publish promptly in the State Bulletin a notice of the order and shall notify the sponsor and the complainant, if any, and the U. S. Department of Labor. The Commissioner shall inform any sponsor whose program has been deregistered that it may appeal such deregistration to the U. S.

Department of Labor in accordance with the procedures of 29 CFR, Section 30.15 or to the courts in a proceeding under Article 78 of the Civil Practice Law and Rules of the State of New York.

(4) If the State Division of Human Rights, after a hearing, finds the existence of discrimination in connection with a program, the Commissioner may, on the basis of such findings, terminate the registration of such program.

(c) *Hearings.* Upon receipt of a request for a hearing, the Commissioner shall request the Chairman of the Apprenticeship Council to designate a panel from the members of the Apprenticeship Council to conduct such hearing. The commissioner may, at the request of the Chairman designate an attorney of the Agency to preside at the hearing, but such attorney shall not participate in the making of the report and recommendations of the panel. The panel shall be composed of an equal number of representatives of employers and of employee organizations, and also may include the Chairman. Reasonable notice of the hearing shall be given by registered mail, return receipt requested, to the appropriate sponsor and the complainant, if any. Such notice shall include a reasonable time and place of hearing, a statement of the provisions of this Part pursuant to which the hearing is to be held, and a concise statement of the matters pursuant to which the action forming the basis of the hearing is proposed to be taken.

Hearings shall be conducted informally and a record made of the sworn testimony. The complainant and every part to the proceeding shall have the right to counsel, and a full opportunity to be heard, including such cross-examination as may be appropriate in the circumstances. The hearing panel shall, on the basis of the record made in the proceeding, submit its report and recommendations to the Commissioner, who after reviewing such record, report and recommendations, shall issue his determination within 30 days after receipt of the hearing panel's report.

§ 600.15. Reinstatement of program registration.

Any apprenticeship program deregistered pursuant to Section 600.14 may be reinstated upon presentation of adequate evidence to the Commissioner that the apprenticeship program is operating in accordance with this part.

§ 600.16. Intimidatory or retaliatory acts.

Any intimidation, threat, coercion, or retaliation by or with the approval of any sponsor against any person for the purpose of interfering with any right or privilege secured by Title VII of the Civil Rights Act of 1964, as amended, Executive Order 11246, as amended, or because he or she has made a complaint, testified, assisted, or participated in any manner in any investigation, proceeding, or hearing under this Part shall be considered non-compliance with the equal employment 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 any investigation, hearing or judicial proceedings arising therefrom.

§ 600.17. 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 age, race, color, religion, national origin, sex, disability, or marital status.

§ 600.18. Exemptions.

Requests for exemption from this Part, or any part thereof, shall be made in writing to the Commissioner and shall contain a statement of reasons supporting the request. Exemptions may be granted for good cause. The commissioner shall notify the U. S. Department of Labor of any such exemptions granted affecting a substantial number of employees and the reasons therefore. A sponsor may be exempted from compliance with this Part during the effective dates of a plan to increase the employment of members of a minority group and women as apprentices, approved by the State Division of Human Rights under subdivision 12 of Section 296 of the State Human Rights Law. A sponsor may also be exempted from compliance during which the apprenticeship program is being administered under jurisdiction of a Federal or State court.

§ 600.19. Federal responsibilities.

The agency fully recognizes the rights, duties and responsibilities of the United States Department of Labor as provided in 29 CFR, Part 30.

§ 600.20. Effective date.

These regulations first became effective November 28, 1978 and were approved by the USDOL on December 14, 1978.