

Equal Employment Opportunity Comm.

§ 1607.18

of the particular affirmative action program, and procedures for making timely adjustments in this program where effectiveness is not demonstrated.

(4) The goal of any affirmative action plan should be achievement of genuine equal employment opportunity for all qualified persons. Selection under such plans should be based upon the ability of the applicant(s) to do the work. Such plans should not require the selection of the unqualified, or the unneeded, nor should they require the selection of persons on the basis of race, color, sex, religion, or national origin. Moreover, while the Council believes that this statement should serve to assist State and local employers, as well as Federal agencies, it recognizes that affirmative action cannot be viewed as a standardized program which must be accomplished in the same way at all times in all places.

Accordingly, the Council has not attempted to set forth here either the minimum or maximum voluntary steps that employers may take to deal with their respective situations. Rather, the Council recognizes that under applicable authorities, State and local employers have flexibility to formulate affirmative action plans that are best suited to their particular situations. In this manner, the Council believes that affirmative action programs will best serve the goal of equal employment opportunity.

Respectfully submitted,

Harold R. Tyler, Jr.,
Deputy Attorney General and Chairman
of the Equal Employment Coordinating
Council.

Michael H. Moskow,
Under Secretary of Labor.

Ethel Bent Walsh,
Acting Chairman, Equal Employment
Opportunity Commission.

Robert E. Hampton,
Chairman, Civil Service Commission.

Arthur E. Flemming,
Chairman, Commission on Civil Rights.

Because of its equal employment opportunity responsibilities under the State and Local Government Fiscal Assistance Act of 1972 (the revenue sharing act), the Department of Treasury was invited to participate in the formulation of this policy statement; and

it concurs and joins in the adoption of this policy statement.

Done this 26th day of August 1976.

Richard Albrecht,
General Counsel,
Department of the Treasury.

§ 1607.18 Citations.

The official title of these guidelines is "Uniform Guidelines on Employee Selection Procedures (1978)". The Uniform Guidelines on Employee Selection Procedures (1978) are intended to establish a uniform Federal position in the area of prohibiting discrimination in employment practices on grounds of race, color, religion, sex, or national origin. These guidelines have been adopted by the Equal Employment Opportunity Commission, the Department of Labor, the Department of Justice, and the Civil Service Commission.

The official citation is:

Section ____, Uniform Guidelines on Employee Selection Procedure (1978); 43 FR ____ (August 25, 1978).

The short form citation is:

Section ____, U.G.E.S.P. (1978); 43 FR ____ (August 25, 1978).

When the guidelines are cited in connection with the activities of one of the issuing agencies, a specific citation to the regulations of that agency can be added at the end of the above citation. The specific additional citations are as follows:

Equal Employment Opportunity Commission
29 CFR part 1607
Department of Labor
Office of Federal Contract Compliance Programs
41 CFR part 60-3
Department of Justice
28 CFR 50.14
Civil Service Commission
5 CFR 300.103(c)

Normally when citing these guidelines, the section number immediately preceding the title of the guidelines will be from these guidelines series 1-18. If a section number from the codification for an individual agency is needed it can also be added at the end of the agency citation. For example, section 6A of these guidelines could be cited for EEOC as follows:

Section 6A, Uniform Guidelines on Employee Selection Procedures (1978); 43 FR _____, (August 25, 1978); 29 CFR part 1607, section 6A.

PART 1608—AFFIRMATIVE ACTION APPROPRIATE UNDER TITLE VII OF THE CIVIL RIGHTS ACT OF 1964, AS AMENDED

Sec.

- 1608.1 Statement of purpose.
- 1608.2 Written interpretation and opinion.
- 1608.3 Circumstances under which voluntary affirmative action is appropriate.
- 1608.4 Establishing affirmative action plans.
- 1608.5 Affirmative action compliance programs under Executive Order No. 11246, as amended.
- 1608.6 Affirmative action plans which are part of Commission conciliation or settlement agreements.
- 1608.7 Affirmative action plans or programs under State or local law.
- 1608.8 Adherence to court order.
- 1608.9 Reliance on directions of other government agencies.
- 1608.10 Standard of review.
- 1608.11 Limitations on the application of these guidelines.
- 1608.12 Equal employment opportunity plans adopted pursuant to section 717 of title VII.

AUTHORITY: Sec. 713 the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e-12, 78 Stat. 265.

SOURCE: 44 FR 4422, Jan. 19, 1979, unless otherwise noted.

§ 1608.1 Statement of purpose.

(a) *Need for Guidelines.* Since the passage of title VII in 1964, many employers, labor organizations, and other persons subject to title VII have changed their employment practices and systems to improve employment opportunities for minorities and women, and this must continue. These changes have been undertaken either on the initiative of the employer, labor organization, or other person subject to title VII, or as a result of conciliation efforts under title VII, action under Executive Order 11246, as amended, or under other Federal, State, or local laws, or litigation. Many decisions taken pursuant to affirmative action plans or programs have been race, sex, or national origin conscious in order to achieve the Congressional purpose of providing equal employment oppor-

tunity. Occasionally, these actions have been challenged as inconsistent with title VII, because they took into account race, sex, or national origin. This is the so-called “reverse discrimination” claim. In such a situation, both the affirmative action undertaken to improve the conditions of minorities and women, and the objection to that action, are based upon the principles of title VII. Any uncertainty as to the meaning and application of title VII in such situations threatens the accomplishment of the clear Congressional intent to encourage voluntary affirmative action. The Commission believes that by the enactment of title VII Congress did not intend to expose those who comply with the Act to charges that they are violating the very statute they are seeking to implement. Such a result would immobilize or reduce the efforts of many who would otherwise take action to improve the opportunities of minorities and women without litigation, thus frustrating the Congressional intent to encourage voluntary action and increasing the prospect of title VII litigation. The Commission believes that it is now necessary to clarify and harmonize the principles of title VII in order to achieve these Congressional objectives and protect those employers, labor organizations, and other persons who comply with the principles of title VII.

(b) *Purposes of title VII.* Congress enacted title VII in order to improve the economic and social conditions of minorities and women by providing equality of opportunity in the work place. These conditions were part of a larger pattern of restriction, exclusion, discrimination, segregation, and inferior treatment of minorities and women in many areas of life.² The Legislative

²Congress has also addressed these conditions in other laws, including the Equal Pay Act of 1963, Pub. L. 88-38, 77 Stat. 56 (1963), as amended; the other titles of the Civil Rights Act of 1964, Pub. L. 88-352, 78 Stat. 241 (1964), as amended; the Voting Rights Act of 1965, Pub. L. 89-110, 79 Stat. 437 (1965), as amended; the Fair Housing Act of 1968, Pub. L. 90-284, title VII, 82 Stat. 73, 81 (1968), as amended; the Educational Opportunity Act (title IX), Pub. L. 92-318, 86 Stat. 373 (1972), as amended; and the Equal Employment Opportunity Act of 1972, Pub. L. 92-261, 86 Stat. 103 (1972), as amended.