

R-39 Rev. 03/2012  
(Title page)

**IMPORTANT:** Read instructions on back of last page (Certification Page) before completing this form. Failure to comply with instructions may cause disapproval of proposed Regulations

State of Connecticut  
**REGULATION**  
of

NAME OF AGENCY

Commission on Human Rights and Opportunities

**Concerning**

SUBJECT MATTER OF REGULATION

Affirmative Action Plans

**Section 1.** The Regulations of Connecticut State Agencies are amended by adding sections 46a-68-75 to Sec. 46a-68-114, inclusive, as follows:

**PART I. DEFINITIONS**

**(NEW) Sec. 46a-68-75. Definitions**

As used in Sections 46a-68-75 to 46a-68-114, inclusive, of these regulations:

- (1) "Adverse impact" means a substantially different rate of selection, generally a selection rate for any protected group less than four-fifths (4/5) of the rate for the group most favored by the selection device.
- (2) "Affirmative action" means positive action, undertaken with conviction and effort to overcome the present effects of past practices, policies or barriers to equal employment opportunity and to achieve the full and fair participation of women, blacks and Hispanics and any other protected group found to be underutilized in the workforce or affected by policies or practices having an adverse impact.
- (3) "Affirmative action plan" or "plan" means a detailed, result-oriented set of procedures, prepared and approved in accordance with section 46a-68 of the Connecticut General Statutes and sections 46a-68-75 through 46a-68-114, inclusive, of the Regulations of Connecticut State Agencies, which blueprints a strategy to combat discrimination and achieve affirmative action.
- (4) "Agency" means each state agency, department, board, educational institution, or commission or entity required to file an affirmative action plan pursuant to section 46a-68 of the Connecticut General Statutes.
- (5) "Applicant" means a person applying for employment with an agency or having on file with the Department of Administrative Services or an agency an application for admission to a test used to establish an employment list for appointment to a position or position classification.
- (6) "Appointing authority" means a board, commission, officer, commissioner, person or group of persons having the power to make appointments by virtue of a statute or by other lawfully delegated authority.

- (7) "Availability base" means the number of persons in the relevant labor market currently possessing skills, abilities and qualifications necessary for the performance of a job or reasonably capable of acquiring in a reasonable period of time the requisite skills through training.
- (8) "Commission" means the nine member commission appointed pursuant to 46a-52 of the Connecticut General Statutes."
- (9) "Commission complaint" means an action initiated under Section 46a-82(b), (c), or (d) of the Connecticut General Statutes or Section 46a-68-113 of the Regulations of Connecticut State Agencies to enforce the provisions of any state or federal antidiscrimination or affirmative action law.
- (10) "Compliance" means conformity with the requirements set forth in Section 46a-68 of the Connecticut General Statutes and regulations promulgated thereunder.
- (11) "Discriminatory practice" means any discriminatory practice as defined in Section 46a-51 (8) of the Connecticut General Statutes unless the context indicates a more specific definition.
- (12) "Employee" means any person holding a position in state service subject to appointment by an appointing authority.
- (13) "Employment analyses" means a review of the employment process to identify potential barriers to equal employment opportunity and affirmative action.
- (14) "Equal employment opportunity" means employment of individuals without consideration of protected classes in Chapter 814c of the Connecticut General Statutes unless there is a bona fide occupational qualification excluding persons in a protected group.
- (15) "Full-time employee" means an employee holding a permanent position normally requiring thirty-five hours or more of service in each week.
- (16) "Goal" means a hiring, promotion or program goal that an agency strives to attain.
- (17) "Good faith effort" means the initiatives delineated in Section 46a-68-92 of the Regulations of Connecticut State Agencies including that degree of care and diligence which a reasonable person would exercise in the performance of legal duties and obligations. At a minimum, it includes all those efforts reasonably necessary to achieve full compliance with the law. Further, it includes additional or substituted efforts when initial endeavors will not meet statutory or regulatory requirements. Finally, it includes documentary evidence of all action undertaken to achieve compliance, especially where requirements have not or will not be achieved within the allotted time frames as delineated in section 46a-68-92 of the Regulations of Connecticut State Agencies.
- (18) "Labor market" or "Labor market area" means a geographical area from which an agency may reasonably recruit or expect to recruit an employee for hire, promotion or transfer.

- (19) "Occupational category" means an office, offices, position, positions, position classification, position classifications or any combination thereof, grouped by job content or primary occupational activity into categories according to instructions contained in the appendix to the United States Equal Employment Opportunity Commission.
- (20) "Office" means any position or position classification in state service established by statute, including appointing authorities, except those job titles set out in Sections 5-198(a) through 5-198(c), inclusive, of the Connecticut General Statutes and members of boards and commissions.
- (21) "Original appointment" means an appointment to a position or position classification made in accordance with Section 5-228(d) of the Connecticut General Statutes and, for the purpose of Sections 46a-68-75 through 46a-68-114, inclusive, of the Regulations of Connecticut State Agencies appointments to the unclassified service.
- (22) "Other Employee" means a full-time employee who does not have permanent status.
- (23) "Parity" means a condition where the percentage of the representation of a protected class in the workforce, occupational category, or job title equals the percentage of such persons in the availability base as determined in accordance with Section 46a-68-84 of the Regulations of Connecticut State Agencies.
- (24) "Position" means a group of duties and responsibilities currently assigned or designed by competent authority to require the services of one employee.
- (25) "Position classification" means a group of positions within an agency sufficiently similar in respect to the duties, responsibilities and authority thereof that the same title may be used to designate each position allocated to the classification; that similar requirements as to education, experience, capacity, knowledge, proficiency, ability and other qualifications shall be required of the incumbents; that similar tests of fitness may be used to choose qualified employees; and that the same schedule of compensation may be made to apply with equity.
- (26) "Program goal" means a target established to respond to an identified obstacle to equal employment opportunity.
- (27) "Promotional appointment" or "promotion" means an appointment to a position or position classification made in accordance with Section 5-228(b) or 5-228(c) of the Connecticut General Statutes and, for the purpose of Sections 46a-68-75 through 46a-68-114, inclusive, of the Regulations of Connecticut State Agencies appointments to the unclassified service.
- (28) "Protected class" or "protected group" means those classes or groups of persons specified in and protected by applicable state or federal antidiscrimination laws, except that, for equal employment opportunity purposes, the limitations set forth in Section 46a-61 of the Connecticut General Statutes shall apply.
- (29) "Qualified Applicant" is a person who meets the minimum requirements stipulated in a job description and has passed the examination for such job.

- (30) "Race/sex" or "race/sex group" means the following groups of persons: white males, black males, Hispanic males, other males, white females, black females, Hispanic females and other females.
- (31) "Underutilization" or "Underutilized" means a condition where the percentage of representation of a protected class in the workforce, occupational category or job title is less than the percentage of such persons in the availability base.
- (32) "Utilization analysis" means a comparison between the race/sex composition of the workforce, occupational category or job title with the availability base of such persons in the relevant labor market.
- (33) "Workforce analysis" means a comprehensive inventory of all employees by race/sex, job title and occupational category.

## **PART II. AN AFFIRMATIVE ACTION PLAN**

### **(NEW) Sec. 46a-68-76. Submission of a plan electronically**

In accordance with the provisions of 46a-68 CGS the commission shall supply each agency required to file a state affirmative action plan with notification by first class mail, facsimile machine, electronic mail or a file transfer protocol not less than one year before a plan is to be submitted that such plan must be submitted electronically. An agency may opt to file electronically earlier than one year if it so chooses.

### **(NEW) Sec. 46a-68-77. Elements of an affirmative action plan**

To satisfy the requirements of Section 46a-68 of the Connecticut General Statutes, and Sections 46a-68-75 through 46a-68-114, inclusive, of the Regulations of Connecticut State Agencies an agency shall submit an affirmative action plan to the commission in electronic form upon notification pursuant to section 46a-68-76-using an electronic program proscribed by the commission and shall contain or reference the following elements:

1. policy statement;
2. internal communication;
3. external communication and recruitment strategies;
4. assignment of responsibility and monitoring;
5. organizational analysis;
6. workforce analysis;
7. availability analysis;
8. utilization analysis and hiring and promotion goals;
9. employment analyses;
10. identification of problem areas;
11. upward mobility program and goals;
12. program goals;
13. discrimination complaint process;
14. goals analysis;
15. innovative programs; and
16. concluding statement and signature.

### **(NEW) Sec. 46a-68-78. Policy statement**

(a) An agency shall submit an affirmative action plan which shall contain a policy statement that:

- (1) identifies the purpose and need for affirmative action/equal employment opportunity;
- (2) identifies the classes protected under all federal and state constitutions, laws, regulations, and executive orders that prohibit or outlaw discrimination, as may from time to time be amended;
- (3) establishes affirmative action as an immediate and necessary agency objective;
- (4) pledges the agency to take affirmative steps to provide services and programs in a fair and impartial manner;
- (5) recognizes the hiring difficulties experienced by individuals with disabilities and by many older persons and sets program goals for action to overcome the present effects of past discrimination, if any, to achieve the full and fair utilization of such persons in the workforce;
- (6) advises employees of the existence of the agency's internal complaint procedures; and
- (7) identifies the agency equal employment opportunity officer or person assigned affirmative action duties by name, position or position classification, address and telephone number.

(b) The policy statement shall be signed and dated by the appointing authority and each subsequent appointing authority and shall evidence his or her commitment to achieve the goals set forth in the plan.

**(NEW) Sec. 46a-68-79. Internal communication**

(a) The policy statement and a summary of the objectives of the plan shall be posted by the agency and distributed, electronically where practicable, and in written form where electronic distribution is not practicable, at least annually to all agency employees. All employees shall be notified of their right to a reasonable period to review and comment upon the agency affirmative action plan. All comments thereto shall be addressed to the equal employment opportunity officer, who shall be identified by name and address in all communications.

(b) The agency shall maintain, as required by the agency's state library records retention schedules for state agencies, copies of all affirmative action-related internal communications and comments received and note the date such statements were received.

(c) The agency shall outline what steps it took during the reporting period to comply with the requirements of 46a-54(15)(A) and 46a-54(16) of the Connecticut General Statutes. The plan shall note all participants trained during the reporting period by race and sex.

(d) The agency's plan shall state the period of time employees of such agency have been given to review and comment upon the agency affirmative action plan and shall include a summary of all comments from employees concerning the plan and note any changes made to the plan based on those comments. The plan shall further indicate the activities undertaken during the reporting period to comply with this section.

**(NEW) Sec. 46a-68-80. External communication and Recruitment Strategies**

(a) Each agency shall develop means of recruiting goal candidates for current positions.

(b) Each agency shall put itself on public record as an affirmative action/equal employment opportunity employer. Consistent with that posture:

- (1) written expression of the agency's commitment to equal employment opportunity/affirmative action and notice of job availability shall be sent regularly to recruiting sources and organizations which are capable of referring qualified applicants for employment; and
- (2) notice that the agency is an affirmative action/equal employment opportunity employer shall be sent to all unions that represent agency employees for collective bargaining purposes. Such notice shall contain an invitation to review and comment upon the agency's affirmative action plan.

(c) Each agency shall initiate and undertake vigorous, positive relationship-building activity to ensure that affirmative action is more than a paper commitment. Each agency shall work to secure ongoing relationships and develop additional recruiting sources while cultivating outreach recruitment programs and maintaining contact with protected class members and resource agencies.

(d) The affirmative action plan shall list the activity undertaken by the agency during the reporting period to comply with this section. Activities undertaken to achieve hiring, promotion, and program goals shall be discussed in section 46a-68-90 of the Regulations of Connecticut State Agencies, "Goals Analysis."

**(NEW) Sec. 46a-68-81. Assignment of responsibility and monitoring**

(a) Each appointing authority of an agency shall have the ultimate responsibility for the development, implementation, and monitoring of the agency's affirmative action plan.

(b) Subject to the provisions of Chapters 67 and 68 of the Connecticut General Statutes, the appointing authority may assign to any employee of the agency such duties and responsibilities necessary for the development, implementation and monitoring of the agency affirmative action program. To acquaint employees with their specific responsibilities under the plan, the appointing authority shall schedule regular meetings that emphasize:

- (1) human relations and intergroup relations;
- (2) nondiscriminatory employment practices;
- (3) the legal authority for affirmative action and equal employment opportunity and the appointing authority's commitment to affirmative action;
- (4) review of the affirmative action plan; and
- (5) identification of obstacles in meeting the goals of the plan.

(c) Each agency shall designate a full-time or part-time equal employment opportunity officer. The equal employment opportunity officer shall report directly to the appointing authority on all matters concerning affirmative action, discrimination, and equal employment opportunity and shall have access to all records and shall receive prompt cooperation from the personnel necessary for the effective performance of his or her duties. Equal employment opportunity officers shall, at a minimum:

- (1) develop, maintain and monitor the agency affirmative action plan;
- (2) initiate and maintain contact with recruiting sources and organizations serving members of protected classes;
- (3) inform the agency of developments in affirmative action law; and
- (4) mitigate any discriminatory conduct and investigate discrimination complaints.

(d) Each agency of one hundred (100) or more employees shall consider the feasibility of establishing an employee advisory/diversity committee. The committee, if established, may consider any matter appropriate to the development and implementation of the affirmative action plan. Members of the committee may be appointed by the appointing authority, in consultation with the equal employment opportunity officer or other individual, or elected by the employees at large. The committee should include representatives from a geographical, occupational category and protected class cross-section of the workforce. Subject to Chapters 55 and 68 of the Connecticut General Statutes, the committee shall have access to agency records necessary for the effective performance of its duties.

(e) The agency shall maintain and submit a record of each member of the employee advisory/diversity committee, identified by name; race; sex; position or position classification; and percentage of time devoted to such duties. Copies of all committee meeting minutes, recommendations made to the equal employment opportunity officer, including whether the recommendations were accepted or rejected by the agency, shall be likewise retained, as required by the agency's records retention schedules for state agencies. If the agency determines that an employee advisory/diversity committee is unnecessary to the development or implementation of the affirmative action plan, the affirmative action plan shall so note.

(f) Each agency shall evaluate and monitor the affirmative action performance of any employee assigned affirmative action responsibilities. Subject to Chapters 67 and 68 of the Connecticut General Statutes, such performance shall be considered in promotion and merit increase decisions, and the plan shall so state.

(g) No employee shall be coerced, intimidated or retaliated against by the agency or any person for performing any of the duties recited in this section. Any person so aggrieved may file a complaint with the commission on human rights and opportunities, provided that nothing herein shall preclude an agency from disciplining or discharging an employee for just cause.

(h) The agency shall maintain and submit a record of each person performing any duty related to the development or implementation of the affirmative action plan by name; job title, percentage of time devoted to affirmative action duties; and outline specific responsibilities. If the equal employment opportunity officer performs other duties, the plan will identify such duties.

(i) Each agency shall develop an internal reporting system to continually audit, monitor and evaluate programs essential for a successful affirmative action plan. A system providing for goals, timetables for goals and initiatives, and periodic evaluations shall be established and implemented. Consideration should be given to the following actions:

- (1) conducting an ongoing review and evaluation of the agency's progress towards the goals of the affirmative action plan. The evaluation should be directed toward results accomplished, not only at efforts made;
- (2) establishing a system for evaluating supervisor's performance on affirmative action consistent with chapters 67 and 68 of the Connecticut General Statutes; and
- (3) reviewing the affirmative action plan at least annually. The equal employment officer should make an annual report to the head of the agency, containing the overall status of the program, results achieved toward established objectives,

identification of any particular problems encountered and recommendations for corrective actions needed.

**(NEW) Sec. 46a-68-82. Organizational analysis**

Each agency shall prepare an occupational category and job title study in the following manner:

- (1) Each agency shall conduct a job title classification study. The study shall use job titles authorized by the Department of Administrative Services or established by statute which shall be arranged into lines of progression that depict the order of jobs through which an employee may advance. Titles without promotional opportunity shall be listed separately. Unclassified titles shall be so identified.
- (2) Each agency shall conduct an occupational category study. Each job title listed in the job title classification study shall be placed in an occupational category with other job titles having similar job content, compensation schedules and opportunity. Titles within an occupational category shall be ranked from the highest to lowest compensation schedule. The salary range for each office, position and position classification shall be noted.
- (3) Organizational charts shall be included in this section of the plan to illustrate lines of progression and reporting.

**(NEW) Sec. 46a-68-83. Workforce analysis**

(a) Each agency shall report the racial and sexual composition of its full-time employees for each office, position and position classification identified in the job title study on forms proscribed by the commission staff. A separate analysis shall be performed for part-time and other employees. The workforce analysis shall inventory the:

- (1) total agency workforce by occupational category with percentages of race/sex groups calculated for each occupational category;
- (2) total agency workforce by office(s), position(s) and position classification(s) within each occupational category;
- (3) agency work force in each relevant labor market area by occupational category; and
- (4) agency work force in each relevant labor market area by office(s), position(s) and position classification(s) within each occupational category.

(b) Each agency shall report the age groupings of its full-time workforce by occupational category, in five year increments as proscribed by the commission staff; and

(c) Each agency shall report the number of physically disabled persons in its full-time workforce by occupational category.

**(NEW) Sec. 46a-68-84. Availability analysis**

(a) As a preparatory step in determining whether protected classes are fully and fairly utilized in the workforce, each agency shall conduct, at a minimum, an analysis by occupational category to determine the availability base of protected group members for employment. A separate availability analysis shall be conducted for any position classification within an occupational category employing twenty-five (25) or more employees. A separate analysis may be performed for any job title requiring unique skills, abilities or educational qualifications. The availability analysis shall:

- (1) examine the job content of each office; position and position classification within an occupational category or, where appropriate, the job content of a position classification;
  - (2) identify the relevant labor market area; and
  - (3) match each office, position and position classification within an occupational category or, where appropriate, a position classification, with the most nearly parallel job title contained in the data source consulted.
- (b) In calculating availability, the following information and data sources shall be consulted:
- (1) employment figures;
  - (2) unemployment figures; and
  - (3) the racial and sexual composition of persons in promotable and transferable offices, positions and position classifications.
- (c) In calculating availability, the following information and data sources may be consulted:
- (1) population figures;
  - (2) client population figures;
  - (3) figures for educational, technical and training program graduates and participants; or
  - (4) any other relevant source.
- (d) For each occupational category, position classification or job title analyzed, the plan shall provide the name of each source consulted, explain the basis for selection of each source, and include copies of the specific data. Additionally, where job titles in the source consulted are not identical to the job titles employed by the agency, the plan shall document the job titles deemed most similar to office(s), position(s) and position classification(s) within an occupational category or, where appropriate, position classification or job title, and substantiate the manner in which the availability base is calculated.
- (e) For job titles with 25 or more employees in occupational categories where only the entry level positions are filled by hiring and the other job titles in the series are filled by promotion, the availability base shall be calculated for the entire series and goals will be set for the entire series.
- (f) The availability base is calculated by determining the sources used to fill positions and the percentage of positions filled from that source. This percentage is the weight assigned to each source. The total weight for all sources cannot exceed 100%. The percent of each race/sex group from each relevant source is multiplied by the weight given to the corresponding source resulting in a weighted factor. The weighted factors for each race/sex group are added to determine the availability base for each race/sex group in each occupational category, position classification, or job title analyzed.
- (g) The plan must substantiate the manner in which the availability base is calculated.
- (h) As part of its review the commission reserves the right to determine the appropriateness of information and data used in subsection (c) of this section and reserves

the right to accept or reject such information or data. An agency, with the consent of the commission's executive director, may analyze additional labor market areas when specific requirements of a job profile, such as geographic proximity, so requires.

**(NEW) Sec. 46a-68-85. Utilization analysis and hiring and promotion goals**

(a) To determine whether protected classes are fully and fairly utilized, the representation of protected group persons in the workforce shall be compared, in form or format proscribed by the commission staff, to the availability of such persons for employment. Comparisons between the agency workforce and the availability base calculated in Section 46a-68-84 of the Regulations of Connecticut State Agencies shall be made by occupational category, position classifications employing a significant number of persons and job titles for which a separate base was calculated.

(b) For each instance of underutilization identified in the utilization analysis, Employment goals shall be set to increase the representation of protected class members in the agency workforce. Employment goals shall be set for job titles filled through original appointment or promotional appointment. The objective of such goals shall be to attain parity with the availability base for such protected class members.

(c) Where the underutilization of race/sex groups, considered individually, does not rise to the level to require a hiring or promotion goal, but where the underutilization of race/sex groups, considered collectively is .5 or greater a goal shall be set based on the race/sex group most underutilized in the occupational category, position classification or job title under consideration or for the race/sex group with the highest availability base, as the agency elects.

**(NEW) Sec. 46a-68-86. Employment analyses**

Each agency shall undertake a comprehensive review of the employment activity during the reporting period to identify policies and practices that perpetuate or build in barriers to equal employment. The following analyses shall be performed:

- (1) The agency shall conduct a separate analysis for any occupational category or position classification for which a separate availability base has been calculated and employment activity has occurred during the reporting period through hire, termination or other personnel activity.
- (2) Appointments to job titles shall be further analyzed. The applicant flow analysis shall track applicants through the hiring or promotional process to identify the step at which they were no longer candidates for employment. Information shall be provided as required for reductions in force.
- (3) Each agency shall further provide information by occupational category on all matters involving personnel evaluations, discipline or other reductions in force.

**(NEW) Sec. 46a-68-87. Identification of problem areas**

(a) Where an occupational category, position classification within an occupational category employing a significant number of persons or position classification for which a separate availability base is calculated has experienced an increase or reduction in force the agency shall examine its personnel policies and practices to identify those nonquantifiable aspects of the employment process which may impede or prevent the full and fair participation of protected race/sex group members in the employment process. Where applicable, the following aspects of employment should be addressed:

- (1) employment applications;

- (2) job qualifications;
- (3) recruitment practices;
- (4) personnel policies;
- (5) orientation;
- (6) training;
- (7) counseling;
- (8) discrimination complaint process;
- (9) evaluation;
- (10) layoffs; and
- (11) termination.

(b) For each occupational category or job title examined in subsection (a) herein, the plan shall list all non-quantifiable elements of the employment process that have been identified as a problem area.

(c) Each agency shall examine all aspects of the employment process itemized in subsection (a) herein to identify whether any employment policy or practice may impede or prevent the full and fair participation of individuals with disabilities and older persons in the workforce.

**(NEW) Sec. 46a-68-88. Program goals**

(a) Where an agency has identified, under Sections 46a-68-87 of the Regulations of Connecticut State Agencies, any employment policy or practice having an adverse impact upon protected race/sex group members, individuals with disabilities or older persons, it shall develop and implement program goals.

(b) Program goals shall be meaningful, measurable and reasonably attainable and shall be consistent with Section 46a-68-92 of the Regulations of Connecticut State Agencies to ensure:

- (1) the promotion of equal opportunity and to achieve a workplace free of discrimination
- (2) to ensure opportunities for all qualified applicants including underutilized groups;
- (3) the utilization of a fair and nondiscriminatory recruitment and selection process, and
- (4) to provide career development opportunities available to all interested and qualified employees, including minorities and women.

(c) A proposed timetable, not exceeding the agency's reporting period, shall be developed for the achievement of the program goal.

(d) Where the cooperation of another agency is essential to the implementation of a program goal, the agency shall keep a record of each instance of contact with the agency whose cooperation is requested and the outcome of the request.

(e) An agency may elect to set program goals or the commission may require that program goals be set for any employment policy or practice having adverse impact upon a race/sex group or for any protected group not covered by this section whether or not that policy or practice was identified as having an adverse impact pursuant to Section 46a-68-87 of the Regulations of Connecticut State Agencies.

**(NEW) Sec. 46a-68-89. Discrimination complaint process**

(a) The plan shall report on the system to process and resolve employee allegations of discrimination consistent with Chapter 67 and 68 of the Connecticut General Statutes. Such system shall provide for the expeditious resolution of grievances to assure that legal options for filing complaints with enforcement agencies are not foreclosed. The discrimination complaint process shall include:

- (1) periodic training in counseling and grievance investigations for agency counselors;
- (2) confidential counseling and procedures for informal resolution at the agency level by the equal employment opportunity officer;
- (3) notice to employees that an agency discrimination complaint process is available;
- (4) a guarantee of non-retaliation for the exercise of rights granted pursuant to this section
- (5) advisement of legal options to file complaints with the Connecticut Commission on Human Rights and Opportunities; United States Equal Employment Opportunity Commission; United States Department of Labor, Wage and Hour Division; and any other agencies, state, federal or local, that enforce laws concerning discrimination in employment; and
- (6) time frames not exceeding ninety (90) days for filing, processing and resolution of such matters.

(b) All records of grievances and dispositions thereof shall be maintained and reviewed on a regular basis by the equal employment opportunity officer to detect any patterns in the nature of the grievances. Records so retained shall be confidential except where disclosure is required by law.

(c) The plan shall contain a summary of the matters alleged, the results thereof and the length of time required to resolve the grievance. The plan shall provide information on the number of such complaints, investigating agency, whether such matter is currently pending or the outcome thereof. All records relevant to employee grievances filed under this section shall be maintained by the agency for examination by the commission staff.

**(NEW) Sec. 46a-68-90. Goals analysis**

(a) Each agency shall prepare a report on all activity undertaken to achieve the hiring, promotion, and program goals contained in the previous affirmative action plan and a probing self-analysis of the progress made toward those ends. If the analysis reveals additional problem areas or finds any current course of action ineffective, the agency shall undertake corrective action as set forth in the Program goals section 46a-68-88 of the Regulations of Connecticut State Agencies.

(b) For each job search, the agency shall provide the race and gender of:

- (1) The total applicant pool
- (2) The qualified applicant pool
- (3) The applicants interviewed

(c) When a goal is met, the applicant shall be identified as a goal candidate. No other information is required.

(d) Each unmet goal shall be accompanied by a narrative outlining the agency's good faith efforts to achieve that goal by explaining why each goal candidate was eliminated. Each unmet goal, by job search, shall be separately addressed by narrative and the discussion of each goal applicant shall be detailed and complete.

**(NEW) Sec. 46a-68-91. Career Mobility**

(a) All departments and agencies of state government shall, pursuant to section 4-61u of the Connecticut General Statutes, establish an effective program of career mobility as part of their affirmative action program, as required by section 46a-68 of the Connecticut General Statutes, for occupational groups, which shall include, but not be limited to, secretarial, clerical, supervisory clerical, semiskilled, crafts and trades, supervisory crafts and trades, custodial, supervisory custodial and laborers. All departments and agencies of state government shall provide, or make provision for, career counseling for such occupational groups.

(b) Each department and agency of state government shall establish an effective program of accommodation and entry level training of persons with disabilities. Such programs shall be part of department and agency affirmative action programs required by section 46a-68 of the Connecticut General Statutes.

**(NEW) Sec. 46a-68-92. Good Faith Efforts**

An agency has demonstrated good faith efforts when it has engaged in the initiatives articulated in subsections (a) through (d), inclusive, of this section:

- (a) Promoted equal opportunity to achieve a workplace that is free of discrimination;
- (1) Communicate the agency's commitment to EEO/AA to all employees.
  - (2) Ensure that employees are aware of nondiscrimination policies and procedures; post policies in a visible location.
  - (3) Ensure that departmental processes, procedures, and systems are nondiscriminatory and free of bias.
  - (4) Evaluate supervisors for making good faith efforts in EEO/AA; document in performance appraisals.
  - (5) Ensure that reasonable accommodations are made for disabled employees.
  - (6) Take appropriate and timely action when there has been an allegation of sexual harassment.
  - (7) Provide training to employees to enhance their knowledge of non-discrimination
- (b) Developed recruitment strategies that ensure opportunities for all qualified applicants, including underutilized groups;
- (1) Identify affirmative action placement goal(s) for all job openings.
  - (2) Make efforts to attract a large and diverse pool of qualified applicants, particularly inclusive of groups associated with affirmative action recruitment goals.
  - (3) Develop a contingency strategy if the initial recruitment effort does not bring in a sufficiently diverse pool. However, it is best to make your initial recruitment as inclusive as possible.
  - (4) Contacting special interest organizations, groups and individuals.
  - (5) Or other means of outreach utilized to hire goal candidates.
- (c) Ensured a fair and nondiscriminatory selection process, and

- (1) Review the selection process to ensure that it treats each applicant fairly and consistently.
- (2) Review the interview format and questions for possible bias.
- (3) Ensure that reasonable accommodations are made for applicants.
- (4) If using a group interview process, create a diverse selection panel.
- (5) Assess all applicants using the same selection criteria.
- (6) Consider all skills that qualify the applicant, including volunteer and professional experience.
- (7) Interview as many applicants as possible to increase opportunity.
- (8) Keep written records of all applicants interviewed and be certain that the information recorded relates to the individual's ability to perform the duties.
- (9) Ensure that selection panel members are aware of the impact of common biases such as stereotyping, unsubstantiated first impressions that may influence a decision, and assessments based on different "comfort levels" with people of dissimilar groups.
- (10) Document the selection process fully. Retain all records.

(d) Provided career development opportunities to all interested and qualified employees, with emphasis on those groups found to be underutilized in the workforce.

- (1) Encourage staff to participate on agency committees to enhance development.
- (2) Inform all staff of internal staff development and promotional opportunities.
- (3) Promote and support employee training and development for all employees.
- (4) Provide career counseling.

(e) Nothing in this section shall be construed to absolve an agency of its obligations under sections, 46a-68-78, 46a-68-79, 46a-68-80, 46a-68-81, 46a-68-85, 46a-68-87, 46a-68-89, 46a-68-90, and 46a-68-92 of the Regulations of Connecticut State Agencies.

**(NEW) Sec. 46a-68-93. Innovative programs**

(a) The development and implementation of programs not covered elsewhere in the plan is an important part of the road to equal employment opportunity. Accordingly, within the framework of the affirmative action plan is an open invitation to each agency to structure comprehensive programs to create opportunities not otherwise available to achieve the full and fair participation of all protected group members. Such programs may include, but are not limited to:

- (1) summer employment programs;
- (2) youth programs;
- (3) apprenticeships;
- (4) work-study programs;
- (5) job sharing arrangements;
- (6) internships;
- (7) day care programs;
- (8) creation of new positions;
- (9) outreach for high school and college students;
- (10) reassignments; or
- (11) any positive, result-oriented program designed to achieve affirmative action.

(b) The plan shall describe any program planned or operated pursuant to this section and report the results achieved.

**(NEW) Sec. 46a-68-94. Concluding statement**

- (a) The affirmative action plan shall contain a concluding provision that:
- (1) Acknowledges that the ultimate responsibility for promoting and enforcing affirmative action rests with the appointing authority, who shall account for the success or failure of the plan.
  - (2) Acknowledges that every good faith effort to achieve the objectives and goals set forth in the plan has been made.
  - (3) Attests that the agency's equal employment opportunity officer reports directly to the agency head.
- (b) The concluding statement shall be signed and dated by the appointing authority.

**PART III. REVIEW AND MONITORING**

**(NEW) Sec. 46a-68-95. Filing standards**

- (a) The following factors shall determine whether an agency shall file on a biennial, annual or a semiannual schedule:
- (1) the timeliness of prior submissions;
  - (2) the degree to which prior plans are in compliance with applicable law and Sections 46a-68-75 through 46a-68-114, inclusive, of the Regulations of Connecticut State Agencies; and
  - (3) whether the agency has demonstrated good faith efforts to achieve the goals of the plan.
- (b) The commission may rescind the biennial or annual filing privilege at any time for failure to maintain the level of performance required in subsection (a) of this section.
- (c) Pursuant to subsection (d) of section 46a-68 of the Connecticut General Statutes any plan that is filed more than ninety days after the date such plan is due to be filed shall be deemed disapproved.

**(NEW) Sec. 46a-68-96. Compliance summary reports; reporting periods**

For purposes of compliance with Sections 46a-68(f) of the Connecticut General Statutes, each agency shall file an annual compliance summary report capturing the race and sex composition of the agency workforce in a format proscribed by the commission. Each agency shall provide CHRO the information by January 15th of every year, and the report shall be filed with the commission staff not more than thirty (30) days thereafter.

**(NEW) Sec. 46a-68-97. Affirmative action plan reporting periods**

- (a) All agencies shall file an affirmative action plan with reporting periods and filing dates established by the executive director pursuant to Section 46a-68(g) of the Connecticut General Statutes.
- (b) Agencies shall have thirty (30) days after its affirmative action plan filing schedule to make corrections to such plan.

**(NEW) Sec. 46a-68-98. Record retention**

All records related to affirmative action plans and all personnel or employment records made or kept shall be preserved for a period of two (2) years from the date of the making of the record or the personnel action involved, whichever occurs later. Where a charge or

complaint of discrimination has been filed, the agency shall preserve all personnel records relevant to the charge or action until final disposition of the matter. Nothing herein shall be construed to supersede a record retention schedule established elsewhere by state or federal law in excess of two (2) years.

**(NEW) Sec. 46a-68-99. Access to records and personnel**

Each agency shall permit reasonable access to the commission staff pursuant to sections 46a-68-101 through 46a-104, inclusive, of the Regulations of Connecticut State Agencies during normal business hours to its premises for the purpose of conducting on-site compliance reviews or monitoring. Reasonable access shall include interviewing employees and inspecting, and copying books, records, accounts, electronic records or other materials relevant to the evaluation of the plan under review or pertinent to compliance with Chapter 814c, Sections 4-61u to 4-61w or Section 4a-60 of the Connecticut General Statutes and regulations or guidelines issued thereunder.

**(NEW) Sec. 46a-68-100. Methods of review**

Review of an affirmative action plan shall be conducted by one or more of the following methods:

- (1) a desk audit of the documents, electronic records and material forming the submission;
- (2) a desk audit of documents and material received pursuant to Sections 46a-68-75 and 46a-68-114 of the Regulations of Connecticut State Agencies;
- (3) an on-site analysis of documents and material required by law or Sections 46a-68-75 through 46a-68-114, inclusive, of the Regulations of Connecticut State Agencies to be retained by the agency; or
- (4) an off-site study of documents and material copied and removed from agency premises.

**(NEW) Sec. 46a-68-101. Requests for information**

In addition to the plan and documents retained on-site pursuant to law or Sections 46a-68-75 through 46a-68-114, inclusive, of the Regulations of Connecticut State Agencies any other information reasonably necessary to assist in the completion of a review or monitoring may be discovered by the commission staff. Such information shall include, but not be limited to:

- (1) production of documents;
- (2) examination of persons upon oral deposition or other method; and
- (3) interrogatories.

**(NEW) Sec. 46a-68-102. Standard of review**

- (a) To receive approved status, a plan must contain all elements required by Sections 46a-68-75 through 46a-68-114, inclusive, of the Regulations of Connecticut State Agencies.
- (b) Additionally a plan shall be approved only if:
  - (1) the workforce, considered as a whole and by occupational category, is in parity; or
  - (2) the agency has met all or substantially all of its hiring, promotion, and program goals during the reporting period or
  - (3) the agency has demonstrated every good faith effort to achieve such goals and, despite these efforts, has been unable to do so; and,

- (4) the agency has addressed deficiencies previously noted by the commission.

**(NEW) Sec. 46a-68-103. Plan review and analysis**

As part of the review process, a written evaluation of the plan shall be prepared. Such evaluation shall:

- (1) assess the degree of procedural compliance with these regulations;
- (2) identify and comment upon the deficiencies and weaknesses of the plan;
- (3) appraise the performance and effort of the agency in meeting goals;
- (4) evaluate the effectiveness of the affirmative action program; and
- (5) suggest remedial action in addition to or in lieu of that proposed in the plan to achieve a balanced workforce and eliminate discriminatory practices.

**(NEW) Sec. 46a-68-104. Staff review; transmittal**

Commission staff shall review affirmative action plans and transmit a recommendation that a plan be approved, conditionally approved or disapproved to the commission and simultaneously to the agency via email. The commission staff shall include in its transmittal the reasons for its recommendation.

**(NEW) Sec. 46a-68-105. Commission review**

(a) The commission shall formally approve, conditionally approve or disapprove an affirmative action plan. Plans so approved or conditionally approved shall be designated commission approved plans and plans so disapproved shall be designated commission disapproved plans.

(b) If the commission fails to formally approve, conditionally approve or disapprove an affirmative action plan within ninety (90) days of the date such plan is submitted, the plan shall be deemed to be approved. Such plans shall be designated commission approved plans by default.

(c) The commission shall provide notification to an agency via email of its approval, conditional approval, or disapproval of that agency's plan.

**(NEW) Sec. 46a-68-106. Training and technical assistance**

The commission staff shall provide training and technical assistance to appointing authorities and equal employment opportunity officers in the development and implementation of affirmative action plans. Such training and technical assistance shall include notification of the provisions of state and federal equal opportunity legislation and amendments hereto.

**(NEW) Sec. 46a-68-107. Delegation of authority**

(a) To assure effective and efficient implementation and enforcement of Section 46a-68 of the Connecticut General Statutes the commission finds that it is necessary to delegate certain responsibilities to its staff. Accordingly, pursuant to Section 46a-54 (2), (4) and (5) of the Connecticut General Statutes, the commission delegates and assigns the following responsibilities and duties:

- (1) Staff shall review affirmative action plans filed with the commission to determine compliance with the relevant statutes and sections 46a-68-75 through 46a-68-114, inclusive, of the Regulations of Connecticut State Agencies and submit their review in a format approved by the commission with a recommendation of approval, conditional approval or disapproval;

(2) Staff shall provide technical assistance for agency personnel to acquaint them with the requirements of Section 46a-68 of the Connecticut General Statutes and Sections 46a-68-75 through 46a-68-114, inclusive, of the Regulations of Connecticut State Agencies and to assist agencies in achieving compliance;

(3) Staff shall monitor the implementation of affirmative action plans to determine the progress achieved by agencies pursuant to the requirements of the law and Sections 46a-68-75 through 46a-68-114, inclusive, of the Regulations of Connecticut State Agencies;

(4) Staff shall endeavor to achieve voluntary compliance with the law and Sections 46a-68-75 through 46a-68-114, inclusive, of the Regulations of Connecticut State Agencies. Upon a failure to achieve voluntary compliance, the staff shall make recommendations for further action by the commission; and

(b) The executive director of the commission shall supervise staff, activities pursuant to this delegation of authority and report to the commission on the activities undertaken, results achieved, and problems encountered and make recommendations for commission or legislative action.

#### **PART IV. ENFORCEMENT PROCEDURES**

##### **(NEW) Sec. 46a-68-108. Letters of commitment**

(a) If the commission identifies, under the standards announced in Sections 46a-68-75 through 46a-68-114, inclusive, of the Regulations of Connecticut State Agencies any portion of an agency affirmative action plan or program as deficient for failing to comply in all particulars with the requirements of Section 46a-68 of the Connecticut General Statutes or Sections 46a-68-75 through 46a-68-114, inclusive, of the Regulations of Connecticut State Agencies the agency shall, within thirty (30) days from the date notice of the commission action is received, accept or reject the commission's proposals to achieve compliance therewith.

(b) In the event that an agency refuses to adopt the proposals contained in the commission review, the commission may meet with the agency and attempt to resolve any outstanding differences to the mutual satisfaction of the parties. Any agreement reached at such meeting between an agency and the commission shall be in writing and signed by the agency appointing authority and equal employment opportunity officer and accepted by a representative of the commission.

(c) The staff of the commission shall closely monitor the agency's efforts to attain the goals contained in the letter of commitment and shall report any agency which fails to comply with its letter of commitment to the commission and the governor. Absent good cause shown, failure to honor, implement, or achieve the terms of a letter of commitment shall be viewed as a failure to cooperate with the commission within the meaning of Section 46a-77 of the Connecticut General Statutes..

##### **(NEW) Sec. 46a-68-109. Certificate of noncompliance; service**

(a) The commission may issue a certificate of noncompliance in accordance with Section 46a-68a of the Connecticut General Statutes and Sections 46a-68-75 through 46a-68-114, inclusive, of the Regulations of Connecticut State Agencies if the affirmative action plan of any agency is disapproved.

(b) The issuance of a certificate of noncompliance shall bar the agency in noncompliance with Section 46a-68 of the Connecticut General Statutes from filling a position or position classification by hire or promotion upon receipt of the certificate, the provisions of any state law or regulation to the contrary notwithstanding, until:

- (1) the commission determines that the agency has achieved compliance with Section 46a-68 of the Connecticut General Statutes, and withdraws the certificate; or
- (2) the commission, at a hearing requested by the agency receiving the certificate and conducted by a presiding officer appointed by the chairperson of the commission, is unable to show cause why the certificate of noncompliance should not be rescinded or a court, upon appeal, so determines; or
- (3) the commissioner of Administrative Services and the secretary of the Office of Policy and Management certify to the commission that the agency in noncompliance with Section 46a-68 of the Connecticut General Statutes requires immediate filling of the vacancy because failure to fill the position or position classification will cause an emergency situation to exist, jeopardizing the public welfare.

(c) A certificate of noncompliance shall be served upon the agency, the Department of Administrative Services and Office of Policy and Management electronically.

**(NEW) Sec. 46a-68-110. Petition for withdrawal of certificate; agreements; effect; monitoring; reissuance of certificate**

(a) An agency receiving a certificate of noncompliance may petition the commission for withdrawal of the certificate. A petition for withdrawal shall be addressed to the chairperson of the commission and may be withdrawn by a majority vote of the commissioners present and voting.

(b) The commission may withdraw a certificate of noncompliance if the petitioning agency:

- (1) shows that it has corrected the deficiencies noted in prior plan reviews and achieved compliance with Section 46a-68 of the Connecticut General Statutes, and Sections 46a-68-75 through 46a-68-114, inclusive, of the Regulations of Connecticut State Agencies; or
- (2) enters into an agreement with the commission to do so within specified time frames.

(c) Any agreement entered into pursuant to this section shall be in writing and signed by the agency appointing authority, the agency equal employment opportunity officer and a representative of the commission. Absent good cause shown, failure to honor, implement or achieve the terms of the agreement shall be viewed as a failure to cooperate with the commission within the meaning of Section 46a-77 of the Connecticut General Statutes.

(d) Commission staff shall closely monitor the agency's efforts to attain compliance with Section 46a-68 of the Connecticut General Statutes. If the staff of the commission determines that an agency has failed to satisfy the terms of the agreement entered into pursuant to subsection (c) of this section, the staff shall report this failure to the commission and the commission may reinstate the certificate by a majority vote of the commissioners present and voting.

**(NEW) Sec. 46a-68-111. Request for rescission of certificate; hearings; appeal**

- (a) An agency receiving a certificate of noncompliance may request rescission of the certificate.
- (b) Upon receipt of a request for rescission, the chairperson of the commission shall appoint a presiding officer to determine whether the certificate should be rescinded. Such certificate shall be rescinded if the presiding officer determines that the commission is unable to show cause why the certificate should continue or a court, upon appeal, so decides.
- (c) Hearings under this section shall be conducted in accordance with Sections 4-177 to 4-182, inclusive, of the Connecticut General Statutes.
- (d) A final order of the presiding officer may be appealed pursuant to Section 46a-94a and 4-183 of the Connecticut General Statutes.

**(NEW) Sec. 46a-68-112. Certificate of exemption; conciliation; hearings**

- (a) An agency receiving a certificate of noncompliance may petition the Commissioner of the Department of Administrative Services and the Secretary of the Office of Policy and Management for issuance of a certificate of exemption in accordance with section 46a-68a of the Connecticut General Statutes. A separate certificate of exemption shall be required for each vacancy in a position or position classification. A copy of the petition, together with evidence in support thereof, shall be served upon the commission. Service shall be made in a manner permitted by Section 46a-68-109(c) of the Regulations of Connecticut State Agencies, and the petition shall so state.
- (b) The Commissioner of the Department of Administrative Services and the Secretary of the Office of Policy and Management may refer the agency to the commission to discuss whether an agreement pursuant to section 46a-68-110 of the Regulations of Connecticut State Agencies may be reached which would obviate the need for issuance of a certificate of exemption. In such event, the agency and commission shall report the results of any such discussion to the Commissioner of the Department of Administrative Services and the Secretary of the Office of Policy and Management. Any agreement between an agency and the commission shall be in writing and signed by the agency appointing authority, the agency equal employment opportunity officer and a representative of the commission.
- (c) If the agency receiving the certificate and the commission are unable to reach an agreement pursuant to Section 46a-68-110 of the Regulations of Connecticut State Agencies or if the Commissioner and Secretary elect to determine whether an emergency situation exists without referring the agency to the commission, as provided in subsection (b) of this section, the Commissioner and Secretary shall determine whether a certificate of exemption shall be issued. A certificate of exemption may issue if the Commissioner and Secretary find that the agency receiving the certificate of noncompliance has shown that failure to fill a vacant position or position classification will cause an emergency situation to exist jeopardizing the public welfare. The commission shall respond to requests from the commissioner and secretary for information relating to the status of a non-complying agency's affirmative action plan.

**(NEW) Sec. 46a-68-113. Commission complaints**

The commission may issue a complaint if:

- (1) it has reason to believe that any person has been engaged in a discriminatory practice as defined by Section 46a-51(8) of the Connecticut General Statutes; or
- (2) an affirmative action plan is in violation of any of the provisions of Sections 4-61u to 4-61w, inclusive, Sections 46a-54 to 46a-64, inclusive, of the Regulations of Connecticut State Agencies or Sections 46a-70 to 46a-78, inclusive of the Connecticut General Statutes; or
- (3) an agency, department, board or commission fails to submit the affirmative action plan required by Section 46a-68 of the Connecticut General Statutes in accordance with the schedule for filing such plans.

**(NEW) Sec. 46a-68-114. Complaint investigation and hearing**

The investigation and hearing of a complaint filed pursuant to Section 46a-82 of the Connecticut General Statutes and Sections 46a-68-75 through 46a-68-114, inclusive, of the Regulations of Connecticut State Agencies shall proceed according to the procedures provided in section 46a-83 to 46a-90, inclusive, 46a-94a, 46a-95 and 46a-96 of the Connecticut General Statutes and regulations adopted thereunder.

**Section 2.** Sections 46a-68-31 to Sec. 46a-68-74, inclusive, of the regulations of Connecticut State Agencies are repealed.

R-39 Rev. 03/2012  
(Statement of Purpose page)

**Statement of Purpose**

Pursuant to Sec. 46a-68. (Formerly Sec. 4-61s). State affirmative action plans: Filing; monitoring; reports; equal employment opportunity officers; review and investigation of discrimination complaints; regulations of the Connecticut General Statutes and Section 75 of HB 6650, PA 11-51, An Act Implementing The Provisions Of The Budget Concerning The Judicial Branch, Child Protection, Criminal Justice, Weigh Stations And Certain State Agency Consolidations proposed regulations 46a-68-75 to 46a-68-114, inclusive, will replace existing Sections 46a-68-31 to 46a-68-74, inclusive, of the Regulations of Connecticut State Agencies. The purpose is to eliminate ineffective sections, make filing electronic which will save both labor time and other expenses and to foster cooperation between agencies and CHRO plan reviewers.