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SUBCHAPTER B—CIVIL SERVICE REGULATIONS

PART 715—NONDISCIPLINARY SEPARATIONS, DEMOTIONS, AND FURLOUGHS

Subpart A—[Reserved]

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715.202 Resignation.

AUTHORITY: 5 U.S.C. 1302, 3301, 3302, 7301; E.O. 10577, 3 CFR, 1954–1958 Comp., p. 218; E.O. 11222, 3 CFR, 1964–1965 Comp., p. 306.

Subpart A—[Reserved]

Subpart B—Voluntary Separations

§ 715.201 Applicability.

This subpart applies to separation actions requested by employees in the executive departments and independent establishments of the Federal Government, including Government-owned or controlled corporations, and in those portions of the legislative and judicial branches of the Federal Government and the government of the District of Columbia having positions in the competitive service.

[33 FR 12482, Sept. 4, 1968]

§ 715.202 Resignation.

(a) *General.* An employee is free to resign at any time, to set the effective date of his resignation, and to have his reasons for resigning entered in his official records.

(b) *Withdrawal of resignation.* An agency may permit an employee to withdraw his resignation at any time before it has become effective. An agency may decline a request to withdraw a resignation before its effective date only when the agency has a valid reason and explains that reason to the employee. A valid reason includes, but is not limited to, administrative disruption or the hiring or commitment to hire a replacement. Avoidance of adverse action proceedings is not a valid reason.

[33 FR 12482, Sept. 4, 1968, as amended at 36 FR 9765, May 28, 1971; 38 FR 18446, July 11, 1973; 38 FR 26601, Sept. 24, 1973]

PART 720—AFFIRMATIVE EMPLOYMENT PROGRAMS

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APPENDIX TO PART 720—GUIDELINES FOR THE DEVELOPMENT OF A FEDERAL RECRUITMENT PROGRAM TO IMPLEMENT 5 U.S.C. SECTION 7201, AS AMENDED

AUTHORITY: 5 U.S.C. 7201; 42 U.S.C. 2000e, unless otherwise noted.

SOURCE: 44 FR 22031, Apr. 13, 1979, unless otherwise noted.

Subpart A—Principal Statutory Requirements

§ 720.101 Federal Equal Opportunity Recruitment Program.

This section incorporates the statutory requirements for establishing and conducting an equal opportunity recruitment program consistent with law within the Federal civil service. The policy in 5 U.S.C. 7201(b) reads as follows: ''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. The President shall use his existing authority to carry out this policy.'' 5 U.S.C. 7201(c) requires under regulations prescribed by the Office of Personnel Management:

''(1) That each Executive agency conduct a continuing program for the recruitment of members of minorities for positions in the agency to carry out the [anti-discrimination] policy set forth in subsection (b) in a manner designed to eliminate underrepresentation of minorities in the various categories of civil service employment within the Federal service, with special efforts directed at recruiting in minority communities, in educational institutions, and from other sources from which minorities can be recruited; and

''(2) That the Office conduct a continuing program of—

''(A) Assistance to agencies in carrying out programs under paragraph (1) of this subsection; and

''(B) Evaluation and oversight of such recruitment programs to determine their effectiveness in eliminating such minority underrepresentation.''

This section and all implementing guidance shall be interpreted consistent with title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000c *et seq.*

[44 FR 22031, Apr. 13, 1979, as amended at 48 FR 193, Jan. 4, 1983]

Subpart B—Federal Equal Opportunity Recruitment Program

§ 720.201 Regulatory requirements.

This subpart contains the regulations of the Office of Personnel Management which implement the above provisions of title 5, United States Code, and are prescribed by the Office under authority of 5 U.S.C. 7201.

§ 720.202 Definitions.

For the purposes of this subpart:

(a) *Underrepresentation* means a situation in which the number of women or members of a minority group within a category of civil service employment constitutes a lower percentage of the total number of employees within the employment category than the percentage women or the minority constitutes within the civilian labor force of the United States, in accordance with § 720.205 (c) and (d).

(b) *Category of civil service employment* means such groupings of Federal jobs by grades and/or occupations as the Office of Personnel Management deems appropriate within the General Schedule and the prevailing wage systems.

(c) *Minority* refers only to those groups classified as ''minority'' for the purpose of data collection by the Office of Personnel Management and the Equal Employment Opportunity Commission in furtherance of Federal equal employment opportunity policies. The term, ''women,'' includes nonminority as well as minority women.

(d) *Civilian labor force* (CLF) includes all persons 16 years of age and over, except those in the armed forces, who are employed or who are unemployed and seeking work. CLF data are defined by the Bureau of the Census and the Bureau of Labor Statistics and are reported in the most recent decennial or mid-decade census, or current population survey, under title 13 of the United States Code or any other reliable statistical study.

(e) *Recruitment* means the total process by which the Federal Government and the Federal agencies locate, identify and assist in the employment of qualified applicants from underrepresented groups for job openings in categories of employment where underrepresentation has been determined. It includes both innovative internal and external recruitment actions. It is also intended to cover processes designed to prepare qualifiable applicants (those who have the potential but do not presently meet valid qualification requirements) for such job openings through programs of training, work experience or both.

(f) *Applicant pool* means all types of listings from which selections may be

made, including (but not limited to) promotion lists, competitive certificates and inventories of eligibles, applicant supply files, and lists of eligibles for certain noncompetitive appointments.

§ 720.203 Responsibilities of the Office of Personnel Management.

(a) The Office of Personnel Management will provide appropriate data to assist Federal agencies in making determinations of underrepresentation. The process for making such determinations is described in sections II and III (c) of the ''Guidelines for the Development of a Federal Recruitment Program to Implement 5 U.S.C. 7201, as amended'' (See appendix to this part). The Office will develop and publish more specific criteria for statistical measurements to be used by individual agencies, and will develop further guidance on—

(1) Agency employment statistics and civilian labor force statistics to be used in making determinations of underrepresentation, on a national, regional or other geographic basis as appropriate;

(2) Groupings of grades and/or other occupational categories to be used in implementing agency programs;

(3) Occupational categories and job series for which expanded external recruitment efforts are most appropriate, and those for which expanded and innovative internal recruitment is appropriate; and

(4) Other factors which may be considered by the agency, in consultation with Office of Personnel Management, to make determinations of underrepresentation and to develop recruitment programs focused on specific occupational categories.

(b) The Office will assist agencies in carrying out their programs by—

(1) Identifying major recruitment sources of women and members of minority groups and providing guidance on internal and external recruitment activities directed toward the solution of specific underrepresentation problem;

(2) Supplementing agency recruitment efforts, utilizing existing networks for dissemination of job information, and involving the participation of minority group and women's organizations where practicable;

(3) Examining existing Federal personnel procedures to identify those which (i) may serve as impediments to innovative internal and external recruitment and (ii) are within the administrative control of the Office or the Federal agencies;

(4) Determining whether applicant pools used in filling jobs in a category of employment where underrepresentation exists include sufficient candidates from any underrepresentated groups, except where the agency controls such pools (see § 720.204(c));

(5) Providing such other support, as the Office deems appropriate.

(c) The Office will monitor and, in conjunction with the personnel management evaluation program of the Office, evaluate agency programs to determine their effectiveness in eliminating underrrepresentation.

(d) The Office will work with agencies to develop effective mechanisms for providing information on Federal job opportunities targeted to reach candidates from underrepresented groups.

(e) The Office will conduct a continuing program of guidance and instruction to supplement these regulations.

(f) The Office will coordinate further activities to implement equal opportunity recruitment programs under this subpart with the Equal Employment Opportunity Commission consistent with law, Executive Order 12067, and Reorganization Plan No. 1 of 1978.

§ 720.204 Agency programs.

(a) Each Executive agency having positions in the pay systems covered by this program must conduct a continuing program for the recruitment of minorities and women for positions in the agency and its components to carry out the policy of the United States to insure equal employment opportunities without discrimination because of race, color, religion, sex or national origin. The head of each agency must specifically assign responsibility for program implementation to an appropriate agency official. All agency officials

who have responsibility for the program will be evaluated on their effectiveness in carrying it out as part of their periodic performance appraisals.

(b) Programs established under this subpart must be designed to cover recruitment for all positions in pay plans covered by this program including part-time and temporary positions.

(c) Where an agency or the Office of Personnel Management has determined that an applicant pool does not adequately provide for consideration of candidates from any underrepresented group, the agency or agency component must take one or more of the following actions:

(1) Expand or otherwise redirect their recruitment activities in ways designed to increase the number of candidates from underrepresented groups in that applicant pool;

(2) Use selection methods involving other applicant pools which include sufficient numbers of members of underrepresented groups;

(3) Notify the office responsible for administering that applicant pool, and request its reopening of application receipt in support of expanded recruitment activities or certifying from equivalent registers existing in other geographic areas; and/or

(4) Take such other action consistent with law which will contribute to the elimination of underrepresentation in the category of employment involved.

(d) Agencies must notify and seek advice and assistance from the Office of Personnel Management in cases where their equal opportunity recruitment programs are not making measurable progress in eliminating identified underrepresentation in the agency work force.

§ 720.205 Agency plans.

(a) Each agency must have an up-to-date equal opportunity recruitment program plan covering recruitment for positions at various organizational levels and geographic locations within the agency. Such plans must be available for review in appropriate offices of the agency and must be submitted to the Office of Personnel Management on request. In accordance with agreement reached between the Office and the Equal Employment Opportunity Commission, such plans must be incorporated in the agency's equal employment opportunity plans required under section 717 of the Civil Rights Act of 1964, as amended, pursuant to regulations and instructions of the Commission, provided they are separable parts of those plans for purposes of review by and submission to the Office of Personnel Management. Agency organizational and geographical components which are required to develop and submit Equal Employment Opportunity plans, under instructions issued by the Equal Employment Opportunity Commission, must also have up-to-date special recruitment program plans. On a determination by the Office of Personnel Management, in consultation with EEOC, that additional component plans are needed to implement an agency's program effectively, the Office will instruct the agency to develop additional plans. Agencies must comply with such instructions.

(b) Agency plans must include annual specific determinations of underrepresentation for each group and must be accompanied by quantifiable indices by which progress toward eliminating underrepresentation can be measured.

(c) Where an agency or agency component is located in a geographical 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 component must base its plans on the higher level of representation in the relevant civilian labor force.

(d) Where an agency or agency component is located in a geographical area where participation of a particular underrepresented group is significantly lower than its participation in the national labor force, the agency or component may, in consultation with the Office of Personnel Management, use the lower percentage in determining underrepresentation. An agency may not use a figure lower than the relevant regional or nationwide labor force percentage where recruitment on a regional or nationwide basis is feasible for particular categories of employment. Factors such as size of the agency or unit, nature of jobs and their wage or pay scale may be considered in

focusing recruitment for various job categories.

(e) In addition to the underrepresentation determinations described in paragraphs (b), (c) and (d) of this section, agency plans must, at a minimum, include:

(1) An assessment of grades or job categories and numbers of jobs in such categories expected to be filled in the current year, and on a longer term basis (based on anticipated turnover, expansion, hiring limits and other relevant factors) identification of those occupational categories and positions suitable for external recruitment, and description of special targeted recruitment programs for such jobs and positions;

(2) A similar assessment for job categories and positions likely to be filled by recruitment from within the agency and/or the Federal civil service system and a description of recruitment programs developed to increase minority and female candidates from internal sources for such positions;

(3) A further assessment of internal availability of candidates from underrepresentated groups for higher job progressions by identifying job-related skills, knowledges and abilities which may be obtained at lower levels in the same or similar occupational series, or through other experience;

(4) A description of methods the agency intends to use to locate and develop minority and female candidates for each category of underrepresentation and an indication of how such methods differ from and expand upon the recruitment activities of the agency prior to establishment of the special recruitment program or the last revision to the agency's plans;

(5) A description of specific, special efforts planned by the agency (or agency component) to recruit in communities, educational institutions, and other likely sources of qualified minority and female candidates;

(6) A description of efforts which will be undertaken by the agency to identify jobs which can be redesigned so as to improve opportunities for minorities and women, including jobs requiring bilingual or bicultural capabilities or not requiring English fluency.

(7) A list of priorities for special recruitment program activities based on agency identification of:

(i) Immediate and longer range job openings for each occupational/grade-level grouping for which underrepresentation has been determined;

(ii) Hiring authorities which may be used to fill such jobs;

(iii) The possible impact of its actions on underrepresentation.

(8) Identification of training and job development programs the agency will use to provide skills, knowledge and abilities to qualify increased numbers of minorities and women for occupational series and grade levels where they are significantly underrepresented.

(9) Identification of problems for which the assistance of the Office of Personnel Management is needed and will be requested.

(f) Equal opportunity recruitment program plans must be consistent with agency Upward Mobility program plans and should be developed with full consideration of the agency's overall recruiting and staffing planning objectives.

(g) All plans required under this subpart must be developed not later than October 1, 1979.

[44 FR 22031, Apr. 13, 1979, as amended at 44 FR 33046, June 8, 1979]

§ 720.206 Selection guidelines.

This subpart sets forth requirements for a recruitment program, not a selection program. Nevertheless, agencies are advised that all selection processes including job qualifications, personnel procedures and criteria must be consistent with the Uniform Guidelines on Employee Selection Procedures (43 FR 38290; August 25, 1978).

§ 720.207 Reports.

(a) Not later than November 1 of each year, agencies must submit an annual report on their equal opportunity recruitment program to the Office of Personnel Management, in a form prescribed by the Office. The Office may require submission of any additional reports it considers necessary in carrying out its responsibilities under this subpart.

(b) The Office will report to Congress on the implementation and operation of the program on a Governmentwide basis not later than January 31 of each year, as required by law. Such reports will include assessments of agencies progress, or lack of progress, in meeting the objectives of the program.

Subpart C—Disabled Veterans Affirmative Action Program

AUTHORITY: 5 U.S.C. 7201; 42 U.S.C. 2000e; 38 U.S.C. 101(2), 2011(3), 2014; 5 U.S.C. 3112; 29 U.S.C. 791(b).

SOURCE: 48 FR 193, Jan. 4, 1983, unless otherwise noted.

§ 720.301 Purpose and authority.

This subpart sets forth requirements for agency disabled veteran affirmative action programs (DVAAPs) designed to promote Federal employment and advancement opportunities for qualified disabled veterans. The regulations in this subpart are prescribed pursuant to responsibilities assigned to the Office of Personnel Management (OPM) under section 403 of the Vietnam Era Veterans Readjustment Assistance Act of 1974, as amended (38 U.S.C. 2014), and section 307 of the Civil Service Reform Act of 1978 (5 U.S.C. 3112).

§ 720.302 Definition.

As used in this subpart, the terms *veteran* and *disabled veteran* have the meanings given to these terms in title 38 of the United States Code.

§ 720.303 Agency programs.

(a) *Continuing Programs.* Each Department, agency, and instrumentality in the executive branch, including the U.S. Postal Service and the Postal Rate Commission, shall conduct a continuing affirmative program for the recruitment, hiring, placement, and advancement of disabled veterans.

(b) *Program Responsibility.* The head of each agency shall assign overall program responsibility to an appropriate agency official. The official so designated shall be at a high enough level to ensure effective program administration and the devotion of adequate resources to the program.

(c) *Problem Analysis.*

(1) Annually, OPM will provide appropriate data on the employment of disabled veterans to each agency participating in the Central Personnel Data File (CPDF). These data will be taken from CPDF. For DVAAP purposes, CPDF data are considered to be the offical record of the status of disabled veteran employment within each participating agency. Each participating agency is responsible for assuring that such records are timely, accurate, and complete.

(2) CPDF data must be analyzed by participating agencies to identify problem areas and deficiencies in the employment and advancement of disabled veterans. (OPM will establish with each agency not participating in CPDF, the nature and extent of data to be used in identifying problems and deficiencies.) Based on this analysis, agencies shall develop methods to improve the recruitment, hiring, placement, and advancement of disabled veterans, or revise or redirect existing methods, as necessary. These methods must then be translated into action items.

§ 720.304 Agency plan.

(a) *Plan Development.* As part of the affirmative action plan it prepares pursuant to section 501(b) of the Rehabilitation Act of 1973 (29 U.S.C. 791 (b)) (''Section 501(b) Plan''), each Department, agency, or instrumentality in the executive branch must have an up-to-date affirmative action plan for the employment and advancement of disabled veterans.

(1) Each agency must review its plan on an annual basis, together with its accomplishments for the previous fiscal year, updated employment data, and any changes in agency mission or structure, and update the plan as necessary. Agency operating components and field installations required to develop separate plans under paragraph (b) of this section, below, must perform the same type of annual review and update of their plans.

(2) Plans shall cover a time period of not less than one year and may cover a longer period if concurrent with the agency's Section 501(b) Plan. Each plan must specify the period of time it covers.

(3) Initial plans for fiscal year 1983 required under this subpart must be developed by January 30, 1983 and must be in effect on that day.

(b) *Plan Coverage.*

(1) Each agency must have an agencywide plan covering all of its operating components and field installations. Agencywide plans shall include instructions assigning specific responsibilities on affirmative actions to be taken by the agency's various operating components and field installations to promote the employment and advancement of disabled veterans. OPM must be informed when headquarters offices require plans at the field or installation level.

(2) Agency operating components and field installations must have a copy of the plan covering them, and must implement their responsibilities under it. OPM may require operating components and field installations to develop separate plans in accordance with program guidance and/or instructions.

(c) *Plan Submission*. Affirmative action plans developed under this section shall be submitted to OPM upon request. The Office of Personnel Management will review a selection of agency plans each fiscal year.

(d) *Plan Certification*. Each agency must certify to OPM by December 1 of each year that it has an up-to-date plan as required by this section. This certification must indicate the date the agency's most recent plan was effective or was last amended.

(e) *Plan Content*. Disabled veteran affirmative action plans shall, at a minimum, contain:

(1) A statement of the agency's policy with regard to the employment and advancement of disabled veterans, especially those who are 30 percent or more disabled.

(2) The name and title of the official assigned overall responsibility for development and implementation of the action plan.

(3) An assessment of the current status of disabled veteran employment within the agency, with emphasis on those veterans who are 30 percent or more disabled.

(4) A description of recruiting methods which will be used to seek out disabled veteran applicants, including special steps to be taken to recruit veterans who are 30 percent or more disabled.

(5) A description of how the agency will provide or improve internal advancement opportunities for disabled veterans.

(6) A description of how the agency will inform its operating components and field installations, on a regular basis, of their responsibilities for employing and advancing disabled veterans.

(7) A description of how the agency will monitor, review, and evaluate its planned efforts, including implementation at operating component and field installation levels during the period covered by the plan.

§ 720.305 Agency accomplishment reports.

(a) Not later than December 1 of each year, agencies must submit an annual accomplishment report on their disabled veterans affirmative action program to the Office of Personnel Management, covering the previous fiscal year.

(b) Agency annual accomplishment reports must describe:

(1) Methods used to recruit and employ disabled veterans, especially those who are 30 percent or more disabled.

(2) Methods used to provide or improve internal advancement opportunities for disabled veterans.

(3) A description of how the activities of major operating components and field installations were monitored, reviewed, and evaluated.

(4) An explanation of the agency's progress in implementing its affirmative action plan during the fiscal year. Where progress has not been shown, the report will cite reasons for the lack of progress, along with specific plans for overcoming cited obstacles to progress.

§ 720.306 Responsibilities of The Office of Personnel Management

(a) *Program Review*. OPM will monitor agency program implementation through review of agency plans, direct agency contact, review of employment data, and through other appropriate means. As it deems appropriate, OPM

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

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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,