

**REGENTS BOARD[681]**

**Adopted and Filed**

**Rule making related to equal employment opportunity**

The Board of Regents hereby amends Chapter 7, “Equal Employment Opportunity, Affirmative Action, and Targeted Small Business,” Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is adopted under the authority provided in Iowa Code section 262.9(3).

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code section 19B.3.

*Purpose and Summary*

The amendments to Chapter 7 update references to be consistent with the Iowa Civil Rights Act and current institutional practice and rescind language related to targeted small business.

*Public Comment and Changes to Rule Making*

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on June 16, 2021, as **ARC 5697C**. No public comments were received. No changes from the Notice have been made.

*Adoption of Rule Making*

This rule making was adopted by the Board on September 16, 2021.

*Fiscal Impact*

This rule making has no fiscal impact to the State of Iowa.

*Jobs Impact*

After analysis and review of this rule making, no impact on jobs has been found.

*Waivers*

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Board for a waiver of the discretionary provisions, if any, pursuant to rule 681—19.18(17A).

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee’s meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

*Effective Date*

This rule making will become effective on November 10, 2021.

The following rule-making actions are adopted:

ITEM 1. Amend **681—Chapter 7**, title, as follows:  
EQUAL EMPLOYMENT OPPORTUNITY, AFFIRMATIVE ACTION, AND  
TARGETED SMALL BUSINESS

ITEM 2. Amend rule 681—7.1(262), introductory paragraph, as follows:

**681—7.1(262) Equal opportunity policy.** It is the policy of the board of regents, hereinafter board, to provide equal opportunity in all aspects of regent operations to all persons without regard to race, creed, color, religion, sex, gender identity, sexual orientation, national origin, age, or status as a protected veteran of the Vietnam era, or physical or mental disability except where it relates to a bona fide occupational qualification. The board of regents and all officials who are responsible to the board of regents shall take affirmative action in personnel administration to overcome the effects of past or present practices, policies, or other factors which serve as barriers to equal employment opportunity. Contractors doing business with the board of regents shall take affirmative action to ensure that all persons without regard to race, creed, color, religion, sex, gender identity, sexual orientation, national origin, age, or status as a protected veteran of the Vietnam era, or physical or mental disability except where it relates to a bona fide occupational qualification above are effectively afforded equal employment opportunities. Institutions under the governance of the board of regents shall provide opportunities for minority and women businesses in the awarding of contracts through a procurement set-aside program as authorized by statute.

ITEM 3. Rescind and reserve subrule **7.1(2)**.

ITEM 4. Amend paragraph **7.2(2)“a”** as follows:

*a.* Each institution and the board office shall regularly review its personnel practices and procedures with a view to correcting personnel practices and procedures which may contribute to discrimination in appointment, assignment, or advancement. Each institution shall conduct programs of job orientation and provide training and organizational structure for upward mobility and shall place emphasis upon fair practices in employment. Each institution shall also bar from all employment application forms any inquiry as to race, creed, color, religion, sex, gender identity, sexual orientation, national origin, age, or status as a protected veteran of the Vietnam era, or physical or mental disability, except for statistical purposes, unless it relates to a bona fide occupational qualification. The employment practices of the board of regents shall be in strict conformity to the provisions of all federal and state laws, executive orders, and rules and regulations of the board of regents and of its institutions which pertain to equal employment opportunity and affirmative action.

ITEM 5. Amend rule 681—7.4(262) as follows:

**681—7.4(262) State educational, counseling, and training programs.** All educational and vocational guidance programs and their essential components, counseling and testing and all on-the-job training programs for the employees of regent institutions and the board office shall be administered in accordance with the provisions of all federal and state laws, executive orders, and rules and regulations of the board of regents and of its institutions which pertain to equal employment opportunity and affirmative action. Every official responsible for the implementation of such programs shall be charged with the duty of seeking to provide equal opportunity for all, regardless of race, creed, color, religion, sex, gender identity, sexual orientation, national origin, age, or status as a protected veteran of the Vietnam era, or physical or mental disability except where it relates to a bona fide occupational qualification.

This rule is intended to implement Executive Order number 15 of 1973.

ITEM 6. Amend rule 681—7.6(262) as follows:

**681—7.6(262) Contract compliance.**

**7.6(1) Equal employment opportunity.** The state board of regents and the institutions under its jurisdiction are responsible for the administration and promotion of equal opportunity in contracts and services and the prohibition of discriminatory and unfair practices within any program administered by institutions under the board of regents receiving or benefiting from state financial assistance in

whole or in part. Every official responsible to the board of regents who is authorized to make contracts or subcontracts for ~~public works construction~~ or for goods or services shall cause to be inserted into every such contract or subcontract a clause in which the contractor or subcontractor is prohibited from engaging in discriminatory employment practices forbidden by federal and state laws, executive orders, and rules and regulations of the board of regents and of its institutions which pertain to equal employment opportunity and affirmative action. ~~Contractors, vendors, and suppliers shall further be required to submit or have on file with the board of regents' equal employment opportunity compliance office a copy of their affirmative action program containing goals and time specifications.~~ These contractual provisions shall be fully ~~monitored and~~ enforced. Any breach of them shall be regarded as a material breach of contract.

~~a.~~ Compliance shall be determined by ~~a comprehensive review and an~~ evaluation of a contractor's employment policies and practices and shall depend on an analysis of all relevant factors, including the following:

- ~~(1)~~ The contractor's publicly stated and posted policy regarding equal opportunity employment.
- ~~(2)~~ The contractor's external dealings with unions, employment agencies, newspapers, and other sources of employees.
- ~~(3)~~ The methods by which and places where the contractor seeks to recruit employees.
- ~~(4)~~ The contractor's use of tests and qualifications for positions which are ~~job-related~~ job-related and not culturally biased.
- ~~(5)~~ Classification and compensation plans which apply equally to all employees.
- ~~(6)~~ Training programs which provide all persons including those in the protected classes with an equal opportunity to qualify for employment and advancement.
- ~~(7)~~ The contractor's active support of local and national community action programs.
- ~~(8)~~ The effectiveness of the contractor's affirmative action program as evidenced, in part, by the number or percentage of persons of the protected classes employed at all levels, taking into account the geographical locations of the contractor's work force.

~~b.~~ The judgment regarding compliance shall be favorable if it is determined that the contractor is working affirmatively toward extending opportunities for members of the protected classes and is not discriminating against these persons. Contractors must be able to demonstrate ~~to the satisfaction of the compliance officer~~ that their affirmative action program is productive.

7.6(2) Procedures. Any individual aggrieved by a contractor's alleged noncompliance with the board of regents equal opportunity policy may file a complaint with the institutional office designated for receiving and investigating complaints of discrimination. Complaints shall be investigated in accordance with established institutional policies and procedures and shall take into consideration the compliance factors in subrule 7.6(1).

~~a.~~ Contractors will be sent periodically an informative statement explaining the regents' equal employment opportunity policy. In the case of construction contracts, the statement constitutes part of the general conditions and bid specifications, and compliance with these is a condition of doing business with regent institutions. It is the intention of the regents to be fair and to avoid harassment and unnecessary reporting requirements and to be clear and firm about policy and expectations.

~~b.~~ Contractors are to submit periodic reports as requested by the compliance office. The report forms shall be as brief as possible and designed to elicit relevant information about employment practices. The compliance office may request other relevant information from a contractor at any time.

~~c.~~ The compliance office will solicit and compile additional information about present and prospective contractors from any reliable source including regent institutions, the Iowa civil rights commission, department of economic development, and other state and federal agencies.

~~d.~~ The compliance office shall systematically review the reports and all other available information concerning the employment practices of present and prospective contractors. Whenever there is reasonable doubt, based on such reports and information, as to whether or not a contractor is discriminating or is failing to take affirmative action in compliance with the regents' policy, the compliance office shall undertake a compliance review of the contractor. Every reasonable effort

shall be made to secure compliance through conciliation and persuasion. The burden shall be on the contractor to demonstrate compliance and eligibility to do business with the regents.

*e.*—The compliance office will receive written and signed complaints against a contractor from any person aggrieved by the contractor's alleged discrimination. The compliance office shall promptly notify the institution involved of a complaint. The burden shall be on the complainant to prove the truth of the allegations. Cognizance will also be taken of verbal complaints, newspaper reports, and any other legitimate source, and these will be followed up if investigation appears to be justified. Award of contracts may be deferred while an investigation is pending, but executed contracts will not be suspended except in compelling situations.

*f.*—If an investigation or compliance evaluation discloses that a contractor has discriminated or has failed to take affirmative action, the executive director in consultation with regent institutions may declare the contractor ineligible unless it can otherwise be affirmatively determined that the contractor is able to comply. The executive director shall issue a written notice of ineligibility to the contractor, and give the contractor 30 days to show cause why enforcement proceedings should not be instituted. During the 30-day show cause period, every effort shall be made to effect compliance through the processes of conciliation, mediation, and persuasion.

*g.*—If the contractor fails to show good cause for failure to comply or fails to remedy that failure, the executive director in consultation with regent institutions may issue a written notice of proposed cancellation or termination of the existing contract or subcontract and debarment from future contracts and subcontracts, giving the contractor ten days to request a hearing. If a request for hearing has not been received within ten days from the notice, the contractor may be declared ineligible for future contracts and current contracts may be terminated for default following the approval of the state board of regents.

*h.*—Hearings shall be conducted by a hearing examiner appointed by the executive director of the board from a panel for hearing examiners selected and approved by the board. The hearing examiner shall submit findings of fact and conclusions to the executive director who shall make final recommendations for final action to the board of regents.

*i.*—The equal opportunity compliance officer shall promptly notify the board of regents and regent institutions when such action is pending regarding the suspension, cancellation, or termination of existing contracts or subcontracts and debarment from future contracts and subcontracts.

**7.6(3)** No change.

ITEM 7. Rescind and reserve rule **681—7.7(73GA, ch315)**.

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/6/21.