

CIRCULAR 2009-01**January 6, 2009**

U.S. Department of Labor Employment and Training Administration Office of Apprenticeship (OA) Washington, D.C. 20210	<u>Distribution:</u> A-541 Headquarters A-544 All Field Tech A-547 SD+RD+SAC+; Lab.Com	<u>Subject:</u> Procedures for Reviewing and Approving Dual Lists <u>Code:</u> 650
Symbols: DSNIP/JVL		Action: Immediate

PURPOSE: To prescribe procedures for reviewing and approving the use of dual lists in the selection of apprentices.

BACKGROUND: "Dual lists" refers to the selection process whereby rankings used for the selection of apprentices are compiled separately for minorities and non-minorities, or for men and women. Apprentices are then selected from each list in a particular ratio for affirmative action purposes. This may result in racial or gender preferences in the selection of apprentices.

The affirmative action requirements administered by the Office of Apprenticeship, at 29 C.F.R. Part 30, do not require the use of dual lists for selection of apprentices. The voluntary use of dual lists by apprenticeship programs is permissible under the nondiscrimination requirements of Part 30 only if their use complies with complex and stringent Title VII requirements regarding the use of race or gender preferences for affirmative action purposes, and, as applicable, the Title VII provision prohibiting the discriminatory use of test scores.

Since the issuance of the Office of Apprenticeship's last substantive policy statement relating to dual lists, in a June 1979 Circular, there have been important developments in the applicable law -- most notably, the passage of the 1991 amendments to Title VII of the Civil Rights Act of 1964 and issuance of several important Supreme Court decisions, particularly *Johnson v. Santa Clara County*, 480 U.S. 616 (1987). In light of these developments, the 1979 Circular is significantly outdated and no longer provides accurate guidance about the standards currently used to assess the legality of dual lists.

ACTION: Office of Apprenticeship field staff will not give blanket approval to the use of dual list selection procedures. Approval of dual list procedures will be made by the Office of Apprenticeship national office on a case-by-case basis, with approval depending on the relevant facts of each situation in light of current applicable law.

Existing apprenticeship selection procedures that utilize dual lists must be sent to the appropriate Office of Apprenticeship Regional Offices for collection by Friday, February 27, 2009. Each Regional Director must then forward this information to the Office of Apprenticeship national office by Friday, March 13, 2009 for review. Any newly proposed selection procedures that utilize dual lists must be sent to the Office of Apprenticeship national office for review, through the appropriate Regional Director, prior to being approved.

NOTE: This Circular replaces all previously issued Circulars on this subject, including Circular 79-19, dated June 29, 1979, Code 650 and Circular 95-1, dated October 31, 1994, Code 650 which are hereby rescinded.