

CIRCULAR 94 - 05**Date: July 13, 1994**

U.S. DEPARTMENT OF LABOR EMPLOYMENT AND TRAINING ADMINISTRATION Bureau of Apprenticeship and Training Washington, D.C. 20210	Distribution: A-541 A-544 A-547	Subject: Code: 650 Dual Lists, 29 CFR 30
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PURPOSE: To clarify BAT's policy on the use of dual lists in the selection of apprentices.

BACKGROUND: In 1991, Congress enacted significant amendments to Title VII of the Civil Rights Act. One of these amendments prohibits the discriminatory use of test scores. As amended, Title VII now declares it unlawful, in the selection of candidates, "to adjust the scores of, use different cutoff scores for, or otherwise alter the results of employment related tests on the basis of race, color, religion, sex, or national origin." 42 U.S.C. 2000e-2(1). The new law specifically applies to "a labor organization; a joint labor-management committee controlling apprenticeship or other training or retraining program, including an on-the-job training program." 42 U.S.C. 2000e(n).

Nothing in the equal employment opportunity regulations enforced by the Bureau of Apprenticeship and Training (BAT), at 29 CFR Part 30, requires the use of dual lists for selection of apprentices. Indeed, BAT may seek sanctions for "noncompliance by a sponsor . . . with Federal . . . laws or regulations requiring equal opportunity" (29 CFR 30.10). In any event, the new amendments to Title VII prohibit the use of scoring of employment related tests in apprenticeship programs on the basis of race, color, religion, sex or national origin.

The use of dual lists also may be unlawful under Supreme Court opinions. The Supreme Court, in a Title VII case entitled, Johnson v. Santa Clara County, 480 U.S. 616 (1987), ruled that voluntary adoption of preferences based on race or gender, even if employed for affirmative action purposes, must be supported by a sufficient factual showing that there is significant underrepresentation /sic/ of minorities or women in the relevant jobs, and that the scope and duration of the preferences must be designed to address such underrepresentation /sic/.

POLICY: BAT'S policy is that neither BAT nor State Apprenticeship Councils may give blanket approval to the use of apprentice selection procedures, including the use of dual lists, which give preferences on the basis of race, color, religion, sex or national origin. Dual scoring of employment-related tests is unlawful under the recent amendments to Title VII, and whether preferences beyond the arena of employment-related tests would be unlawful under the opinion in the Johnson case would depend on all the facts of each situation.

RECISIONS: This Circular replaces Circular 79-19, dated June 29, 1979, Code 650, which is hereby rescinded.