



## Ohio Administrative Code

### Rule 5101:11-8-01 Response to findings of non-compliance.

Effective: October 1, 2020

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Upon expiration of the time allowed for corrective action in response to a complaint or compliance review finding, or upon issuance of a notice of findings where such allowance is not made, the following steps need to be taken:

(A) Internal records. The council office will provide each member of the apprenticeship council, with a copy of: the relevant case record; the notice of compliance findings described in paragraph (A) of rule 5101:11-7-03 of the Administrative Code; and the notice of enforcement proceedings described in paragraph (B) of this rule.

(B) Notice to affected parties. The council office will issue a written notice of enforcement proceedings to the sponsor by registered or certified mail, return receipt requested. A copy of the pertinent notice of compliance findings will be enclosed. These materials will also be provided at the same time to the complainant(s) involved, if any, by such means as the council office deems appropriate. The notice of enforcement proceedings are to state the following:

(1) That the notice is sent pursuant to this rule;

(2) That the sponsor was informed of the rule violation(s) described in the enclosed notice of compliance findings, and that the sponsor has failed to effect remediation in the time allowed;

(3) That within fifteen days of receipt of this notice, the sponsor may request a hearing pursuant to rule 5101:11-8-02 of the Administrative Code, in order to challenge the accuracy of the stated findings; and

(4) That due to the stated violation(s) and failure of remedy, if the request for a hearing is not made or if a hearing occurs that fails to disprove the findings, the council office will make a determination with respect to de-registration, in accordance with paragraphs (C) to (E) of this rule.



(C) Enforcement action. The following steps need to be taken pursuant to any notice of enforcement proceedings:

(1) The council office will receive a recommendation of enforcement, pursuant to the process described in paragraph (C)(2) of this rule. The recommendation is to include:

(a) Citation of the respective notice of enforcement proceedings;

(b) A copy of all relevant documentation obtained by the recommending party subsequent to the notice, including where applicable a hearing record; and

(c) For each rule alleged to have been violated, a recommendation for one and only one of the enforcement options listed in paragraph (C)(3) of this rule.

(2) With the exception described in this paragraph, the council will make the recommendation of enforcement on the basis of the record before it. The exception is that in cases involving non-compliance with equal employment opportunity (EEO) rules, the recommendation will be made on the same basis by the chairperson or, if he/she encounters an impediment or a conflict of interest in doing so, then by his/her designee. In the event that the chairperson appoints a designee, the latter is to be another council member. If a hearing occurs pursuant to rule 5101:11-8-02 of the Administrative Code, then the record on which the recommendation is based, will include the findings and recommendations of the hearing officer.

(3) After reviewing the recommendation of enforcement, and with due consideration of its contents, the council office will issue a written, dated determination of enforcement that will state one and only one of the following conclusions, along with supporting arguments:

(a) That the program is de-registered effective on the date of issuance;

(b) That there are not sufficient grounds for de-registration, and barring new information to the contrary, the program will remain registered; or

(c) That the sponsor may be allowed a reasonable additional period to correct the designated



deficiency(s), such period to be specified as part of the determination; and that the program will be automatically de-registered at the end of that period, unless the council office determines with certainty, based entirely on evidence that the sponsor presents at that time, that the program has fully remedied the cited deficiency(s).

(D) Additional response to EEO violation. If a notice of compliance findings reports that a sponsor is not in compliance with EEO requirements, the council office at its discretion may, in addition to voluntary remediation and/or enforcement action, refer the matter to one or more of the following agencies, for action based on their respective legal mandates:

- (1) The equal employment opportunity commission (EEOC);
- (2) The United States attorney general;
- (3) The department of labor office of federal contract compliance (OFCCP); and/or
- (4) In cases where the sponsor is a state agency, the Ohio department of administrative services equal opportunity division.

(E) Intimidating or retaliatory acts.

(1) The state of Ohio prohibits any intimidation, threat, coercion, or retaliation by or with the approval of any sponsor or its employer(s) against any person:

(a) For the purpose of interfering with any right or privilege secured by Title VII of the Civil Rights Act of 1964 or by federal executive order 11246

(<http://www.dol.gov/esa/ofccp/regs/statutes/eo11246.htm>),

(b) Or because he or she has:

- (i) Made a complaint under any provision of division 5101:11 of the Administrative Code; or
- (ii) Testified, assisted, furnished information to, or participated in any manner in a compliance



review, investigation, proceeding, or hearing under division 5101:11 of the Administrative Code; or

(iii) Opposed a practice prohibited by division 5101:11 of the Administrative Code or any other federal or state equal opportunity law.

(2) Any such act by a sponsor or employer will be considered noncompliance with rules under division 5101:11 of the Administrative Code, and will be addressed as prescribed under Chapter 5101:11-8 of the Administrative Code for any other case of noncompliance.