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will conduct onsite evaluations of program effectiveness, both at agency headquarters and at field installations or operating components.

(b) *Technical Assistance.* The Office of Personnel Management will provide technical assistance, guidance, instructions, data, and other information as appropriate to supplement and support agency programs for disabled veterans, through the Federal Personnel Manual (FPM).

(c) *Semiannual Reports.* As provided by 38 U.S.C. 2014(d), OPM will, on at least a semiannual basis, publish reports on Government-wide progress in implementing affirmative action programs for disabled veterans.

(d) *Report to Congress.* As required by 38 U.S.C. 2014(e), OPM will report to Congress each year on the implementation and progress of the program. These reports will include specific assessments of agency progress or lack of progress in meeting the objectives of the program.

§ 720.307 Interagency report clearance.

The reports contained in this regulation have been cleared in accordance with FPMR 101–11.11 and assigned interagency report control number 0305–OPM–AN.

Subparts D–I—[Reserved]

Subpart J—Equal Opportunity Without Regard to Politics or Marital Status

§ 720.901 Equal opportunity without regard to politics or marital status.

(a) *In appointments and position changes.* In determining the merit and fitness of a person for competitive appointment or appointment by noncompetitive action to a position in the competitive service, an appointing officer shall not discriminate on the basis of the person's political affiliations, except when required by statute, or on the basis of marital status

(b) *In adverse actions and termination of probationers.* An agency may not take an adverse action against an employee covered by part 752 of this chapter, not effect the termination of a probationer under part 315 of this chapter, (1) for political reasons, except when required by statute, or (2) because of marital status.

(5 U.S.C. 2301, 2302, 7202, 7203, 7204)

[44 FR 48149, Aug. 17, 1979]

Appendix to Part 720—Guidelines for the Development of a Federal Recruitment Program to Implement 5 U.S.C. Section 7201, as Amended [1]

I. *Background Information.* A. In 1964 the Congress adopted a basic anti-discrimination policy for Federal employment, stating:

It is the policy of the United States to insure equal employment opportunities for employees without discrimination because of race, color, religion, sex or national origin. [5 U.S.C. 7151][2]

In 1978, Congress reaffirmed and amended this policy as part of the Civil Service Reform Act of 1978 [Sec. 310 of Pub. L. 95–454], requiring immediate development of a recruitment program designed to eliminate underrepresentation of minority groups in specific Federal job categories. Section 310 directs the Equal Employment Opportunity Commission:

1. To establish Guidelines proposed to be used for a program designed to eliminate such underrepresentation;

2. To make, in consultation with OPM, initial determinations of underrepresentation which are proposed to be used in this program; and

3. To transmit the determinations made under (2) above to the Executive Agencies, the Office of Personnel Management and the Congress, within 60 days of enactment.

The Office of Personnel Management (OPM)[3] is directed by this amendment:

1. To issue regulations to implement a program under EEOC Guidelines within 180 days after enactment, which shall provide that Executive agencies conduct continuing recruitment programs to carry out the anti-discrimination policy in a manner designed

[1] This section originally was section 701(b) (2nd Proviso) of the Civil Rights Act of 1964 (Pub. L. 88–352, July 2, 1964), codified as 5 U.S.C. 7151. Section 7151 was further amended by section 310 of the Civil Service Reform Act of 1978. This Act also redesignated section 7151 as section 7201, effective January 11, 1979. (Sec. 703(a)(1) of the Act.)

[2] *Ibid.*

[3] This Office was created by Reorganization Plan No. 2, issued pursuant to 5 U.S.C. 901 *et seq.* It will assume personnel management functions of the present Office of Personnel Management on January 1, 1979.

to eliminate underrepresentation in identified categories of civil service;

2. To provide continuing assistance to Federal agencies in carrying out such programs;

3. To conduct a continuing program of evaluation and oversight to determine the effectiveness of such programs;

4. To establish occupational, professional and other groupings within which appropriate recruitment will occur, based upon the determinations of underrepresentation pursuant to these Guidelines; and

5. To report annually to the Congress on this program, not later than January 31 of each year.

Congress further directed that the recruitment program must be administered consistent with provisions of Reorganization Plan No. 1 of 1978.[4]

B. In framing these Guidelines and making its initial determinations of underrepresentation, the Equal Employment Opportunity Commission (Commission) is acting pursuant to its obligations and authority under 5 U.S.C. 7201, as amended; Section 717 of title VII of the Civil Rights Act of 1964, as amended; Reorganization Plan No. 1 of 1978 (issued pursuant to 5 U.S.C. 901 et seq.) and Executive Order 12067, issued under this Plan (43 FR 28967, June 30, 1978). This Commission must develop and/or ensure the development of uniform, coherent and effective standards for administration and enforcement of all Federal anti-discrimination and equal employment opportunity laws, policies and programs, and to ensure the elimination of duplication and inconsistency in such programs.

C. A review of the legislative history of Federal equal employment opportunity policy provides further guidance on the scope and nature of determinations and guidelines to be issued for this program.

The basic policy statement on Federal equal employment policy enacted by the Congress in 1964 (5 U.S.C. 7151, redesignated as section 7201) gave the President authority for implementation. Executive Order 11246 (1966), expanded and superseded by Executive Order 11478 (1969) with respect to Federal employment, required Federal agencies to develop affirmative action programs designed to eliminate discrimination and assure equal employment opportunity.

In 1972, Congress found that serious discrimination persisted in Federal employment. It found that minorities and women were significantly absent at higher levels in Federal employment, and severely underrepresented in some Federal agencies and in some geographic areas where they constituted significant proportions of the population. After a detailed review of Federal employment practices and statistics, the Congress concluded that:

The disproportionate distribution of minorities and women throughout the Federal bureaucracy and their exclusion from higher level policy-making and supervisory positions indicates the government's failure to pursue its policy of equal employment opportunity.[5]

Congress found that this exclusion resulted from overt and ''systemic'' discriminatory practices.

These findings, among others, led Congress to extend title VII coverage to Federal employment in Section 717 of the Equal Employment Opportunity Act of 1972.

The Civil Service Reform Act of 1978 clearly states, for the first time, that ''it is the policy of the United States * * * to provide * * * a Federal workforce reflective of the Nation's diversity * * *''[6] The Act establishes in law as the first merit principle that recruitment should be designed to achieve a Federal workforce from ''all segments of society.'' Among the personnel practices prohibited by the Act is discrimination prohibited under title VII of the Civil Rights Act of 1964, as amended.[7] Therefore, the Civil Service Reform Act and its directive for a special recruitment program clearly unite requirements for basic Federal personnel policy with requirements for Federal equal employment policy.

It is clear from the legislative history of Federal equal employment policy that the legal standards of title VII must be applied to Federal employment. Thus, guidelines for a recruitment program designed to eliminate underrepresentation in Federal agency employment must be developed consistent with the framework of affirmative action programs.

D. Guided by the review of the legislative history, and the responsibilities and authorities cited in I(B) of this appendix, the Commission is issuing these Guidelines to provide a framework for development of recruitment program regulations by OPM. The Commission may later provide more detailed guidance, through consultation with OPM, designed to achieve an overall Federal equal employment program which is consistent with, and which effectively implements title VII requirements.

II. *Initial Determinations of Underrepresentation.* A. Pursuant to Section 7201, underrepresentation exists when the percentages of minority and female Federal employees in

[4] *Conference Report on Civil Service Reform Act of 1978,* No. 95–1272, p. 145.

[5] *Legislative History of the Equal Employment Opportunity Act of 1972,* p. 83. See pp. 82–86 and 421–425 for Congressional Findings.

[6] Civil Service Reform Act of 1978, Section 3.

[7] Section 101(a) of the Act, 5 U.S.C. 2301(b)(1) and 2302(b)(1)(A), as amended.

specific grades are less than their percentages in the civilian labor force. ''Minority'' refers only to those groups classified as ''minority'' for the purpose of data collection by the Commission and OPM in furtherance of Federal equal employment opportunity policies. The civilian labor force includes all persons 16 years of age and over except the armed forces, who are employed or seeking employment. Such a determination of underrepresentation is designated in these Guidelines as ''below the Section 7201 level''.

B. The Commission has examined existing data on Federal employment and the civilian labor force and has made initial determinations of underrepresentation of groups by race, national origin and sex in specific grades of the major Federal pay systems, under the legal authorities cited in I(B), of this appendix.

C. The Table which follows shows the grades at which the percentage of each group in the Federal workforce falls below its percentage in the civilian labor force. The table covers four major Federal pay systems which account for more than 95 percent of Federal employees, excluding the Postal Service.[8]

Civilian Labor Force and Federal Employment Grades at Which Minorities and Women Are Below the 7201 Level, by Selected Pay Systems, and by Sex, Race, and National Origin—1977

Sex/Race/National Origin	Percent of Civilian Labor Force	Grades Below the 7201 Level			
		Gen Sched and Equivalent	Non-spvsry Regular Wage	Leader Regular Wage	Spvsry Regular Wage
Number of Grades	.....	18	15	15	19
Women	41.0	9+	2+	2+	All
White	34.0	9+	All	All	All
Black	4.6	11+	5+	5+	5+
Hispanic	1.7	6+	All	2, 4+	All
AsAm/PacIs	.6	1, 10+	2+	2+	All
AmIn/AlNa	.1	13+	9+	1, 5, 6, 9+	4, 9, 11+
Minority Men	8.9	3+	13+	11, 14+	13+
Black	5.3	4, 6+	12+	11+	11+
Hispanic	2.8	All	14+	1, 15	13–15, 17+
AsAm/PacIs	.7	1–8, 10, 16+	9, 14+	1, 3, 8, 9, 12+	1, 3, 8, 9, 17+
AmIn/AlNa	.2	None	14	1, 13+	17+

NOTES.—1. Comparable data for white men shown below are for reference.

White Men	50.1	1–8	1–4	1–5	1–3

2. + means ''and all grades above''.
3. Detail may not add to total because of rounding.

Sources: Civilian Labor Force information based on data from the Current Population Survey, Bureau of Labor Statistics, *Employment and Earnings,* Vol. 25, No. 1, January 1978.
Information on grades below 7201 level based on Office of Personnel Management data from *Equal Employment Opportunity Statistics,* November 20, 1977 (publication in process).

D. The initial determinations of underrepresentation were based upon average 1977 labor force data from the Current Population Survey published by the Bureau of Labor Statistics *(Employment and Earnings,* January 1978), and 1977 Federal workforce statistics from *Equal Employment Opportunity Statistics* (publication in process).

The labor force figures are published annually; the Federal employment statistics semiannually. These measures, and any modifications agreed upon by the Commission and OPM, will be updated annually.

Regional and area Federal employment statistics are available from the Office of Personnel Management. The latest reliable local labor force data by race, national origin, and sex is from the 1970 Census. The Commission and OPM will consult on appropriate labor force measures to be used for local analyses.

E. These initial determinations are based upon a preliminary analysis of the data, and may be further refined by the Commission, in consultation with OPM, to include geographic and occupational underrepresentation. It is further recognized that for the purpose of developing regulations, the OPM, in consultation with the Commission, will undertake more specific analyses of data use and applicability necessary to develop programs for the Federal agencies pursuant to Section 7201(a)(2)(C). The OPM may establish criteria for grouping agencies, for treating

[8] The initial determinations are based on data for only those agencies covered by the Civil Service Reform Act of 1978. The Commission will make subsequent determinations on other agencies covered by title VII, e.g. the U.S. Postal Service, TVA, Central Intelligence Agency, Federal Reserve Board.

agency components separately and for grouping grades and pay systems. In addition, OPM may study other available data sources and use other techniques to assure statistically significant findings of underrepresentation. Based upon these studies, OPM may make recommendations to the Commission for future determinations of underrepresentation.

III. *Procedures for Developing Recruitment Programs.* A. The program developed and implemented by OPM under Section 7201 should be designed to result in applicant pools with sufficient qualified members of underrepresented groups. Where the supply of such groups initially appears to be low for specific occupational, professional and other groupings, the program should be designed so that recruitment efforts stimulate interest of underrepresented groups in those occupations where there are realistic projections of Federal employment opportunities.

B. In establishing groupings for determining underrepresentation, OPM should utilize broad occupational categories to the extent possible.

C. The Commission recognizes that OPM's regulations should allow flexibility in development and design of each Federal agency's recruitment program. However, all statistical comparisons must be computed in a manner consistent with the method utilized in II C of this appendix.

The Commission recommends that each agency program meet several minimum requirements. The program should be based on a determination of underrepresentation in the agency's total workforce, in appropriate geographic components; by grade; by broad occupational, professional and other groupings in comparison to the national civilian labor force, according to the criteria developed by OPM under these guidelines.

Where an agency or major component thereof (such as Headquarters and Regional Offices) is located in a geographic area where the percentage of underrepresented groups in the area civilian labor force is *higher* than their percentage in the national labor force, the agency or appropriate component should conduct its recruitment program for that component on the basis of the higher level of representation in the relevant civilian labor force.

Where an agency or major component thereof is located in a geographic area where participation of a particular underrepresented group in the area labor force is significantly *lower* than their participation in the national labor force, such agency or component may, in consultation with OPM, utilize the lower applicable civilian labor force percentage in determining underrepresentation for the component. In no event, however, may the agency utilize a figure lower than the regional or nationwide Section 7201 level for positions where recruitment on a regional or nationwide basis is feasible. Factors such as size of the agency or unit, nature of jobs and their wage or pay scale may be considered to set goals and to justify a recruitment program focused on various job categories.

IV. *Scope of Actions Covered by This Program.* A. ''Recruitment'' under this program is defined as the total process by which the Federal Government and the Federal agencies locate, identify and assist in the employment of qualified or qualifiable applicants from underrepresented groups for job openings in grades and in occupational categories where underrepresentation has been determined. This process should include innovative internal, as well as targeted external, recruitment actions.

B. Prior to developing regulations, the Office should review data on personnel actions and other information, to identify those job categories for which internal recruitment and external recruitment is most appropriate and feasible, and to provide guidance to the Federal agencies for targeting their recruitment programs, based on this information. OPM should advise all agencies that all job qualifications, personnel procedures and criteria must be consistent with the *Uniform Guidelines on Employee Selection Procedures* (43 FR 38290 August 25, 1978) OPM should consider the following in providing guidance to agencies:

1. *External Recruitment Programs.* a. Such programs should focus on grade levels and/or job categories where underrepresentation has been identified and where external recruitment realistically will result in hiring opportunities.

Recruitment programs also should include a review of job functions to determine those jobs that may be better performed by persons who are bicultural and who have bilingual capabilities, and those jobs that can be performed by persons not fluent in English.

b. Where eligibility lists are used for filling jobs, it is recommended that the regulations require, an analysis by race, national origin and sex, to determine whether the list contains sufficient candidates from groups underrepresented in those jobs. OPM should require that where the list does not have such representation, expanded recruitment procedures be designed to assure that members of underrepresented groups qualified to perform the job(s) are included in the pool of applicants from which the selecting official makes the selection. Such expanded recruitment procedures may include additional external recruitment or various actions (such as described in 2. below) to reach members of these groups within the Federal workforce who are qualified or qualifiable for these jobs.

2. *Internal Recruitment Programs.* a. Internal recruitment programs should be designed by agencies to identify currently qualified or

qualifiable persons for job categories and series where underrepresentation prevails, according to the national determinations and the determinations made by each agency under these guidelines.

b. Further, OPM should work with Federal agencies to develop effective mechanisms for providing information on Federal job opportunities, targeted to reach Federal employees from underrepresented groups in all agencies in order to broaden the applicant pool.

V. *Consistency with Reorganization Plan No. 1 of 1978.* A. The Office shall develop regulations and implement this program in consultation with the Commission and with other affected agencies in such manner that their recruitment programs may be incorporated as a consistent and effective element of the agencies' national and regional equal employment opportunity plans. Each agency is required to implement such plans under the direction and guidance of the Commission in accordance with Section 717 of title VII of the Civil Rights Act of 1964, as amended, and Executive Order 12067.

B. Procedures shall be established by OPM and the Commission to assure appropriate consultation in development of the regulations.

C. Pursuant to Reorganization Plan No. 1 and to Executive Order 12067 issued thereunder, the Commission will establish procedures to provide appropriate consultation and review of the program on a continuing basis, to maximize its effectiveness and eliminate any duplication, conflict or inconsistency in requirements for equal opportunity programs in the Federal agencies.

D. In preparing its annual report to the Congress pursuant to the Act, OPM should do so in consultation with the Commission.

[44 FR 22031, Apr. 13, 1979; 44 FR 76747, Dec. 28, 1979]

PART 723—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE OFFICE OF PERSONNEL MANAGEMENT

Sec.

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AUTHORITY: 29 U.S.C. 794.

SOURCE: 53 FR 25880 and 25885, July 8, 1988, unless otherwise noted.

§ 723.101 Purpose.

The purpose of this regulation is to effectuate section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the United States Postal Service.

§ 723.102 Application.

This regulation (§§ 723.101–723.170) applies to all programs or activities conducted by the agency, except for programs or activities conducted outside the United States that do not involve individuals with handicaps in the United States.

§ 723.103 Definitions.

For purposes of this regulation, the term—

Assistant Attorney General means the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

Auxiliary aids means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities conducted by the agency. For example, auxiliary aids useful for persons with impaired vision include readers, Brailled materials, audio recordings, and other similar services and devices. Auxiliary aids useful for persons with impaired hearing include telephone handset amplifiers, telephones compatible with hearing aids, telecommunication devices for deaf persons (TDD's), interpreters,