

16 December 1981

Memo to D/Pers from C/PPS/OP; Subject:
Phase II Implementation of the Uniform Guidelines

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9 January 1980 Memo to DD'S, Compt and D/EEO from DDCI re Task Force Report on Uniform Guidelines on Employee Selection Procedures

undated DDS&T Comments on Task Force Report

22 January 1980 Comptroller Comments on Task Force Report

22 January 1980 DDA Comments on Task Force Report

23 January 1980 Memo to C/Uniform Guidelines Task Force from D/PersPP&M re OPPPM being inadvertently overlooked in the request for comments on the Task Force Report.

24 January 1980 D/EEO Comments on Task Force Report

28 January 1980 DDO Comments on Task Force Report

29 January 1980 NFAC Comments on Task Force Report

30 January 1980 Memo to DD's, D/EEO and Comptroleer re Summary of Comennts on Task Force Report

30 January 1980 Memo to EXCOM Member from SA/DDCI re Agenda for EXCOM Meeting of 6 February 1980

20 February 1980 Memo from SA/DDCI forwarding DDCI approval of Uniform Guidelines Implementation Plan

19 March 1980 Memo to D/EEO fr D/OTR: Subject; Uniform Guidelines

28 April 19 Memo to DDCI fr D/EEO; Subject: Definition of "Applicant"

29 December 1980 Memo to D/PPPM from C/PS/OPPPN; subject: Implementation Plan for Uniform Guidelines - Phase II Responsibilities

5 January 1981 Memo to D/EEO and D/PPPM from D/OT&E; subject: Uniform Guidelines Training Program

16 January 1981 Memo to DDCI from D,EEO; Subject: Uniform Guidelines Implementation Plan - Phase II Responsibilities

24 March 1981 Memo to D/PPPM fr DD/PA&E; Subject: Implementation Plan for Uniform Guidelines - Phase II

**UNIFORM GUIDELINES ON
EMPLOYEE SELECTION
PROCEDURES**

IMPLEMENTATION PLAN

December 1979

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THE UNIFORM GUIDELINES: BRIEF SUMMARY

The Uniform Guidelines on Employee Selection Procedures went into effect 25 September 1978 and became part of the Code of Federal Regulations. The Uniform Guidelines were issued jointly by the Equal Employment Opportunity Commission, Civil Service Commission, Department of Labor, and Department of Justice to meet the need in the Federal Government for a uniform set of principles governing the use of tests and other personnel selection procedures and to assist employers to comply with requirements of Federal law prohibiting employment practices which discriminate on grounds of race, color, religion, sex and national origin.

The Uniform Guidelines require, inter alia, that an employer *"maintain and have available for inspection records that disclose for each job or job category the impact its selection procedures have upon employment opportunities of persons by identifiable sex, race or ethnic group. . ."* (By "selection procedures" is meant any selection procedure used as a basis for any employment decision, such as hiring, promotion, demotion, retention, etc.) If it is determined that the total selection process for a job or job category has an adverse impact, the employer is required to identify the element (e.g., test, interview, etc.) causing the adverse impact and (1) eliminate that element, (2) modify its use to lessen the adverse impact, or (3) justify its use as a business necessity by a specified validation strategy, a highly technical and complex procedure. A

copy of both the Uniform Guidelines and supplemental Questions and Answers is at Tab A. Supplemental information on the history and requirements of the Uniform Guidelines is at Tab B; specific information regarding the determination of adverse impact by application of the "four-fifths rule" and validation requirements is at Tabs C and D, respectively.

The Uniform Guidelines apply in toto to the Central Intelligence Agency under the provisions of section 717 of Title VII of the Civil Rights Act of 1964, as amended. As provided by the Act, Federal departments and agencies are subject to the regulatory jurisdiction of the Civil Service Commission (CSC) with regard to equal employment opportunity in the Federal Government. Though the authorities and responsibilities of the CSC regarding civil rights enforcement in the Federal Government were recently transferred to the Equal Employment Opportunity Commission by Reorganization Plan Number 1, the transfer does not affect the applicability of the Uniform Guidelines to the Agency. The General Counsel's position regarding this point may be found at Tab E.

THE TASK FORCE: COMPOSITION AND APPROACH

The Agency Task Force on Uniform Guidelines on Employment Selection Procedures was formally established on 10 September 1979 at the direction of the DDCI. The purpose of this Task Force was to examine the requirements of the Uniform Guidelines and to propose specific recommendations for their implementation in the Agency. The Task Force was comprised of two representatives from the Office of EEO, and one representative each from the Offices of Personnel and Training. Representatives from the Office of General Counsel and the Psychological Services Staff served as advisors.

To better understand current employee selection procedures in the Agency, the Task Force interviewed representatives from each of the four Directorates, the DCI area, the Offices of Personnel, Training, Security, and Medical Services, the Inspector General's Staff and the Career Trainee Program. Comments and recommendations contained in this report were subsequently developed independently by the Task Force and are based upon both our current understanding of Agency employee selection policy and practices and of the particular requirements of the Uniform Guidelines. Not incidentally, the Task Force wishes to express its sincere appreciation for the excellent cooperation it received from all Agency components.

A consensus reached early by the Task Force was that complete, immediate implementation of the Uniform Guidelines by the Agency, or any other Federal agency for that matter, is impossible. The recordkeeping requirements alone introduce totally new and additional

functions in the area of personnel administration. Our consequent decision, then, was to attempt to devise a two-phased approach that would bring the Agency essentially into immediate compliance and yet allow time to address some of the thornier issues raised by the Uniform Guidelines.

We should note that the phrase, "immediate compliance," represents an early agreement by the Task Force that the recommendations in Phase I would focus only on hires and promotions, selection procedures for which are clearly specified as employment decisions by the Uniform Guidelines and which activities are of major significance in terms of employee concern and Agency resources. One aspect of Phase II considers the question of whether there are other activities, such as training and assignments, which should be considered employment decisions in the context of the Uniform Guidelines.

The italicized quotations which accompany the recommendations are relevant citations from the Uniform Guidelines on Uniform Guidelines Questions and Answers.

TASK FORCE MEMBERS

STATINTL [REDACTED] EEO (Chairman)

STATINTL [REDACTED] OEE0

[REDACTED] DP
[REDACTED], OTR

STATINTL

STATINTL [REDACTED], Administrative Secretary

STATINTL [REDACTED] PSS/OMS (Advisor)

[REDACTED] (Advisor)

PHASE I: OVERVIEW AND RECOMMENDATIONS

The recommendations in Phase I, which are concerned with specific functions that must be performed to meet the fundamental requirements of the Uniform Guidelines, are formulated to provide Agency compliance immediately upon implementation: policy is stated, recordkeeping begins, data review procedures applied, evaluation techniques devised, informal resolution provided for, and a review procedure for management options established.

Accordingly, it is the position of the Task Force that implementation of the recommendations in Phase I should begin immediately upon approval by the Executive Committee.

Policy Statement

The Task Force believes that the first step toward Agency implementation of the Uniform Guidelines must begin with the publication of a policy statement that outlines the purpose of the guidelines, specifies the requirements to be met, and directs incorporation into Agency personnel selection procedures. This initial statement of policy will, in addition to providing the why and how of the Uniform Guidelines, also serve as a vehicle for promoting a positive approach and cooperative effort toward the implementation process.

Recommendation 1

Publish a Headquarters Notice on the initial implementation of the Uniform Guidelines requirements into Agency personnel selection procedures.

A draft Headquarters Notice that may be used for this purpose is at Tab F.

Recordkeeping

"Each user should maintain . . . records or other information which will disclose the impact which its tests and other selection procedures have upon employment opportunities of persons by identifiable race, sex, or ethnic group . . . : Blacks (Negros), American Indians (including Alaskan Natives), Asians (including Pacific Islanders), Hispanic (including persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish origin or culture regardless of race), whites (Caucasians) other than Hispanic, and totals." (Section 4. A & B)

The Task Force has ascertained that the Agency presently is unable to determine race and sex data on applicants other than by visual observation or inferences drawn from information contained in the Personal History Statement (PHS). Without a consistent data collection system, adequate compliance with the recordkeeping requirements of the Uniform Guidelines is impossible. The Task Force believes that a workable and far more efficient method of collecting this information is by voluntary self-identification by the prospective employee.

Recommendation 2

A self-identification sheet accompany the PHS provided each prospective employee.

The self-identification sheet should in no way be part of the PHS. It will contain a statement of its specific purpose, and must be removed from the individual's file by the Office of Personnel immediately upon a decision to reject or to hire. An example of a self-identification sheet is at Tab G.

Applicant

"The precise definition of the term 'applicant' depends upon the user's recruitment and selection procedures A person who voluntarily withdraws formally or informally at any stage of the selection process is no longer an applicant . . . for purposes of computing adverse impact." (Q & A 15)

So far as is known to the Task Force the term "applicant" is neither defined uniformly nor applied consistently within the Agency. The Uniform Guidelines in effect require that the meaning of the term

be defined operationally to establish a basis for the maintenance of accurate records.

Recommendation 3

Define an "applicant" in the context of the Uniform Guidelines as an individual whose file containing a completed PHS and self-identification sheet is reviewed by the interested Agency component (i.e., Office or Division).

There are several reasons for this recommendation. First, the component considering an individual for Agency employment is in the best position to conduct a thorough review of a file and thus render the substantive decision as to rejection or selection. Second, the component can best identify the job or job category for which an individual is being considered. This particular information is essential, since the race and sex information required by the Uniform Guidelines must be keyed by occupational grouping. And third, such a definition will promote accurate recordkeeping, particularly for professionals, by fixing responsibility for the collection of applicant flow data at the point of decision.

To meet the basic recordkeeping requirements of the Uniform Guidelines for applicants, the Task Force makes the following recommendations:

Recommendation 4

The Office of Personnel collect applicant flow data (i.e., race and sex information) for all clericals.

Recommendation 5

In the DCI area, the Career Trainee Program and

Directorates other than the Directorate of Operations, the Office level components concerned collect applicant flow data for professionals and technicals by specific job category (i.e., occupational grouping, such as Career Trainee, Economist, Electronic Engineer, Security Officer).

Recommendation 6

In the Operations Directorate, the Career Management Staff (CMS) collect applicant flow data for professionals and technicals other than Career Trainees by Category (e.g., A, B, C, etc.).

The rationale underlying recommendations four, five and six is as follows: selection for employment in the Agency is both centralized and decentralized - - the former for clericals hired by the Office of Personnel, the latter for professionals and technicals hired by individual organizational components. We recognize, however, that the primary professional input into the Operations Directorate is essentially a centralized process through the Career Trainee Program (CTP); nonetheless, we believe an accurate tracking of all CT applicants can be better accomplished by establishing recordkeeping responsibility within the CTP component itself.

Consideration of applicants for the CTP introduces another factor into the recordkeeping equation, that is, whether to distinguish between "staff" applicants and "contract" applicants, the latter such as for the CTP. The Uniform Guidelines are silent on this point; however, to have implementation work in consonance with the spirit of the Uniform Guidelines, as well as to facilitate recordkeeping, the Task Force believes that:

Recommendation 7

No distinction be made between applicants for staff employment and applicants for regularly scheduled contract employment.

The Task Force has determined that there are two distinct steps involved in Agency employment that must be considered in the context of the Uniform Guidelines: (1) initial selection to put in process and (2) final selection for entry-on-duty. We believe it necessary, therefore, that recordkeeping account for these steps.

Recommendation 8

Applicant flow data be maintained by components in such a way that reflects: (1) the number of applicants put in process compared to the number of applicants considered and (2) the number of applicants selected for entry-on-duty compared to the number of applicants put in process.

The same form may be used by components for monitoring both steps in the employment process. An example of such a form is at Tab H.

The Task Force has determined that medical examinations and security clearance procedures are part of the total selection process for Agency employment. We believe such procedures must be monitored by race and sex. We understand that the Office of Personnel is routinely notified of medical and security rejections. These considerations lead to:

Recommendation 9

The Office of Personnel collect data by race and sex on all applicants rejected for medical and security reasons.

As specified by the Uniform Guidelines, applicants who voluntarily withdraw from consideration for Agency employment should not be counted. Accordingly, entries for such applicants would be removed from component applicant flow data.

Promotions

The recordkeeping requirements of the Uniform Guidelines concerning promotions can, in the opinion of the Task Force, be implemented in a relatively straightforward manner.

Recommendation 10

Race and sex information be collected by the appropriate Career Service or component according to grade and job category for all employees considered for promotion.

The information collected will indicate by race and sex the number of employees considered and the number of employees promoted. An example of this form is at Tab I.

It is understood that this information will under no circumstances be divulged to the promotion board or panel concerned either before or after its deliberations and will be held in strict confidence by the responsible unit.

Data Collection

Recommendation 11

Data on applicant flow and promotions collected by components be forwarded monthly to the Directorate level for consolidation.

Recommendation 12

Each Directorate and independent office in the DCI area after consolidating the information, forward one copy of both the consolidated report and component reports quarterly to the Office of EEO for determination of possible adverse impact and one copy of each to the Office of Personnel for monitoring of data.

The Task Force believes that the collection of race and sex data in this manner will not only facilitate the overall recordkeeping process but also provide Directorates with the opportunity for informal review.

Implementation

The recordkeeping requirements of the Uniform Guidelines, while introducing an additional task for each procedure related to the selection for employment or promotion, can, in the view of the Task Force, be accomplished by a relatively simple paper-and-pencil method. In our view, therefore, attendant costs to the Agency will be in terms of time rather than personnel. Accordingly, we believe that no additional personnel or personnel positions will be required to bring the Agency into compliance.

The recordkeeping required by the Uniform Guidelines, once implemented, will reflect with increasing accuracy the Agency's applicant flow and promotion data, and, in the view of the Task Force, will supplement the operation of the Agency's Minority Employment Coordinator (MEC) system. In this regard, to preclude possible duplication of effort, we believe that:

Recommendation 13

The MEC function in the Office of Personnel should operate as an adjunct to the OP Screening Panel.

In a similar context, the Task Force believes that monitoring by race and sex prior to applicant consideration (for example, as part of the recruitment process) is necessary for "pre-applicant" accounting. Accordingly,

Recommendation 14

Race and sex data on all applications received be collected by the Office of Personnel Screening Panel and reviewed by Director of Personnel and Director of Equal Employment Opportunity periodically to detect potential imbalance in the pre-applicant screening process.

Determination of Adverse Impact

"A selection rate for any race, sex, or ethnic group which is less than four-fifths (4/5) (or eighty percent) of the rate for the group with the highest rate will generally be regarded by the Federal enforcement agencies as evidence of adverse impact" (Section 3D)

"Users of selection procedures . . . should maintain and have available for each job records or other information showing whether the total selection process for that job has an adverse impact on any of the groups for which records are called for Adverse impact determinations should be made at least annually . . ."

(Section 15A (2) (a))

Recommendation 15

The Director of Equal Employment Opportunity be responsible for the application of the 80% rule and the determination of whether there may be adverse impact for the total selection process

and for informing all appropriate officials.

The Uniform Guidelines, though impacting heavily on personnel selection procedures, remain essentially a Baedeker for Equal Employment Opportunity. In the view of the Task Force, therefore, the Director, EEO is logically the Agency officer who should be responsible for determining whether adverse impact exists, proposing informal resolution, and ensuring Agency compliance with the Uniform Guidelines. This responsibility does not, however, attenuate the responsibility of the Director of Personnel for the collection and monitoring of personnel data; rather, the Task Force sees this aspect of Uniform Guidelines implementation in the Agency as providing an opportunity for the Director of EEO and the Director of Personnel to work closely in a cooperative effort to identify adverse impact and remedy its causes.

Evaluation of Adverse Impact

"Once an employer has established that there is adverse impact. . . the employer can modify or eliminate the procedure which produces the adverse impact, thus taking the selection procedure from the coverage of these guidelines. If the employer does not do that, then it must justify the use of the procedure on grounds of 'business necessity'. This normally means that it must show a clear relation between performance on the selection procedure and performance on the job. In the language of industrial psychology, the employer must validate the selection procedure." (Overview, IV)

Recommendation 16

If adverse impact exists, the Director, EEO at his discretion appoint a trained EEO Specialist to conduct an evaluation of the total selection process of the job category concerned.

Before any action can be taken to correct a situation of adverse impact, it is necessary to identify the particular element of the total selection process causing the adverse impact. There are specialists in the Office of Equal Employment Opportunity already trained and serving as discrimination complaints investigators. These investigators can readily be trained to evaluate selection procedures in the context of the Uniform Guidelines, to identify the specific element causing the adverse impact, and to prepare a report of findings and recommendations for the Director of Equal Employment Opportunity.

When a determination is made that adverse impact is caused by a particular selection procedure, the investigator, during the evaluation process, will be gathering information that could be an essential part of a validation strategy to justify a particular procedure as "business necessity". It is thus imperative that only specific, job-related reasons be recorded for the non-selection of an applicant for Agency employment. Vague statements, such as "no component interest" and "will wait on better candidate", are unacceptable under the validation criteria requirements of the Uniform Guidelines.

Recommendation 17

A responsible officer in the reviewing component be required to give specific, job-related reasons for non-selection of an applicant.

An example of a form that could be used for this purpose is at Tab J.

Resolution of Adverse Impact Problems

Members of the Task Force differed in their opinions as to the procedures which should be established for the resolution of adverse impact problems. Therefore alternatives are presented.

Recommendation 18

Upon receipt of an adverse impact evaluation report, the Director of Equal Employment Opportunity take such action as appropriate to resolve the problem causing the adverse impact.

As in the discrimination complaint process, the Director of Equal Employment Opportunity should have the flexibility necessary to work with organizational components to resolve adverse impact problems. Such an approach may lead to the elimination or modification of the problem causing adverse impact, or the initiation of a validation strategy to justify the procedure. If the Director of Equal Employment Opportunity and the component concerned are unable to effect resolution, the D/EEO may require the appropriate Deputy Director or Head of Independent Office to select one of the remedies required by the Uniform Guidelines. Should a Deputy Director or Head of Independent Office wish to appeal this requirement,

Recommendation 19

Within ten working days from date of notification, an appeal to the DDCI may be made by the concerned Deputy Director or Head of Independent Office.

Alternatives to Recommendations 18 and 19 follow:

Alternative Recommendation 18

Upon receipt of an adverse impact evaluation report, the Director of Equal Employment Opportunity take such action as appropriate toward the informal resolution of the problem causing the adverse impact.

If the Director of Equal Employment Opportunity and the component concerned are unable to effect resolution, the D/EEO may request the appropriate Deputy Director to select one of the measures (e.g., elimination or validation of the procedure in question) required by the Uniform Guidelines.

Alternative Recommendation 19

An Adverse Impact Review Board be established to review cases regarding adverse impact that are formally submitted by the D/EEO and to recommend to the DDCI which of the measures required by the Uniform Guidelines should be taken by the component concerned. The Board will be comprised of the General Counsel, the Comptroller, and the Inspector General, with the Director of Personnel and Chief, Psychological Services Staff serving as non-voting advisors.

Only those cases of adverse impact that cannot be resolved informally would be submitted by the Director of Equal Employment Opportunity for Board review. At the discretion of the Board, information could be obtained from any Agency official concerned.

The Board in its composition provides for high-level management review and promotes objectivity in the adverse impact review process.

There is the possibility that, in some extraordinary circumstance, it may be advantageous to the Agency to send an adverse impact case directly to the DDCI for final decision in lieu of its submission to

the Board. Accordingly,

Alternative Recommendation 19A

By agreement of the Director of Equal Employment Opportunity, the Deputy Director concerned, and the DDCI, an adverse impact case may be presented directly to the DDCI.

Regardless of the set of recommendations approved for the resolution of adverse impact problems, the DDCI will be the final authority.

Recommendation 20

The DDCI make the final decision in the formal resolution of adverse impact cases and direct the implementation of that decision.

PHASE II: OVERVIEW AND RECOMMENDATIONS

Certain requirements of the Uniform Guidelines are somewhat unclear as to specific meaning (e.g., "employment decisions") while others entail considerable complexity in implementation. In this section the Task Force has addressed these requirements; such issues as alternative selection procedures, testing, job analysis, and enforcement agency review are dealt with.

The recommendations in Phase II differ somewhat from those in Phase I in that management responsibility, rather than specific function, is the primary concern. Though the Agency will have some flexibility as to the time frame for completion of the actions implicit in these recommendations, the Task Force wishes to emphasize that these issues, and their resolution, are in no absolute sense less urgent than the actions proposed in Phase I. Accordingly, we believe that implementation of these recommendations should begin no later than 1 October 1981 (FY 82).

Employment Decisions

"The guidelines apply to tests and other selection procedures which are used as a basis for any employment decision . . . [which] include but are not limited to hiring, promotion, demotion . . . retention . . . Other selection decisions, such as selection for training and transfer, may also be considered employment decisions if they lead to any of the decisions listed above" (Section 2 B).

As noted earlier, the Task Force has determined that the recording by race and sex of selection for employment and promotion effectively brings the Agency into compliance with the Uniform Guidelines. Much discussion in the Task Force, however, dealt with the question of under what circumstances and to what extent does selection for training and transfer (assignment) "lead" to an employment decision (e.g., promotion).

The Task Force notes that the Uniform Guidelines were drafted by an ad hoc group comprised of representatives from the competitive civil service. Naturally, selection procedures in the competitive civil service would be reflected (e.g., selection for a specific, rank-in-the-position vacancy in which promotion is virtually automatic). Selection for reassignment in the Agency, however, does not in itself guarantee advancement without other, perhaps even more important, factors (e.g., adequate on-the-job performance). Just how selection for certain training would lead to an employment decision is even more problematical.

In a very broad sense, all training courses, programs, or workshops could conceivably lead to promotion opportunities. However, training selection procedures vary widely from Directorate to Directorate, and

enrollment is affected by the basic prerequisites established by the Office of Training or the sponsoring component, availability of space, and availability of the employee.

The Task Force believes that compliance with the Uniform Guidelines will ultimately require the determination of how training is related to career development and what kind of training leads to promotion opportunities. In any event, selection for training is an issue raised by the Uniform Guidelines and must be addressed by the Agency.

Therefore, the Task Force ultimately concluded that this particular application of the Uniform Guidelines, with its inherent ambiguity, required far more time for research and discussion than was available.

Recommendation 21

The Director of Personnel and the Director of Equal Employment Opportunity be responsible for determining when selection for "transfer" (i.e., assignment, including vacancy notices), demotion and retention in the Agency is an employment decision under the Uniform Guidelines.

Similarly,

Recommendation 22

The Director of Training and the Director of Equal Employment Opportunity be responsible for determining when selection for "training" in the Agency is an employment decision under the Uniform Guidelines.

Alternative Selection Procedures

"Where two or more selection procedures are available which serve the user's legitimate interest in efficient and trustworthy workmanship, and which are substantially equally valid for a given purpose, the user should use the procedure which has been demonstrated to have the lesser

adverse impact. Accordingly, whenever a validity study is called for by these guidelines, the user should include, as part of the validation study, an investigation of suitable alternative selection procedures and suitable alternative methods of using the selection procedure which have as little adverse impact as possible, to determine the appropriateness of using or validating them in accord with these guidelines" (Section 3 B).

The citation above is one of the most controversial requirements contained in the Uniform Guidelines, commonly referred to as "the cosmic search" by its detractors. Nevertheless, it is a requirement, and the Task Force believes that consideration by the Agency of alternatives to tests and alternative methods of using tests and other selection procedures should commence well in advance of required validation. An indication of the possible judicial significance of this requirement is shown in the recent case of Allen v. City of Mobile, 18 FEP cases 217 (S. D., Alabama, 1978) in which the court ruled against the defendant who, even though he had presented a content-valid testing procedure, had not included as part of that validation study either "alternative methods of selection procedures or alternative ways of utilizing the existing examination. . ." (18 FEP cases 223).

The search for alternatives is at the cutting edge of knowledge in the area of personnel selection research, and the task will not be easy. Much more research is needed on potential alternatives such as interviews, training, recruitment, and biographical data. Despite the difficulty, it is the opinion of the Task Force that the Agency's beginning such research now will preclude potential problems in

validation efforts later.

Recommendation 23

The Director of Equal Employment Opportunity, the Director of Personnel and the Chief, Psychological Services Staff be jointly responsible for initiating a program of research into alternative selection procedures and methods.

Agency Testing Policy

The discussion concerning the search for alternative selection procedures leads naturally into a consideration of the need for a comprehensive policy on testing in the Agency. A case in point is our understanding that some components of the Directorate of Science and Technology do not in practice use the PATB as a selection tool for professional applicants. The effect of this practice essentially is that this Directorate already employs other selection devices (e.g., professional qualifications) as alternatives to testing.

In the view of the Task Force, the issue is not whether the PATB or any other test should or should not be used as a selection tool, but is rather the need for a definitive statement of Agency policy that specifies what tests may be used, under what circumstances, and who has the authority for the option to use or not use testing in the total selection process.

In the opinion of the Task Force, the current Agency policy on testing, [REDACTED] has been overtaken by the requirements of the Uniform Guidelines. For example, the Uniform Guidelines state:

STATINTL

"Users should provide a reasonable opportunity for retesting and reconsideration The user may however take reasonable

steps to preserve the security of its procedures" (Section 12).

This point is not covered in current policy.

A truly comprehensive policy statement would address not only this particular requirement but also more fundamental issues such as overall test application, specification of affected Agency components or employees, test interpretation and use of test results (in effect, alternative methods), and strategies employed in test validation. Such a statement would provide crucially needed guidance to Agency employees involved in testing.

Recommendation 24

The Chief, Psychological Services Staff, the Director of Training, and the Director of Personnel be responsible for the formulation of a comprehensive testing policy to be coordinated with the Director of Equal Employment Opportunity and incorporated into the Headquarters Regulations.

Job Analysis

Upon a finding of adverse impact in the Agency, there will undoubtedly be a decision to validate the particular selection procedure in many, if not most, circumstances. If either a content or construct validation strategy is used, the Uniform Guidelines require that a job analysis be performed (Sections 14 C(2) and D(2)). If a criterion-related validation strategy is used, there must still be *"a review of job information to determine measures of work behavior(s) or performance that are relevant to the job or group of jobs in question"* (Section 14 B(2)). A job analysis is defined by the Uniform Guidelines as *"a detailed statement of work behaviors and other information relevant to the job"* (Section 16 K).

Even apart from the Uniform Guidelines, it would be difficult for the Task Force to overstate the importance of job analysis to personnel research and administration in all organizations. Job analysis, thoroughly conducted, provides a deeper understanding of individual jobs and their behavioral requirements and thus constitutes a firm basis on which to make job-related decisions. We also note that the Supreme Court ruled in Albermarle Paper Company V. Moody, 422 US 405 (1975) that a validation study that purports to demonstrate a relationship between a selection procedure (e.g., test, interview, etc.) and job performance is materially defective without adequate job analysis. This requirement has been incorporated into the Uniform Guidelines.

It is beyond the scope of this report to delineate the salient differences between a job analysis as required by the Uniform Guidelines and a position description. A cursory review of the relevant literature will show that job descriptions by definition and purpose do not adequately account for job behaviors. (For example, M. D. Dunnette, Personnel Selection and Placement, 1966, pp. 68-102 and B. J. Schneider, Staffing Organizations, 1976, pp. 19-44) This is particularly manifest in job descriptions of executive and managerial positions where incumbents have considerable influence over their work activities, the percentage of time which they allot to different work activities, and the way in which the activities are carried out. A job analysis in the broadest sense is concerned with analyzing all work-related information and consists first of defining a job in terms of its component tasks and then discovering what it requires in terms of employee behaviors. Job

analysis is thus of critical importance both within and outside the context of the Uniform Guidelines.

Recommendation 25

The Director of Personnel be responsible for instituting a time-phased, comprehensive, and systematic program for job analysis within the Agency.

Management Training

Successful implementation of the Uniform Guidelines will depend ultimately upon management's understanding and support of their purpose and function. During Phase II, therefore, there should be established a training program in the Agency that would include, but not be limited to, (1) briefing sessions attended by Personnel Officers, selecting officials, Career Management Officers, and supervisors and managers to explain the purpose and objectives of the Uniform Guidelines, to illustrate recordkeeping techniques, and to discuss concepts such as adverse impact and validation, and (2) corresponding segments on the Uniform Guidelines incorporated into various training courses such as Fundamentals of Supervision and Administration, the Management Seminar, the Senior Seminar, the Mid-Career Course, the MEO Course and the Program on Creative Management. Accordingly,

Recommendation 26

The Directors of Training, Equal Employment Opportunity, and Personnel be jointly responsible for developing a Uniform Guidelines training program.

Agency Policy

"The guidelines are designed to aid in the achievement of our nation's

goal of equal employment opportunity without discrimination on the grounds of race, color, sex, religion or national origin. The Federal agencies have adopted the Guidelines to provide a uniform set of principles governing use of employee selection procedures which is consistent with applicable legal standards and validation standards generally accepted by the psychological profession and which the Government will apply in the discharge of its responsibilities." (Q. & A. 1)

Recommendation 27

The Director of Personnel be responsible for the submission of an Agency regulation that consolidates Agency policy on the Uniform Guidelines.

In Phase I it is recommended that there be published a Headquarters Notice directing initial implementation of the Uniform Guidelines. The publication of a Headquarters Regulation early in Phase II will provide for a timely, permanent, more useful reference of Agency policy.

Review by Enforcement Agency

"Each user should maintain and have available for inspection records or other information which will disclose the impact which its tests and other selections procedures have upon employment opportunities of persons by identifiable race, sex, or ethnic group . . . in order to determine compliance with these guidelines." (Section 4 A)

A clear implication in the requirement cited above is that the EEOC and other enforcement agencies have the unqualified prerogative to review the personnel selection data collected by an organization. We are not unaware, however, that ". . . the Director of Central Intelligence shall be responsible for protecting intelligence sources and methods from unauthorized disclosure [and] the Agency shall be

exempted from the provisions of . . . any other law which require the publication or disclosure of the organization, functions, names, official titles, salaries, or numbers of personnel employed by the Agency . . ." [50 USC 403g]

The potential conflict between these provisions of the Uniform Guidelines and statutory law is readily apparent, and, in the opinion of the Task Force, must be resolved as expeditiously as possible.

Recommendation 28

The General Counsel be responsible for the drafting in coordination with the Director of Equal Employment Opportunity, Director of Security and other appropriate officials on the Agency's position concerning the inspection by an enforcement agency of Agency records or other information maintained in compliance with the Uniform Guidelines.

TABs

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FRIDAY, AUGUST 25, 1978

PART IV



Legislation
for
the
Federal
Government

EQUAL EMPLOYMENT
OPPORTUNITY
COMMISSION

CIVIL SERVICE
COMMISSION

DEPARTMENT OF LABOR

DEPARTMENT OF
JUSTICE

ADOPTION BY FOUR AGENCIES
OF UNIFORM GUIDELINES ON
EMPLOYEE SELECTION
PROCEDURES (1978)

[6570-06]

Title 29—Labor**CHAPTER XIV—EQUAL EMPLOYMENT OPPORTUNITY COMMISSION****PART 1607—UNIFORM GUIDELINES ON EMPLOYEE SELECTION PROCEDURES (1978)****Title 5—Administrative Personnel****CHAPTER I—CIVIL SERVICE COMMISSION****PART 300—EMPLOYMENT (GENERAL)****Title 28—Judicial Administration****CHAPTER I—DEPARTMENT OF JUSTICE****PART 50—STATEMENTS OF POLICY****Title 41—Public Contracts and Property Management****CHAPTER 60—OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS, DEPARTMENT OF LABOR****PART 60-3—UNIFORM GUIDELINES ON EMPLOYEE SELECTION PROCEDURES (1978)****Adoption of Employee Selection Procedures**

AGENCIES: Equal Employment Opportunity Commission, Civil Service Commission, Department of Justice and Department of Labor.

ACTION: Adoption of uniform guidelines on employee selection procedures as final rules by four agencies.

SUMMARY: This document sets forth the uniform guidelines on employee selection procedures adopted by the Equal Employment Opportunity Commission, Civil Service Commission, Department of Justice, and the Department of Labor. At present two different sets of guidelines exist. The guidelines are intended to establish a uniform Federal position in the area of prohibiting discrimination in employment practices on grounds of race, color, religion, sex, or national origin. Cross reference documents are published at 5 CFR 300.103(c) (Civil Service Commission), 28 CFR 50.14 (Department of Justice), 29 CFR Part 1607 (Equal Employment Opportunity Commission), and 41 CFR Part 60-3 (Department of Labor) elsewhere in this issue.

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SUPPLEMENTARY INFORMATION:**AN OVERVIEW OF THE 1978 UNIFORM GUIDELINES ON EMPLOYEE SELECTION PROCEDURES****I. BACKGROUND**

One problem that confronted the Congress which adopted the Civil Rights Act of 1964 involved the effect of written preemployment tests on equal employment opportunity. The use of these test scores frequently denied employment to minorities in many cases without evidence that the tests were related to success on the job. Yet employers wished to continue to use such tests as practical tools to assist in the selection of qualified employees. Congress sought to strike a balance which would proscribe discrimination, but otherwise permit the use of tests in the selection of employees. Thus, in title VII, Congress authorized the use of "any professionally developed ability test provided that such test, its administration or action upon the results is not designed, intended or used to discriminate * * *".¹

At first, some employers contended that, under this section, they could use any test which had been developed by a professional so long as they did not intend to exclude minorities, even if such exclusion was the consequence of the use of the test. In 1966, the Equal Employment Opportunity Commission (EEOC) adopted guidelines to advise employers and other users what the law and good industrial psycholo-

gy practice required.² The Department of Labor adopted the same approach in 1968 with respect to tests used by Federal contractors under Executive Order 11246 in a more detailed regulation. The Government's view was that the employer's intent was irrelevant. If tests or other practices had an adverse impact on protected groups, they were unlawful unless they could be justified. To justify a test which screened out a higher proportion of minorities, the employer would have to show that it fairly measured or predicted performance on the job. Otherwise, it would not be considered to be "professionally developed."

In succeeding years, the EEOC and the Department of Labor provided more extensive guidance which elaborated upon these principles and expanded the guidelines to emphasize all selection procedures. In 1971 in *Griggs v. Duke Power Co.*,³ the Supreme Court announced the principle that employer practices which had an adverse impact on minorities and were not justified by business necessity constituted illegal discrimination under title VII. Congress confirmed this interpretation in the 1972 amendments to title VII. The elaboration of these principles by courts and agencies continued into the mid-1970's,⁴ but differences between the EEOC and the other agencies (Justice, Labor, and Civil Service Commission) produced two different sets of guidelines by the end of 1976.

With the advent of the Carter administration in 1977, efforts were intensified to produce a unified government position. The following document represents the result of that effort. This introduction is intended to assist those not familiar with these matters to understand the basic approach of the uniform guidelines. While the guidelines are complex and technical, they are based upon the principles which have been consistently upheld by the courts, the Congress, and the agencies.

The following discussion will cite the sections of the Guidelines which embody these principles.

II. ADVERSE IMPACT

The fundamental principle underlying the guidelines is that employer policies or practices which have an adverse impact on employment opportunities of any race, sex, or ethnic group are illegal under title VII and the Executive order unless justified by business necessity.⁵ A selection procedure

²See 35 U.S.L.W. 2137 (1966).

³401 U.S. 424 (1971).

⁴See, e.g., *Albermarle Paper Co. v. Moody*, 422 U.S. 405 (1975).

⁵*Griggs*, note 3, supra; uniform guidelines on employee selection procedures (1978), section 3A, (hereinafter cited by section number only).

¹Section 703(h), 42 U.S.C. 2000e(2)(h).

which has no adverse impact generally does not violate title VII or the Executive order.⁶ This means that an employer may usually avoid the application of the guidelines by use of procedures which have no adverse impact.⁷ If adverse impact exists, it must be justified on grounds of business necessity. Normally, this means by validation which demonstrates the relation between the selection procedure and performance on the job.

The guidelines adopt a "rule of thumb" as a practical means of determining adverse impact for use in enforcement proceedings. This rule is known as the "4/5ths" or "80 percent" rule.⁸ It is not a legal definition of discrimination, rather it is a practical device to keep the attention of enforcement agencies on serious discrepancies in hire or promotion rates or other employment decisions. To determine whether a selection procedure violates the "4/5ths rule", an employer compares its hiring rates for different groups.⁹ But this rule of thumb cannot be applied automatically. An employer who has conducted an extensive recruiting campaign may have a larger than normal pool of applicants, and the "4/5ths rule" might unfairly expose it to enforcement proceedings.¹⁰ On the other hand, an employer's reputation may have discouraged or "chilled" applicants of particular groups from applying because they believed application would be futile. The application of the "4/5ths" rule in that situation would allow an employer to evade scrutiny because of its own discrimination.¹¹

III. IS ADVERSE IMPACT TO BE MEASURED BY THE OVERALL PROCESS?

In recent years some employers have eliminated the overall adverse impact of a selection procedure and employed sufficient numbers of minorities or women to meet this "4/5ths rule of thumb". However, they might continue use of a component which does have an adverse impact. For example, an employer might insist on a minimum passing score on a written test which is not job related and which has an adverse impact on minorities.¹² However, the employer might compensate for this adverse impact by hiring a sufficient proportion of minorities who do meet its standards, so that its overall hiring is on a par with or higher than the applicant flow. Employers have argued that as long as their "bottom line" shows no overall

adverse impact, there is no violation at all, regardless of the operation of a particular component of the process.

Employee representatives have argued that rights under equal employment opportunity laws are individual, and the fact that an employer has hired some minorities does not justify discrimination against other minorities. Therefore, they argue that adverse impact is to be determined by examination of each component of the selection procedure, regardless of the "bottom line." This question has not been answered definitively by the courts. There are decisions pointing in both directions.

These guidelines do not address the underlying question of law. They discuss only the exercise of prosecutorial discretion by the Government agencies themselves.¹³ The agencies have decided that, generally, their resources to combat discrimination should be used against those respondents whose practices have restricted or excluded the opportunities of minorities and women. If an employer is appropriately including all groups in the workforce, it is not sensible to spend Government time and effort on such a case, when there are so many employers whose practices do have adverse effects which should be challenged. For this reason, the guidelines provide that, in considering whether to take enforcement action, the Government will take into account the general posture of the employer concerning equal employment opportunity, including its affirmative action plan and results achieved under the plan.¹⁴ There are some circumstances where the government may intervene even though the "bottom line" has been satisfied. They include the case where a component of a selection procedure restricts promotional opportunities of minorities or women who were discriminatorily assigned to jobs, and where a component, such as a height requirement, has been declared unlawful in other situations.¹⁵

What of the individual who is denied the job because of a particular component in a procedure which otherwise meets the "bottom line" standard? The individual retains the right to proceed through the appropriate agencies, and into Federal court.¹⁶

IV. WHERE ADVERSE IMPACT EXISTS: THE BASIC OPTIONS

Once an employer has established that there is adverse impact, what

steps are required by the guidelines? As previously noted, the employer can modify or eliminate the procedure which produces the adverse impact, thus taking the selection procedure from the coverage of these guidelines. If the employer does not do that, then it must justify the use of the procedure on grounds of "business necessity."¹⁷ This normally means that it must show a clear relation between performance on the selection procedure and performance on the job. In the language of industrial psychology, the employer must validate the selection procedure. Thus the bulk of the guidelines consist of the Government's interpretation of standards for validation.

V. VALIDATION: CONSIDERATION OF ALTERNATIVES

The concept of validation as used in personnel psychology involves the establishment of the relationship between a test instrument or other selection procedure and performance on the job. Federal equal employment opportunity law has added a requirement to the process of validation. In conducting a validation study, the employer should consider available alternatives which will achieve its legitimate business purpose with lesser adverse impact.¹⁸ The employer cannot concentrate solely on establishing the validity of the instrument or procedure which it has been using in the past.

This same principle of using the alternative with lesser adverse impact is applicable to the manner in which an employer uses a valid selection procedure.¹⁹ The guidelines assume that there are at least three ways in which an employer can use scores on a selection procedure: (1) To screen out of consideration those who are not likely to be able to perform the job successfully; (2) to group applicants in accordance with the likelihood of their successful performance on the job, and (3) to rank applicants, selecting those with the highest scores for employment.²⁰

The setting of a "cutoff score" to determine who will be screened out may have an adverse impact. If so, an employer is required to justify the initial cutoff score by reference to its need for a trustworthy and efficient workforce.²¹ Similarly, use of results for

¹³ Section 4C.

¹⁴ Section 4E.

¹⁵ Section 4C.

¹⁶ The processing of individual cases is excluded from the operation of the bottom line concept by the definition of "enforcement action," section 16I. Under section 4C, where adverse impact has existed, the employer must keep records of the effect of each component for 2 years after the adverse effect has dissipated.

¹⁷ A few practices may be used without validation even if they have adverse impact. See, e.g., *McDonnell Douglas v. Green*, 411 U.S. 792 (1973) and section 6B.

¹⁸ *Albermarle Paper Co. v. Moody*, 422 U.S. 405 (1975); *Robinson v. Lorillard Corp.*, 444 F. 2d 791 (4th Cir. 1971).

¹⁹ Sections 3B; 5G.

²⁰ *Ibid.*

²¹ See sections 3B; 5H. See also sections 14B(6) (criterion-related validity); 14C(9) (content validity); 14D(1) (construct validity).

⁶ *Furnco v. Waters*, 98 S.Ct. 2943 (1978).

⁷ Section 6.

⁸ Section 4D.

⁹ Section 16R (definition of selection rate).

¹⁰ Section 4D (special recruiting programs).

¹¹ *Ibid.* (user's actions have discouraged applicants).

¹² See, e.g., *Griggs v. Duke Power Co.*, 401 U.S. 424 (1971).

grouping or for rank ordering is likely to have a greater adverse effect than use of scores solely to screen out unqualified candidates. If the employer chooses to use a rank order method, the evidence of validity must be sufficient to justify that method of use.²²

VI. TESTING FOR HIGHER LEVEL JOBS

Normally, employers test for the job for which people are hired. However, there are situations where the first job is temporary or transient, and the workers who remain are promoted to work which involves more complex activities. The guidelines restrict testing for higher level jobs to users who promote a majority of the employees who remain with them to the higher level job within a reasonable period of time.²³

VII. HOW IS VALIDATION TO BE CONDUCTED

Validation has become highly technical and complex, and yet is constantly changing as a set of concepts in industrial psychology. What follows here is a simple introduction to a highly complex field. There are three concepts which can be used to validate a selection procedure. These concepts reflect different approaches to investigating the job relatedness of selection procedures and may be interrelated in practice. They are (1) criterion-related validity,²⁴ (2) content validity,²⁵ and (3) construct validity.²⁶ In criterion-related validity, a selection procedure is justified by a statistical relationship between scores on the test or other selection procedure and measures of job performance. In content validity, a selection procedure is justified by showing that it representatively samples significant parts of the job, such as a typing test for a typist. Construct validity involves identifying the psychological trait (the construct) which underlies successful performance on the job and then devising a selection procedure to measure the presence and degree of the construct. An example would be a test of "leadership ability."

The guidelines contain technical standards and documentation requirements for the application of each of the three approaches.²⁷ One of the problems which the guidelines attempt to meet is the "borderline" be-

tween "content validity" and "construct validity." The extreme cases are easy to understand. A secretary, for example, may have to type. Many jobs require the separation of important matters which must be handled immediately from those which can be handled routinely. For the typing function, a typing test is appropriate. It is justifiable on the basis of content validity because it is a sample of an important or critical part of the job. The second function can be viewed as involving a capability to exercise selective judgment in light of the surrounding circumstances, a mental process which is difficult to sample.

In addressing this situation, the guidelines attempt to make it practical to validate the typing test by a content strategy,²⁸ but do not allow the validation of a test measuring a construct such as "judgment" by a content validity strategy.

The bulk of the guidelines deals with questions such as those discussed in the above paragraphs. Not all such questions can be answered simply, nor can all problems be addressed in the single document. Once the guidelines are issued, they will have to be interpreted in light of changing factual, legal, and professional circumstances.

VIII. SIMPLIFICATION OF REPORTING AND RECORDKEEPING REQUIREMENTS

The reporting and recordkeeping provisions which appeared in the December 30 draft which was published for comment have been carefully reviewed in light of comments received and President Carter's direction to limit paperwork burdens on those regulated by Government to the minimum necessary for effective regulation. As a result of this review, two major changes have been made in the documentation requirements of the guidelines:

(1) A new section 15A(1) provides a simplified recordkeeping option for employers with fewer than 100 employees;

(2) Determinations of the adverse impact of selection procedures need not be made for groups which constitute less than 2 percent of the relevant labor force.

Also, the draft has been changed to make clear that users can assess adverse impact on an annual basis rather than on a continuing basis.

Analysis of comments. The uniform guidelines published today are based upon the proposition that the Federal Government should speak to the public and to those whom it regulates with one voice on this important subject; and that the Federal Government ought to impose upon itself obligations for equal employment opportunity which are at least as demanding as

those it seeks to impose on others. These guidelines state a uniform Federal position on this subject, and are intended to protect the rights created by title VII of the Civil Rights Act of 1964, as amended, Executive Order 11246, as amended, and other provisions of Federal law. The uniform guidelines are also intended to represent "professionally acceptable methods" of the psychological profession for demonstrating whether a selection procedure validly predicts or measures performance for a particular job. *Albermarle Paper Co. v. Moody*, 442 U.S. 405, 425. They are also intended to be consistent with the decisions of the Supreme Court and authoritative decisions of other appellate courts.

Although the development of these guidelines preceded the issuance by President Jimmy Carter of Executive Order 12044 designed to improve the regulatory process, the spirit of his Executive order was followed in their development. Initial agreement among the Federal agencies was reached early in the fall of 1977, and the months from October 1977 until today have been spent in extensive consultation with civil rights groups whose clientele are protected by these guidelines; employers, labor unions, and State and local governments whose employment practices are affected by these guidelines; State and local government antidiscrimination agencies who share with the Federal Government enforcement responsibility for discriminatory practices; and appropriate members of the general public. For example, an earlier draft of these guidelines was circulated informally for comment on October 28, 1977, pursuant to OMB Circular A-85. Many comments were received from representatives of State and local governments, psychologists, private employers, and civil rights groups. Those comments were taken into account in the draft of these guidelines which was published for comment December 30, 1977, 42 FR 66542.

More than 200 organizations and individuals submitted written comments on the December 30, 1977, draft. These comments were from representatives of private industry, public employers, labor organizations, civil rights groups, the American Psychological Association and components thereof, and many individual employers, psychologists, and personnel specialists. On March 3, 1978, notice was given of a public hearing and meeting to be held on April 10, 1978, 43 FR 9131. After preliminary review of the comments, the agencies identified four issues of particular interest, and invited testimony particularly on those issues, 43 FR 11812 (March 21, 1978). In the same notice the agencies published questions and answers on four

²² Sections 6G, 14B(6); 14C(9); 14D(1).

²³ Section 5I.

²⁴ Sections 5B, (General Standards); 14B (Technical Standards); 15B (Documentation); 16F (Definition).

²⁵ Sections 5B (General Standards); 14C (Technical Standards); 15C (Documentation); 16D (Definition).

²⁶ Sections 5B (General Standards); 14D (Technical Standards); 15D (Documentation); 16E (Definition).

²⁷ Technical standards are in section 14; documentation requirements are in section 15.

²⁸ Section 14C.

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issues of concern to the commenters. The questions and answers were designed to clarify the intent of the December 30, 1977, draft, so as to provide a sharper focus for the testimony at the hearing.

At a full day of testimony on April 10, 1978, representatives of private industry, State and local governments, labor organizations, and civil rights groups, as well as psychologists, personnel specialists, and others testified at the public hearing and meeting. The written comments, testimony, and views expressed in subsequent informal consultations have been carefully considered by the four agencies. We set forth below a summary of the comments, and the major issues raised in the comments and testimony, and attempt to explain how we have resolved those issues.

The statement submitted by the American Psychological Association (A.P.A.) stated that "these guidelines represent a major step forward and with careful interpretation can provide a sound basis for concerned professional work." Most of the A.P.A. comments were directed to clarification and interpretation of the present language of the proposal. However, the A.P.A. recommended substantive change in the construct validity section and in the definition of work behavior.

Similarly, the Division of Industrial and Organizational Psychology (division 14) of the A.P.A. described the technical standards of the guidelines as "superior" in terms of congruence with professional standards to "most previous orders and guidelines but numerous troublesome aspects remain." Division 14 had substantial concerns with a number of the provisions of the general principles of the draft.

Civil rights groups generally found the uniform guidelines far superior to the FEA guidelines, and many urged their adoption, with modifications concerning ranking and documentation. Others raised concerns about the "bottom line" concept and other provisions of the guidelines.

The Ad Hoc Group on Employee Selection Procedures representing many employers in private industry supported the concept of uniform guidelines, but had a number of problems with particular provisions, some of which are described below. The American Society for Personnel Administration (ASPA) and the International Personnel Management Association, which represents State and local governments, generally took the same position as the ad hoc group. Major industrial unions found that the draft guidelines were superior to the FEA guidelines, but they perceived them to be inferior to the EEOC guidelines. They challenged particularly the

bottom line concept and the construct validity section.

The building trade unions urged an exclusion of apprenticeship programs from coverage of the guidelines. The American Council on Education found them inappropriate for employment decisions concerning faculty at institutions of higher education. Other particular concerns were articulated by organizations representing the handicapped, licensing and certifying agencies, and college placement offices.

General Principles

1. *Relationship between validation and elimination of adverse impact, and affirmative action.* Federal equal employment opportunity law generally does not require evidence of validity for a selection procedure if there is no adverse impact; e.g., *Griggs v. Duke Power Co.*, 401 U.S. 424. Therefore, a user has the choice of complying either by providing evidence of validity (or otherwise justifying use in accord with Federal law), or by eliminating the adverse impact. These options have always been present under Federal law, 29 CFR 1607.3; 41 CFR 60-3.3(a); and the Federal Executive Agency Guidelines, 41 FR 51734 (November 23, 1976). The December 30 draft guidelines, however, clarified the nature of the two options open to users.

Psychologists expressed concern that the December 30 draft of section 6A encouraged the use of invalid procedures as long as there is no adverse impact. Employers added the concern that the section might encourage the use of illegal procedures not having an adverse impact against the groups who have historically suffered discrimination (minorities, women), even if they have an adverse impact on a different group (whites, males).

Section 6A was not so intended, and we have revised it to clarify the fact that illegal acts purporting to be affirmative action are not the goal of the agencies or of the guidelines; and that any employee selection procedure must be lawful and should be as job related as possible. The delineation of examples of alternative procedures was eliminated to avoid the implication that particular procedures are either prescribed or are necessarily appropriate. The basic thrust of section 6A, that elimination of adverse impact is an alternative to validation, is retained.

The inclusion of excerpts from the 1976 Equal Employment Opportunity Coordinating Council Policy Statement on Affirmative Action in section 13B of the December 30 draft was criticized as not belonging in a set of guidelines for the validation of selection procedures. Section 13 has been revised. The general statement of

policy in support of voluntary affirmative action, and the reaffirmation of the policy statement have been retained, but this statement itself is now found in the appendix to the guidelines.

2. *The "bottom line" (section 4C).* The guidelines provide that when the overall selection process does not have an adverse impact the Government will usually not examine the individual components of that process for adverse impact or evidence of validity. The concept is based upon the view that the Federal Government should not generally concern itself with individual components of a selection process, if the overall effect of that process is nonexclusionary. Many commenters criticized the ambiguity caused by the word "generally" in the December 30 draft of section 4C which provided, "the Federal enforcement agencies * * * generally will not take enforcement action based upon adverse impact of any component" of a process that does not have an overall adverse impact. Employer groups stated the position that the "bottom line" should be a rule prohibiting enforcement action by Federal agencies with respect to all or any part of a selection process where the bottom line does not show adverse impact. Civil rights and some labor union representatives expressed the opposing concerns that the concept may be too restrictive, that it may be interpreted as a matter of law, and that it might allow certain discriminatory conditions to go unremedied.

The guidelines have been revised to clarify the intent that the bottom line concept is based upon administrative and prosecutorial discretion. The Federal agencies cannot accept the recommendation that they never inquire into or take enforcement action with respect to any component procedure unless the whole process of which it is a part has an adverse impact. The Federal enforcement agencies believe that enforcement action may be warranted in unusual circumstances, such as those involving other discriminatory practices, or particular selection procedures which have no validity and have a clear adverse impact on a national basis. Other unusual circumstances may warrant a high level agency decision to proceed with enforcement actions although the "bottom line" has been satisfied. At the same time the agencies adhere to the bottom line concept of allocating resources primarily to those users whose overall selection processes have an adverse impact. See overview, above, part III.

3. *Investigation of alternative selection procedures and alternative methods of use (section 3B).* The December 30 draft included an obligation on the user, when conducting a validity

study, to investigate alternative procedures and uses, in order to determine whether there are other procedures which are substantially equally valid, but which have less adverse impact. The American Psychological Association stated:

"We would concur with the drafters of the guidelines that it is appropriate in the determination of a selection strategy to consider carefully a variety of possible procedures and to think carefully about the question of adverse impact with respect to each of these procedures. Nevertheless, we feel it appropriate to note that a rigid enforcement of these sections, particularly for smaller employers, would impose a substantial and expensive burden on these employers."

Since a reasonable consideration of alternatives is consistent with the underlying principle of minimizing adverse impact consistent with business needs, the provision is retained.

Private employer representatives challenged earlier drafts of these guidelines as being inconsistent with the decision of the Supreme Court in *Albemarle Paper Co. v. Moody*, 422 U.S. 405. No such inconsistency was intended. Accordingly, the first sentence of section 3B was revised to paraphrase the opinion in the *Albemarle* decision, so as to make it clear that section 3B is in accord with the principles of the *Albemarle* decision.

Section 3B was further revised to clarify the intent of the guidelines that the obligation to investigate alternative procedures is a part of conducting a validity study, so that alternative procedures should be evaluated in light of validity studies meeting professional standards, and that section 3B does not impose an obligation to search for alternatives if the user is not required to conduct a validity study.

Just as, under section 3B of the guidelines, a user should investigate alternative selection procedures as a part of choosing and validating a procedure, so should the user investigate alternative uses of the selection device chosen to find the use most appropriate to his needs. The validity study should address the question of what method of use (screening, grouping, or rank ordering) is appropriate for a procedure based on the kind and strength of the validity evidence shown, and the degree of adverse impact of the different uses.

4. *Establishment of cutoff scores and rank ordering.* Some commenters from civil rights groups believed that the December 30 draft guidelines did not provide sufficient guidance as to when it was permissible to use a selection procedure on a ranking basis rather than on a pass-fail basis. They also objected to section 5G in terms of setting cutoff scores. Other comments noted a lack of clarity as to how the determi-

nation of a cutoff score or the use of a procedure for ranking candidates relates to adverse impact.

As we have noted, users are not required to validate procedures which do not have an adverse impact. However, if one way of using a procedure (e.g., for ranking) results in greater adverse impact than another way (e.g., pass/fail), the procedure must be validated for that use. Similarly, cutoff scores which result in adverse impact should be justified. If the use of a validated procedure for ranking results in greater adverse impact than its use as a screening device, the evidence of validity and utility must be sufficient to warrant use of the procedures as a ranking device.

A new section 5G has been added to clarify these concepts. Section 5H (formerly section 5G) addresses the choice of a cutoff score when a procedure is to be used for ranking.

5. *Scope: Requests for exemptions for certain classes of users.* Some employer groups and labor organizations (e.g., academic institutions, large public employers, apprenticeship councils) argued that they should be exempted from all or some of the provisions of these guidelines because of their special needs. The intent of Congress as expressed in Federal equal employment opportunity law is to apply the same standards to all users, public and private.

These guidelines apply the same principles and standards to all employers. On the other hand, the nature of the procedures which will actually meet those principles and standards may be different for different employers, and the guidelines recognize that fact. Accordingly, the guidelines are applicable to all employers and other users who are covered by Federal equal employment opportunity law.

Organizations of handicapped persons objected to excluding from the scope of these guidelines the enforcement of laws prohibiting discrimination on the basis of handicap, in particular the Rehabilitation Act of 1973, sections 501, 503, and 504. While this issue has not been addressed in the guidelines, nothing precludes the adoption of the principles set forth in these guidelines for other appropriate situations.

Licensing and certification boards raised the question of the applicability of the guidelines to their licensing and certification functions. The guidelines make it clear that licensing and certification are covered "to the extent" that licensing and certification may be covered by Federal equal employment opportunity law.

Voluntary certification boards, where certification is not required by law, are not users as defined in section 16 with respect to their certifying

functions and therefore are not subject to these guidelines. If an employer relies upon such certification in making employment decisions, the employer is the user and must be prepared to justify, under Federal law, that reliance as it would any other selection procedure.

6. *The "Four-Fifths Rule of Thumb"* (section 4D). Some representatives of employers and some professionals suggest that the basic test for adverse impact should be a test of statistical significance, rather than the four-fifths rule. Some civil rights groups, on the other hand, still regard the four-fifths rule as permitting some unlawful discrimination.

The Federal agencies believe that neither of these positions is correct. The great majority of employers do not hire, promote, or assign enough employees for most jobs to warrant primary reliance upon statistical significance. Many decisions in day-to-day life are made on the basis of information which does not have the justification of a test of statistical significance. Courts have found adverse impact without a showing of statistical significance. *Griggs v. Duke Power Co.*, supra; *Vulcan Society of New York v. CSC of N.Y.*, 490 F. 2d 387, 393 (2d Cir. 1973); *Kirkland v. New York St. Dept. of Corr. Serv.*, 520 F. 2d 420, 425 (2d Cir. 1975).

Accordingly, the undersigned believe that while the four-fifths rule does not define discrimination and does not apply in all cases, it is appropriate as a rule of thumb in identifying adverse impact.

Technical Standards

7. *Criterion-related validity* (section 14B). This section of the guidelines found general support among the commenters from the psychological profession and, except for the provisions concerning test fairness (sometimes mistakenly equated with differential prediction or differential validity), generated relatively little comment.

The provisions of the guidelines concerning criterion-related validity studies call for studies of fairness of selection procedures where technically feasible.

Section 14B(8). Some psychologists and employer groups objected that the concept of test fairness or unfairness has been discredited by professionals and pointed out that the term is commonly misused. We recognize that there is serious debate on the question of test fairness; however, it is accepted professionally that fairness should be examined where feasible. The A.P.A. standards for educational and psychological tests, for example, direct users to explore the question of fairness on finding a difference in group performances (section E9, pp. 43-44). Simi-

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larly the concept of test fairness is one which is closely related to the basic thrust of Federal equal employment opportunity law; and that concept was endorsed by the Supreme Court in *Albemarle Paper Co. v. Moody*, 422 U.S. 405.

Accordingly, we have retained in the guidelines the obligation upon users to investigate test fairness where it is technically feasible to do so.

8. *Content validity.* The Division of Industrial and Organizational Psychology of A.P.A. correctly perceived that the provisions of the draft guidelines concerning content validity, with their emphasis on observable work behaviors or work products, were "greatly concerned with minimizing the inferential leap between test and performance." That division expressed the view that the draft guidelines neglected situations where a knowledge, skill or ability is necessary to an outcome but where the work behavior cannot be replicated in a test. They recommended that the section be revised.

We believe that the emphasis on observable work behaviors or observable work products is appropriate; and that in order to show content validity, the gap between the test and performance on the job should be a small one. We recognize, however, that content validity may be appropriate to support a test which measures a knowledge, skill, or ability which is a necessary prerequisite to the performance of the job, even though the test might not be close enough to the work behavior to be considered a work sample, and the guidelines have been revised appropriately. On the other hand, tests of mental processes which are not directly observable and which may be difficult to determine on the basis of observable work behaviors or work products should not be supported by content validity.

Thus, the Principles for the Validation and Use of Personnel Selection Procedures (Division of Industrial and Organizational Psychology, American Psychological Association, 1975, p. 10), discuss the use of content validity to support tests of "specific items of knowledge, or specific job skills," but call attention to the inappropriateness of attempting to justify tests for traits or constructs on a content validity basis.

9. *Construct validity (section 14D).* Business groups and professionals expressed concern that the construct validity requirements in the December 30 draft were confusing and technically inaccurate. As section 14D indicates, construct validity is a relatively new procedure in the field of personnel selection and there is not yet substantial guidance in the professional literature as to its use in the area of employment practices. The provisions on construct

validity have been revised to meet the concerns expressed by the A.P.A. The construct validity section as revised clarifies what is required by the Federal enforcement agencies at this stage in the development of construct validity. The guidelines leave open the possibility that different evidence of construct validity may be accepted in the future, as new methodologies develop and become incorporated in professional standards and other professional literature.

10. *Documentation (section 15).* Commenters stated that the documentation section did not conform to the technical requirements of the guidelines or was otherwise inadequate. Section 15 has been clarified and two significant changes have been made to minimize the recordkeeping burden. (See overview, part VIII.)

11. *Definitions (section 16).* The definition of work behavior in the December 30, 1977 draft was criticized by the A.P.A. and others as being too vague to provide adequate guidance to those using the guidelines who must identify work behavior as a part of any validation technique. Other comments criticized the absence or inadequacies of other definitions, especially "adverse impact." Substantial revisions of and additions to this section were therefore made.

UNIFORM GUIDELINES ON EMPLOYEE SELECTION PROCEDURES (1978)

NOTE.—These guidelines are issued jointly by four agencies. Separate official adoptions follow the guidelines in this part IV as follows: Civil Service Commission, Department of Justice, Equal Employment Opportunity Commission, Department of Labor.

For official citation see section 18 of these guidelines.

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GENERAL PRINCIPLES

SECTION 1. Statement of purpose.—A. Need for uniformity—Issuing agencies. The Federal government's need for a uniform set of principles on the question of the use of tests and other selection procedures has long been recognized. The Equal Employment Opportunity Commission, the Civil Service Commission, the Department of Labor, and the Department of Justice jointly have adopted these uniform guidelines to meet that need, and to apply the same principles to the Federal Government as are applied to other employers.

B. Purpose of guidelines. These guidelines incorporate a single set of principles which are designed to assist employers, labor organizations, employment agencies, and licensing and certification boards to comply with requirements of Federal law prohibiting employment practices which discriminate on grounds of race, color, religion, sex, and national origin. They are designed to provide a framework for determining the proper use of tests and other selection procedures. These guidelines do not require a user to conduct validity studies of selection procedures where no adverse impact results. However, all users are encouraged to use selection procedures which are valid, especially users operating under merit principles.

C. Relation to prior guidelines. These guidelines are based upon and supersede previously issued guidelines on employee selection procedures. These guidelines have been built upon court decisions, the previously issued guidelines of the agencies, and the practical experience of the agencies, as well as the standards of the psychological profession. These guidelines are intended to be consistent with existing law.

Sec. 2. Scope.—A. Application of guidelines. These guidelines will be applied by the Equal Employment Opportunity Commission in the enforcement of title VII of the Civil Rights Act of 1964, as amended by the Equal Employment Opportunity Act of 1972 (hereinafter "Title VII"); by the Department of Labor, and the contract compliance agencies until the transfer of authority contemplated by the President's Reorganization Plan No. 1 of 1978, in the administration and enforcement of Executive Order 11246, as amended by Executive Order 11375 (hereinafter "Executive Order 11246"); by the Civil Service Commission and other Federal agencies subject to section 717 of Title VII; by the Civil Service Commission in exercising its responsibilities toward State and local governments under section 208(b)(1) of the Intergovernmental Personnel Act; by the Department of Justice in exercising its responsibilities under Federal law; by the Office of Revenue Sharing of the Department of the Treasury under the State and Local Fiscal Assistance Act of 1972, as amended; and by any other Federal agency which adopts them.

B. Employment decisions. These guidelines apply to tests and other selection procedures which are used as a basis for any employment decision. Employment decisions include but are not limited to hiring, promotion, demotion, membership (for example, in a labor organization), referral, retention, and licensing and certification, to the extent that licensing and certification may be covered by Federal equal employment opportunity law. Other selection decisions, such as selection for training or transfer, may also be considered employment decisions if they lead to any of the decisions listed above.

C. Selection procedures. These guidelines apply only to selection procedures which are used as a basis for making employment decisions. For example, the use of recruiting procedures designed to attract members of a particular race, sex, or ethnic group, which were previously denied employment opportunities or which are currently underutilized, may be necessary to bring an employer into compliance with Federal law, and is frequently an essential element of any effective af-

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firmative action program; but recruitment practices are not considered by these guidelines to be selection procedures. Similarly, these guidelines do not pertain to the question of the lawfulness of a seniority system within the meaning of section 703(h), Executive Order 11246 or other provisions of Federal law or regulation, except to the extent that such systems utilize selection procedures to determine qualifications or abilities to perform the job. Nothing in these guidelines is intended or should be interpreted as discouraging the use of a selection procedure for the purpose of determining qualifications or for the purpose of selection on the basis of relative qualifications, if the selection procedure had been validated in accord with these guidelines for each such purpose for which it is to be used.

D. Limitations. These guidelines apply only to persons subject to Title VII, Executive Order 11246, or other equal employment opportunity requirements of Federal law. These guidelines do not apply to responsibilities under the Age Discrimination in Employment Act of 1967, as amended, not to discriminate on the basis of age, or under sections 501, 503, and 504 of the Rehabilitation Act of 1973, not to discriminate on the basis of handicap.

E. Indian preference not affected. These guidelines do not restrict any obligation imposed or right granted by Federal law to users to extend a preference in employment to Indians living on or near an Indian reservation in connection with employment opportunities on or near an Indian reservation.

Sec. 3. Discrimination defined: Relationship between use of selection procedures and discrimination.—A. Procedure having adverse impact constitutes discrimination unless justified. The use of any selection procedure which has an adverse impact on the hiring, promotion, or other employment or membership opportunities of members of any race, sex, or ethnic group will be considered to be discriminatory and inconsistent with these guidelines, unless the procedure has been validated in accordance with these guidelines, or the provisions of section 6 below are satisfied.

B. Consideration of suitable alternative selection procedures. Where two or more selection procedures are available which serve the user's legitimate interest in efficient and trustworthy workmanship, and which are substantially equally valid for a given purpose, the user should use the procedure which has been demonstrated to have the lesser adverse impact. Accordingly, whenever a validity study is called for by these guidelines, the user should include, as a part of the validity study, an investigation of suitable

alternative selection procedures and suitable alternative methods of using the selection procedure which have as little adverse impact as possible, to determine the appropriateness of using or validating them in accord with these guidelines. If a user has made a reasonable effort to become aware of such alternative procedures and validity has been demonstrated in accord with these guidelines, the use of the test or other selection procedure may continue until such time as it should reasonably be reviewed for currency. Whenever the user is shown an alternative selection procedure with evidence of less adverse impact and substantial evidence of validity for the same job in similar circumstances, the user should investigate it to determine the appropriateness of using or validating it in accord with these guidelines. This subsection is not intended to preclude the combination of procedures into a significantly more valid procedure, if the use of such a combination has been shown to be in compliance with the guidelines.

Sec. 4. Information on impact.—A. Records concerning impact. Each user should maintain and have available for inspection records or other information which will disclose the impact which its tests and other selection procedures have upon employment opportunities of persons by identifiable race, sex, or ethnic group as set forth in subparagraph B below in order to determine compliance with these guidelines. Where there are large numbers of applicants and procedures are administered frequently, such information may be retained on a sample basis, provided that the sample is appropriate in terms of the applicant population and adequate in size.

B. Applicable race, sex, and ethnic groups for recordkeeping. The records called for by this section are to be maintained by sex, and the following races and ethnic groups: Blacks (Negroes), American Indians (including Alaskan Natives), Asians (including Pacific Islanders), Hispanic (including persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish origin or culture regardless of race), whites (Caucasians) other than Hispanic, and totals. The race, sex, and ethnic classifications called for by this section are consistent with the Equal Employment Opportunity Standard Form 100, Employer Information Report EEO-1 series of reports. The user should adopt safeguards to insure that the records required by this paragraph are used for appropriate purposes such as determining adverse impact, or (where required) for developing and monitoring affirmative action programs, and that such records are not used improperly. See sections 4E and 17(4), below.

C. Evaluation of selection rates. The "bottom line." If the information called for by sections 4A and B above shows that the total selection process for a job has an adverse impact, the individual components of the selection process should be evaluated for adverse impact. If this information shows that the total selection process does not have an adverse impact, the Federal enforcement agencies, in the exercise of their administrative and prosecutorial discretion, in usual circumstances, will not expect a user to evaluate the individual components for adverse impact, or to validate such individual components, and will not take enforcement action based upon adverse impact of any component of that process, including the separate parts of a multipart selection procedure or any separate procedure that is used as an alternative method of selection. However, in the following circumstances the Federal enforcement agencies will expect a user to evaluate the individual components for adverse impact and may, where appropriate, take enforcement action with respect to the individual components: (1) where the selection procedure is a significant factor in the continuation of patterns of assignments of incumbent employees caused by prior discriminatory employment practices, (2) where the weight of court decisions or administrative interpretations hold that a specific procedure (such as height or weight requirements or no-arrest records) is not job related in the same or similar circumstances. In unusual circumstances, other than those listed in (1) and (2) above, the Federal enforcement agencies may request a user to evaluate the individual components for adverse impact and may, where appropriate, take enforcement action with respect to the individual component.

D. Adverse impact and the "four-fifths rule." A selection rate for any race, sex, or ethnic group which is less than four-fifths ($\frac{4}{5}$) (or eighty percent) of the rate for the group with the highest rate will generally be regarded by the Federal enforcement agencies as evidence of adverse impact, while a greater than four-fifths rate will generally not be regarded by Federal enforcement agencies as evidence of adverse impact. Smaller differences in selection rate may nevertheless constitute adverse impact, where they are significant in both statistical and practical terms or where a user's actions have discouraged applicants disproportionately on grounds of race, sex, or ethnic group. Greater differences in selection rate may not constitute adverse impact where the differences are based on small numbers and are not statistically significant, or where special recruiting or other programs cause

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the pool of minority or female candidates to be atypical of the normal pool of applicants from that group. Where the user's evidence concerning the impact of a selection procedure indicates adverse impact but is based upon numbers which are too small to be reliable, evidence concerning the impact of the procedure over a longer period of time and/or evidence concerning the impact which the selection procedure had when used in the same manner in similar circumstances elsewhere may be considered in determining adverse impact. Where the user has not maintained data on adverse impact as required by the documentation section of applicable guidelines, the Federal enforcement agencies may draw an inference of adverse impact of the selection process from the failure of the user to maintain such data, if the user has an underutilization of a group in the job category, as compared to the group's representation in the relevant labor market or, in the case of jobs filled from within, the applicable work force.

E. *Consideration of user's equal employment opportunity posture.* In carrying out their obligations, the Federal enforcement agencies will consider the general posture of the user with respect to equal employment opportunity for the job or group of jobs in question. Where a user has adopted an affirmative action program, the Federal enforcement agencies will consider the provisions of that program, including the goals and timetables which the user has adopted and the progress which the user has made in carrying out that program and in meeting the goals and timetables. While such affirmative action programs may in design and execution be race, color, sex, or ethnic conscious, selection procedures under such programs should be based upon the ability or relative ability to do the work.

SEC. 5. *General standards for validity studies.*—A. *Acceptable types of validity studies.* For the purposes of satisfying these guidelines, users may rely upon criterion-related validity studies, content validity studies or construct validity studies, in accordance with the standards set forth in the technical standards of these guidelines, section 14 below. New strategies for showing the validity of selection procedures will be evaluated as they become accepted by the psychological profession.

B. *Criterion-related, content, and construct validity.* Evidence of the validity of a test or other selection procedure by a criterion-related validity study should consist of empirical data demonstrating that the selection procedure is predictive of or significantly correlated with important elements of job performance. See section 14B

below. Evidence of the validity of a test or other selection procedure by a content validity study should consist of data showing that the content of the selection procedure is representative of important aspects of performance on the job for which the candidates are to be evaluated. See section 14C below. Evidence of the validity of a test or other selection procedure through a construct validity study should consist of data showing that the procedure measures the degree to which candidates have identifiable characteristics which have been determined to be important in successful performance in the job for which the candidates are to be evaluated. See section 14D below.

C. *Guidelines are consistent with professional standards.* The provisions of these guidelines relating to validation of selection procedures are intended to be consistent with generally accepted professional standards for evaluating standardized tests and other selection procedures, such as those described in the Standards for Educational and Psychological Tests prepared by a joint committee of the American Psychological Association, the American Educational Research Association, and the National Council on Measurement in Education (American Psychological Association, Washington, D.C., 1974) (hereinafter "A.P.A. Standards") and standard textbooks and journals in the field of personnel selection.

D. *Need for documentation of validity.* For any selection procedure which is part of a selection process which has an adverse impact and which selection procedure has an adverse impact, each user should maintain and have available such documentation as is described in section 15 below.

E. *Accuracy and standardization.* Validity studies should be carried out under conditions which assure insofar as possible the adequacy and accuracy of the research and the report. Selection procedures should be administered and scored under standardized conditions.

F. *Caution against selection on basis of knowledges, skills, or ability learned in brief orientation period.* In general, users should avoid making employment decisions on the basis of measures of knowledges, skills, or abilities which are normally learned in a brief orientation period, and which have an adverse impact.

G. *Method of use of selection procedures.* The evidence of both the validity and utility of a selection procedure should support the method the user chooses for operational use of the procedure, if that method of use has a greater adverse impact than another method of use. Evidence which may be sufficient to support the use of a selec-

tion procedure on a pass/fail (screening) basis may be insufficient to support the use of the same procedure on a ranking basis under these guidelines. Thus, if a user decides to use a selection procedure on a ranking basis, and that method of use has a greater adverse impact than use on an appropriate pass/fail basis (see section 5H below), the user should have sufficient evidence of validity and utility to support the use on a ranking basis. See sections 3B, 14B (5) and (6), and 14C (8) and (9).

H. *Cutoff scores.* Where cutoff scores are used, they should normally be set so as to be reasonable and consistent with normal expectations of acceptable proficiency within the work force. Where applicants are ranked on the basis of properly validated selection procedures and those applicants scoring below a higher cutoff score than appropriate in light of such expectations have little or no chance of being selected for employment, the higher cutoff score may be appropriate, but the degree of adverse impact should be considered.

I. *Use of selection procedures for higher level jobs.* If job progression structures are so established that employees will probably, within a reasonable period of time and in a majority of cases, progress to a higher level, it may be considered that the applicants are being evaluated for a job or jobs at the higher level. However, where job progression is not so nearly automatic, or the time span is such that higher level jobs or employees' potential may be expected to change in significant ways, it should be considered that applicants are being evaluated for a job at or near the entry level. A "reasonable period of time" will vary for different jobs and employment situations but will seldom be more than 5 years. Use of selection procedures to evaluate applicants for a higher level job would not be appropriate:

(1) If the majority of those remaining employed do not progress to the higher level job;

(2) If there is a reason to doubt that the higher level job will continue to require essentially similar skills during the progression period; or

(3) If the selection procedures measure knowledges, skills, or abilities required for advancement which would be expected to develop principally from the training or experience on the job.

J. *Interim use of selection procedures.* Users may continue the use of a selection procedure which is not at the moment fully supported by the required evidence of validity, provided: (1) The user has available substantial evidence of validity, and (2) the user has in progress, when technically feasible, a study which is designed to pro-

duce the additional evidence required by these guidelines within a reasonable time. If such a study is not technically feasible, see section 6B. If the study does not demonstrate validity, this provision of these guidelines for interim use shall not constitute a defense in any action, nor shall it relieve the user of any obligations arising under Federal law.

K. Review of validity studies for currency. Whenever validity has been shown in accord with these guidelines for the use of a particular selection procedure for a job or group of jobs, additional studies need not be performed until such time as the validity study is subject to review as provided in section 3B above. There are no absolutes in the area of determining the currency of a validity study. All circumstances concerning the study, including the validation strategy used, and changes in the relevant labor market and the job should be considered in the determination of when a validity study is outdated.

SEC. 6. Use of selection procedures which have not been validated.—A. Use of alternate selection procedures to eliminate adverse impact. A user may choose to utilize alternative selection procedures in order to eliminate adverse impact or as part of an affirmative action program. See section 13 below. Such alternative procedures should eliminate the adverse impact in the total selection process, should be lawful and should be as job related as possible.

B. Where validity studies cannot or need not be performed. There are circumstances in which a user cannot or need not utilize the validation techniques contemplated by these guidelines. In such circumstances, the user should utilize selection procedures which are as job related as possible and which will minimize or eliminate adverse impact, as set forth below.

(1) *Where informal or unscored procedures are used.* When an informal or unscored selection procedure which has an adverse impact is utilized, the user should eliminate the adverse impact, or modify the procedure to one which is a formal, scored or quantified measure or combination of measures and then validate the procedure in accord with these guidelines, or otherwise justify continued use of the procedure in accord with Federal law.

(2) *Where formal and scored procedures are used.* When a formal and scored selection procedure is used which has an adverse impact, the validation techniques contemplated by these guidelines usually should be followed if technically feasible. Where the user cannot or need not follow the validation techniques anticipated by these guidelines, the user should

either modify the procedure to eliminate adverse impact or otherwise justify continued use of the procedure in accord with Federal law.

SEC. 7. Use of other validity studies.—A. Validity studies not conducted by the user. Users may, under certain circumstances, support the use of selection procedures by validity studies conducted by other users or conducted by test publishers or distributors and described in test manuals. While publishers of selection procedures have a professional obligation to provide evidence of validity which meets generally accepted professional standards (see section 5C above), users are cautioned that they are responsible for compliance with these guidelines. Accordingly, users seeking to obtain selection procedures from publishers and distributors should be careful to determine that, in the event the user becomes subject to the validity requirements of these guidelines, the necessary information to support validity has been determined and will be made available to the user.

B. Use of criterion-related validity evidence from other sources. Criterion-related validity studies conducted by one test user, or described in test manuals and the professional literature, will be considered acceptable for use by another user when the following requirements are met:

(1) *Validity evidence.* Evidence from the available studies meeting the standards of section 14B below clearly demonstrates that the selection procedure is valid;

(2) *Job similarity.* The incumbents in the user's job and the incumbents in the job or group of jobs on which the validity study was conducted perform substantially the same major work behaviors, as shown by appropriate job analyses both on the job or group of jobs on which the validity study was performed and on the job for which the selection procedure is to be used; and

(3) *Fairness evidence.* The studies include a study of test fairness for each race, sex, and ethnic group which constitutes a significant factor in the borrowing user's relevant labor market for the job or jobs in question. If the studies under consideration satisfy (1) and (2) above but do not contain an investigation of test fairness, and it is not technically feasible for the borrowing user to conduct an internal study of test fairness, the borrowing user may utilize the study until studies conducted elsewhere meeting the requirements of these guidelines show test unfairness, or until such time as it becomes technically feasible to conduct an internal study of test fairness and the results of that study can be acted upon. Users obtaining selection procedures from publishers should

consider, as one factor in the decision to purchase a particular selection procedure, the availability of evidence concerning test fairness.

C. Validity evidence from multiunit study. If validity evidence from a study covering more than one unit within an organization satisfies the requirements of section 14B below, evidence of validity specific to each unit will not be required unless there are variables which are likely to affect validity significantly.

D. Other significant variables. If there are variables in the other studies which are likely to affect validity significantly, the user may not rely upon such studies, but will be expected either to conduct an internal validity study or to comply with section 6 above.

SEC. 8. Cooperative studies.—A. Encouragement of cooperative studies. The agencies issuing these guidelines encourage employers, labor organizations, and employment agencies to cooperate in research, development, search for lawful alternatives, and validity studies in order to achieve procedures which are consistent with these guidelines.

B. Standards for use of cooperative studies. If validity evidence from a cooperative study satisfies the requirements of section 14 below, evidence of validity specific to each user will not be required unless there are variables in the user's situation which are likely to affect validity significantly.

SEC. 9. No assumption of validity.—A. Unacceptable substitutes for evidence of validity. Under no circumstances will the general reputation of a test or other selection procedures, its author or its publisher, or casual reports of its validity be accepted in lieu of evidence of validity. Specifically ruled out are: assumptions of validity based on a procedure's name or descriptive labels; all forms of promotional literature; data bearing on the frequency of a procedure's usage; testimonial statements and credentials of sellers, users, or consultants; and other nonempirical or anecdotal accounts of selection practices or selection outcomes.

B. Encouragement of professional supervision. Professional supervision of selection activities is encouraged but is not a substitute for documented evidence of validity. The enforcement agencies will take into account the fact that a thorough job analysis was conducted and that careful development and use of a selection procedure in accordance with professional standards enhance the probability that the selection procedure is valid for the job.

SEC. 10. Employment agencies and employment services.—A. Where selection procedures are devised by agency. An employment agency, including pri-

vate employment agencies and State employment agencies, which agrees to a request by an employer or labor organization to device and utilize a selection procedure should follow the standards in these guidelines for determining adverse impact. If adverse impact exists the agency should comply with these guidelines. An employment agency is not relieved of its obligation herein because the user did not request such validation or has requested the use of some lesser standard of validation than is provided in these guidelines. The use of an employment agency does not relieve an employer or labor organization or other user of its responsibilities under Federal law to provide equal employment opportunity or its obligations as a user under these guidelines.

B. Where selection procedures are devised elsewhere. Where an employment agency or service is requested to administer a selection procedure which has been devised elsewhere and to make referrals pursuant to the results, the employment agency or service should maintain and have available evidence of the impact of the selection and referral procedures which it administers. If adverse impact results the agency or service should comply with these guidelines. If the agency or service seeks to comply with these guidelines by reliance upon validity studies or other data in the possession of the employer, it should obtain and have available such information.

Sec. 11. Disparate treatment. The principles of disparate or unequal treatment must be distinguished from the concepts of validation. A selection procedure—even though validated against job performance in accordance with these guidelines—cannot be imposed upon members of a race, sex, or ethnic group where other employees, applicants, or members have not been subjected to that standard. Disparate treatment occurs where members of a race, sex, or ethnic group have been denied the same employment, promotion, membership, or other employment opportunities as have been available to other employees or applicants. Those employees or applicants who have been denied equal treatment, because of prior discriminatory practices or policies, must at least be afforded the same opportunities as had existed for other employees or applicants during the period of discrimination. Thus, the persons who were in the class of persons discriminated against during the period the user followed the discriminatory practices should be allowed the opportunity to qualify under less stringent selection procedures previously followed, unless the user demonstrates that the increased standards are required by business necessity. This section does not prohibit

a user who has not previously followed merit standards from adopting merit standards which are in compliance with these guidelines; nor does it preclude a user who has previously used invalid or unvalidated selection procedures from developing and using procedures which are in accord with these guidelines.

Sec. 12. Retesting of applicants. Users should provide a reasonable opportunity for retesting and reconsideration. Where examinations are administered periodically with public notice, such reasonable opportunity exists, unless persons who have previously been tested are precluded from retesting. The user may however take reasonable steps to preserve the security of its procedures.

Sec. 13. Affirmative action.—A. Affirmative action obligations. The use of selection procedures which have been validated pursuant to these guidelines does not relieve users of any obligations they may have to undertake affirmative action to assure equal employment opportunity. Nothing in these guidelines is intended to preclude the use of lawful selection procedures which assist in remedying the effects of prior discriminatory practices, or the achievement of affirmative action objectives.

B. Encouragement of voluntary affirmative action programs. These guidelines are also intended to encourage the adoption and implementation of voluntary affirmative action programs by users who have no obligation under Federal law to adopt them; but are not intended to impose any new obligations in that regard. The agencies issuing and endorsing these guidelines endorse for all private employers and reaffirm for all governmental employers the Equal Employment Opportunity Coordinating Council's "Policy Statement on Affirmative Action Programs for State and Local Government Agencies" (41 FR 38814, September 13, 1976). That policy statement is attached hereto as appendix, section 17.

TECHNICAL STANDARDS

Sec. 14. Technical standards for validity studies. The following minimum standards, as applicable, should be met in conducting a validity study. Nothing in these guidelines is intended to preclude the development and use of other professionally acceptable techniques with respect to validation of selection procedures. Where it is not technically feasible for a user to conduct a validity study, the user has the obligation otherwise to comply with these guidelines. See sections 6 and 7 above.

A. Validity studies should be based on review of information about the job. Any validity study should be

based upon a review of information about the job for which the selection procedure is to be used. The review should include a job analysis except as provided in section 14B(3) below with respect to criterion-related validity. Any method of job analysis may be used if it provides the information required for the specific validation strategy used.

B. Technical standards for criterion-related validity studies.—(1) Technical feasibility. Users choosing to validate a selection procedure by a criterion-related validity strategy should determine whether it is technically feasible (as defined in section 16) to conduct such a study in the particular employment context. The determination of the number of persons necessary to permit the conduct of a meaningful criterion-related study should be made by the user on the basis of all relevant information concerning the selection procedure, the potential sample and the employment situation. Where appropriate, jobs with substantially the same major work behaviors may be grouped together for validity studies, in order to obtain an adequate sample. These guidelines do not require a user to hire or promote persons for the purpose of making it possible to conduct a criterion-related study.

(2) Analysis of the job. There should be a review of job information to determine measures of work behavior(s) or performance that are relevant to the job or group of jobs in question. These measures or criteria are relevant to the extent that they represent critical or important job duties, work behaviors or work outcomes as developed from the review of job information. The possibility of bias should be considered both in selection of the criterion measures and their application. In view of the possibility of bias in subjective evaluations, supervisory rating techniques and instructions to raters should be carefully developed. All criterion measures and the methods for gathering data need to be examined for freedom from factors which would unfairly alter scores of members of any group. The relevance of criteria and their freedom from bias are of particular concern when there are significant differences in measures of job performance for different groups.

(3) Criterion measures. Proper safeguards should be taken to insure that scores on selection procedures do not enter into any judgments of employee adequacy that are to be used as criterion measures. Whatever criteria are used should represent important or critical work behavior(s) or work outcomes. Certain criteria may be used without a full job analysis if the user can show the importance of the criteria to the particular employment con-

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text. These criteria include but are not limited to production rate, error rate, tardiness, absenteeism, and length of service. A standardized rating of overall work performance may be used where a study of the job shows that it is an appropriate criterion. Where performance in training is used as a criterion, success in training should be properly measured and the relevance of the training should be shown either through a comparison of the content of the training program with the critical or important work behavior(s) of the job(s), or through a demonstration of the relationship between measures of performance in training and measures of job performance. Measures of relative success in training include but are not limited to instructor evaluations, performance samples, or tests. Criterion measures consisting of paper and pencil tests will be closely reviewed for job relevance.

(4) *Representativeness of the sample.* Whether the study is predictive or concurrent, the sample subjects should insofar as feasible be representative of the candidates normally available in the relevant labor market for the job or group of jobs in question, and should insofar as feasible include the races, sexes, and ethnic groups normally available in the relevant job market. In determining the representativeness of the sample in a concurrent validity study, the user should take into account the extent to which the specific knowledges or skills which are the primary focus of the test are those which employees learn on the job.

Where samples are combined or compared, attention should be given to see that such samples are comparable in terms of the actual job they perform, the length of time on the job where time on the job is likely to affect performance, and other relevant factors likely to affect validity differences; or that these factors are included in the design of the study and their effects identified.

(5) *Statistical relationships.* The degree of relationship between selection procedure scores and criterion measures should be examined and computed, using professionally acceptable statistical procedures. Generally, a selection procedure is considered related to the criterion, for the purposes of these guidelines, when the relationship between performance on the procedure and performance on the criterion measure is statistically significant at the 0.05 level of significance, which means that it is sufficiently high as to have a probability of no more than one (1) in twenty (20) to have occurred by chance. Absence of a statistically significant relationship between a selection procedure and job performance should not necessarily discourage

other investigations of the validity of that selection procedure.

(6) *Operational use of selection procedures.* Users should evaluate each selection procedure to assure that it is appropriate for operational use, including establishment of cutoff scores or rank ordering. Generally, if other factors remain the same, the greater the magnitude of the relationship (e.g., correlation coefficient) between performance on a selection procedure and one or more criteria of performance on the job, and the greater the importance and number of aspects of job performance covered by the criteria, the more likely it is that the procedure will be appropriate for use. Reliance upon a selection procedure which is significantly related to a criterion measure, but which is based upon a study involving a large number of subjects and has a low correlation coefficient will be subject to close review if it has a large adverse impact. Sole reliance upon a single selection instrument which is related to only one of many job duties or aspects of job performance will also be subject to close review. The appropriateness of a selection procedure is best evaluated in each particular situation and there are no minimum correlation coefficients applicable to all employment situations. In determining whether a selection procedure is appropriate for operational use the following considerations should also be taken into account: The degree of adverse impact of the procedure, the availability of other selection procedures of greater or substantially equal validity.

(7) *Overstatement of validity findings.* Users should avoid reliance upon techniques which tend to overestimate validity findings as a result of capitalization on chance unless an appropriate safeguard is taken. Reliance upon a few selection procedures or criteria of successful job performance when many selection procedures or criteria of performance have been studied, or the use of optimal statistical weights for selection procedures computed in one sample, are techniques which tend to inflate validity estimates as a result of chance. Use of a large sample is one safeguard; cross-validation is another.

(8) *Fairness.* This section generally calls for studies of unfairness where technically feasible. The concept of fairness or unfairness of selection procedures is a developing concept. In addition, fairness studies generally require substantial numbers of employees in the job or group of jobs being studied. For these reasons, the Federal enforcement agencies recognize that the obligation to conduct studies of fairness imposed by the guidelines generally will be upon users or groups of users with a large number of persons in a job class, or test developers;

and that small users utilizing their own selection procedures will generally not be obligated to conduct such studies because it will be technically infeasible for them to do so.

(a) *Unfairness defined.* When members of one race, sex, or ethnic group characteristically obtain lower scores on a selection procedure than members of another group, and the differences in scores are not reflected in differences in a measure of job performance, use of the selection procedure may unfairly deny opportunities to members of the group that obtains the lower scores.

(b) *Investigation of fairness.* Where a selection procedure results in an adverse impact on a race, sex, or ethnic group identified in accordance with the classifications set forth in section 4 above and that group is a significant factor in the relevant labor market, the user generally should investigate the possible existence of unfairness for that group if it is technically feasible to do so. The greater the severity of the adverse impact on a group, the greater the need to investigate the possible existence of unfairness. Where the weight of evidence from other studies shows that the selection procedure predicts fairly for the group in question and for the same or similar jobs, such evidence may be relied on in connection with the selection procedure at issue.

(c) *General considerations in fairness investigations.* Users conducting a study of fairness should review the A.P.A. Standards regarding investigation of possible bias in testing. An investigation of fairness of a selection procedure depends on both evidence of validity and the manner in which the selection procedure is to be used in a particular employment context. Fairness of a selection procedure cannot necessarily be specified in advance without investigating these factors. Investigation of fairness of a selection procedure in samples where the range of scores on selection procedures or criterion measures is severely restricted for any subgroup sample (as compared to other subgroup samples) may produce misleading evidence of unfairness. That factor should accordingly be taken into account in conducting such studies and before reliance is placed on the results.

(d) *When unfairness is shown.* If unfairness is demonstrated through a showing that members of a particular group perform better or poorer on the job than their scores on the selection procedure would indicate through comparison with how members of other groups perform, the user may either revise or replace the selection instrument in accordance with these guidelines, or may continue to use the selection instrument operationally

with appropriate revisions in its use to assure compatibility between the probability of successful job performance and the probability of being selected.

(e) *Technical feasibility of fairness studies.* In addition to the general conditions needed for technical feasibility for the conduct of a criterion-related study (see section 16, below) an investigation of fairness requires the following:

(i) An adequate sample of persons in each group available for the study to achieve findings of statistical significance. Guidelines do not require a user to hire or promote persons on the basis of group classifications for the purpose of making it possible to conduct a study of fairness; but the user has the obligation otherwise to comply with these guidelines.

(ii) The samples for each group should be comparable in terms of the actual job they perform, length of time on the job where time on the job is likely to affect performance, and other relevant factors likely to affect validity differences; or such factors should be included in the design of the study and their effects identified.

(f) *Continued use of selection procedures when fairness studies not feasible.* If a study of fairness should otherwise be performed, but is not technically feasible, a selection procedure may be used which has otherwise met the validity standards of these guidelines, unless the technical infeasibility resulted from discriminatory employment practices which are demonstrated by facts other than past failure to conform with requirements for validation of selection procedures. However, when it becomes technically feasible for the user to perform a study of fairness and such a study is otherwise called for, the user should conduct the study of fairness.

C. Technical standards for content validity studies.—(1) *Appropriateness of content validity studies.* Users choosing to validate a selection procedure by a content validity strategy should determine whether it is appropriate to conduct such a study in the particular employment context. A selection procedure can be supported by a content validity strategy to the extent that it is a representative sample of the content of the job. Selection procedures which purport to measure knowledges, skills, or abilities may in certain circumstances be justified by content validity, although they may not be representative samples, if the knowledge, skill, or ability measured by the selection procedure can be operationally defined as provided in section 14C(4) below, and if that knowledge, skill, or ability is a necessary prerequisite to successful job performance.

A selection procedure based upon inferences about mental processes cannot be supported solely or primarily on the basis of content validity. Thus, a content strategy is not appropriate for demonstrating the validity of selection procedures which purport to measure traits or constructs, such as intelligence, aptitude, personality, commonsense, judgment, leadership, and spatial ability. Content validity is also not an appropriate strategy when the selection procedure involves knowledges, skills, or abilities which an employee will be expected to learn on the job.

(2) *Job analysis for content validity.* There should be a job analysis which includes an analysis of the important work behavior(s) required for successful performance and their relative importance and, if the behavior results in work product(s), an analysis of the work product(s). Any job analysis should focus on the work behavior(s) and the tasks associated with them. If work behavior(s) are not observable, the job analysis should identify and analyze those aspects of the behavior(s) that can be observed and the observed work products. The work behavior(s) selected for measurement should be critical work behavior(s) and/or important work behavior(s) constituting most of the job.

(3) *Development of selection procedures.* A selection procedure designed to measure the work behavior may be developed specifically from the job and job analysis in question, or may have been previously developed by the user, or by other users or by a test publisher.

(4) *Standards for demonstrating content validity.* To demonstrate the content validity of a selection procedure, a user should show that the behavior(s) demonstrated in the selection procedure are a representative sample of the behavior(s) of the job in question or that the selection procedure provides a representative sample of the work product of the job. In the case of a selection procedure measuring a knowledge, skill, or ability, the knowledge, skill, or ability being measured should be operationally defined. In the case of a selection procedure measuring a knowledge, the knowledge being measured should be operationally defined as that body of learned information which is used in and is a necessary prerequisite for observable aspects of work behavior of the job. In the case of skills or abilities, the skill or ability being measured should be operationally defined in terms of observable aspects of work behavior of the job. For any selection procedure measuring a knowledge, skill, or ability the user should show that (a) the selection procedure measures and is a representative sample of that knowl-

edge, skill, or ability; and (b) that knowledge, skill, or ability is used in and is a necessary prerequisite to performance of critical or important work behavior(s). In addition, to be content valid, a selection procedure measuring a skill or ability should either closely approximate an observable work behavior, or its product should closely approximate an observable work product. If a test purports to sample a work behavior or to provide a sample of a work product, the manner and setting of the selection procedure and its level and complexity should closely approximate the work situation. The closer the content and the context of the selection procedure are to work samples or work behaviors, the stronger is the basis for showing content validity. As the content of the selection procedure less resembles a work behavior, or the setting and manner of the administration of the selection procedure less resemble the work situation, or the result less resembles a work product, the less likely the selection procedure is to be content valid, and the greater the need for other evidence of validity.

(5) *Reliability.* The reliability of selection procedures justified on the basis of content validity should be a matter of concern to the user. Whenever it is feasible, appropriate statistical estimates should be made of the reliability of the selection procedure.

(6) *Prior training or experience.* A requirement for or evaluation of specific prior training or experience based on content validity, including a specification of level or amount of training or experience, should be justified on the basis of the relationship between the content of the training or experience and the content of the job for which the training or experience is to be required or evaluated. The critical consideration is the resemblance between the specific behaviors, products, knowledges, skills, or abilities in the experience or training and the specific behaviors, products, knowledges, skills, or abilities required on the job, whether or not there is close resemblance between the experience or training as a whole and the job as a whole.

(7) *Content validity of training success.* Where a measure of success in a training program is used as a selection procedure and the content of a training program is justified on the basis of content validity, the use should be justified on the relationship between the content of the training program and the content of the job.

(8) *Operational use.* A selection procedure which is supported on the basis of content validity may be used for a job if it represents a critical work behavior (i.e., a behavior which is necessary for performance of the job) or

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work behaviors which constitute most of the important parts of the job.

(9) *Ranking based on content validity studies.* If a user can show, by a job analysis or otherwise, that a higher score on a content valid selection procedure is likely to result in better job performance, the results may be used to rank persons who score above minimum levels. Where a selection procedure supported solely or primarily by content validity is used to rank job candidates, the selection procedure should measure those aspects of performance which differentiate among levels of job performance.

D. *Technical standards for construct validity studies.*—(1) *Appropriateness of construct validity studies.* Construct validity is a more complex strategy than either criterion-related or content validity. Construct validation is a relatively new and developing procedure in the employment field, and there is at present a lack of substantial literature extending the concept to employment practices. The user should be aware that the effort to obtain sufficient empirical support for construct validity is both an extensive and arduous effort involving a series of research studies, which include criterion related validity studies and which may include content validity studies. Users choosing to justify use of a selection procedure by this strategy should therefore take particular care to assure that the validity study meets the standards set forth below.

(2) *Job analysis for construct validity studies.* There should be a job analysis. This job analysis should show the work behavior(s) required for successful performance of the job, or the groups of jobs being studied, the critical or important work behavior(s) in the job or group of jobs being studied, and an identification of the construct(s) believed to underlie successful performance of these critical or important work behaviors in the job or jobs in question. Each construct should be named and defined, so as to distinguish it from other constructs. If a group of jobs is being studied the jobs should have in common one or more critical or important work behaviors at a comparable level of complexity.

(3) *Relationship to the job.* A selection procedure should then be identified or developed which measures the construct identified in accord with subparagraph (2) above. The user should show by empirical evidence that the selection procedure is validly related to the construct and that the construct is validly related to the performance of critical or important work behavior(s). The relationship between the construct as measured by the selection procedure and the related work behavior(s) should be supported by

empirical evidence from one or more criterion-related studies involving the job or jobs in question which satisfy the provisions of section 14B above.

(4) *Use of construct validity study without new criterion-related evidence.*—(a) *Standards for use.* Until such time as professional literature provides more guidance on the use of construct validity in employment situations, the Federal agencies will accept a claim of construct validity without a criterion-related study which satisfies section 14B above only when the selection procedure has been used elsewhere in a situation in which a criterion-related study has been conducted and the use of a criterion-related validity study in this context meets the standards for transportability of criterion-related validity studies as set forth above in section 7. However, if a study pertains to a number of jobs having common critical or important work behaviors at a comparable level of complexity, and the evidence satisfies subparagraphs 14B (2) and (3) above for those jobs with criterion-related validity evidence for those jobs, the selection procedure may be used for all the jobs to which the study pertains. If construct validity is to be generalized to other jobs or groups of jobs not in the group studied, the Federal enforcement agencies will expect at a minimum additional empirical research evidence meeting the standards of subparagraphs section 14B (2) and (3) above for the additional jobs or groups of jobs.

(b) *Determination of common work behaviors.* In determining whether two or more jobs have one or more work behavior(s) in common, the user should compare the observed work behavior(s) in each of the jobs and should compare the observed work product(s) in each of the jobs. If neither the observed work behavior(s) in each of the jobs nor the observed work product(s) in each of the jobs are the same, the Federal enforcement agencies will presume that the work behavior(s) in each job are different. If the work behaviors are not observable, then evidence of similarity of work products and any other relevant research evidence will be considered in determining whether the work behavior(s) in the two jobs are the same.

DOCUMENTATION OF IMPACT AND VALIDITY EVIDENCE

SEC. 15. *Documentation of impact and validity evidence.*—A. *Required information.* Users of selection procedures other than those users complying with section 15A(1) below should maintain and have available for each job information on adverse impact of the selection process for that job and, where it is determined a selection

process has an adverse impact, evidence of validity as set forth below.

(1) *Simplified recordkeeping for users with less than 100 employees.* In order to minimize recordkeeping burdens on employers who employ one hundred (100) or fewer employees, and other users not required to file EEO-1, et seq., reports, such users may satisfy the requirements of this section 15 if they maintain and have available records showing, for each year:

(a) The number of persons hired, promoted, and terminated for each job, by sex, and where appropriate by race and national origin;

(b) The number of applicants for hire and promotion by sex and where appropriate by race and national origin; and

(c) The selection procedures utilized (either standardized or not standardized).

These records should be maintained for each race or national origin group (see section 4 above) constituting more than two percent (2%) of the labor force in the relevant labor area. However, it is not necessary to maintain records by race and/or national origin (see § 4 above) if one race or national origin group in the relevant labor area constitutes more than ninety-eight percent (98%) of the labor force in the area. If the user has reason to believe that a selection procedure has an adverse impact, the user should maintain any available evidence of validity for that procedure (see sections 7A and 8).

(2) *Information on impact.*—(a) *Collection of information on impact.* Users of selection procedures other than those complying with section 15A(1) above should maintain and have available for each job records or other information showing whether the total selection process for that job has an adverse impact on any of the groups for which records are called for by sections 4B above. Adverse impact determinations should be made at least annually for each such group which constitutes at least 2 percent of the labor force in the relevant labor area or 2 percent of the applicable workforce. Where a total selection process for a job has an adverse impact, the user should maintain and have available records or other information showing which components have an adverse impact. Where the total selection process for a job does not have an adverse impact, information need not be maintained for individual components except in circumstances set forth in subsection 15A(2)(b) below. If the determination of adverse impact is made using a procedure other than the "four-fifths rule," as defined in the first sentence of section 4D above, a justification, consistent with section 4D above, for

the procedure used to determine adverse impact should be available.

(b) *When adverse impact has been eliminated in the total selection process.* Whenever the total selection process for a particular job has had an adverse impact, as defined in section 4 above, in any year, but no longer has an adverse impact, the user should maintain and have available the information on individual components of the selection process required in the preceding paragraph for the period in which there was adverse impact. In addition, the user should continue to collect such information for at least two (2) years after the adverse impact has been eliminated.

(c) *When data insufficient to determine impact.* Where there has been an insufficient number of selections to determine whether there is an adverse impact of the total selection process for a particular job, the user should continue to collect, maintain and have available the information on individual components of the selection process required in section 15(A)(2)(a) above until the information is sufficient to determine that the overall selection process does not have an adverse impact as defined in section 4 above, or until the job has changed substantially.

(3) *Documentation of validity evidence.*—(a) *Types of evidence.* Where a total selection process has an adverse impact (see section 4 above) the user should maintain and have available for each component of that process which has an adverse impact, one or more of the following types of documentation evidence:

(i) Documentation evidence showing criterion-related validity of the selection procedure (see section 15B, below).

(ii) Documentation evidence showing content validity of the selection procedure (see section 15C, below).

(iii) Documentation evidence showing construct validity of the selection procedure (see section 15D, below).

(iv) Documentation evidence from other studies showing validity of the selection procedure in the user's facility (see section 15E, below).

(v) Documentation evidence showing why a validity study cannot or need not be performed and why continued use of the procedure is consistent with Federal law.

(b) *Form of report.* This evidence should be compiled in a reasonably complete and organized manner to permit direct evaluation of the validity of the selection procedure. Previously written employer or consultant reports of validity, or reports describing validity studies completed before the issuance of these guidelines are acceptable if they are complete in regard to the documentation requirements

contained in this section, or if they satisfied requirements of guidelines which were in effect when the validity study was completed. If they are not complete, the required additional documentation should be appended. If necessary information is not available the report of the validity study may still be used as documentation, but its adequacy will be evaluated in terms of compliance with the requirements of these guidelines.

(c) *Completeness.* In the event that evidence of validity is reviewed by an enforcement agency, the validation reports completed after the effective date of these guidelines are expected to contain the information set forth below. Evidence denoted by use of the word "Essential" is considered critical. If information denoted essential is not included, the report will be considered incomplete unless the user affirmatively demonstrates either its unavailability due to circumstances beyond the user's control or special circumstances of the user's study which make the information irrelevant. Evidence not so denoted is desirable but its absence will not be a basis for considering a report incomplete. The user should maintain and have available the information called for under the heading "Source Data" in sections 15B(11) and 15D(11). While it is a necessary part of the study, it need not be submitted with the report. All statistical results should be organized and presented in tabular or graphic form to the extent feasible.

B. *Criterion-related validity studies.* Reports of criterion-related validity for a selection procedure should include the following information:

(1) *User(s), location(s), and date(s) of study.* Dates and location(s) of the job analysis or review of job information, the date(s) and location(s) of the administration of the selection procedures and collection of criterion data, and the time between collection of data on selection procedures and criterion measures should be provided (Essential). If the study was conducted at several locations, the address of each location, including city and State, should be shown.

(2) *Problem and setting.* An explicit definition of the purpose(s) of the study and the circumstances in which the study was conducted should be provided. A description of existing selection procedures and cutoff scores, if any, should be provided.

(3) *Job analysis or review of job information.* A description of the procedure used to analyze the job or group of jobs, or to review the job information should be provided (Essential). Where a review of job information results in criteria which may be used without a full job analysis (see section 14B(3)), the basis for the selection of

these criteria should be reported (Essential). Where a job analysis is required a complete description of the work behavior(s) or work outcome(s), and measures of their criticality or importance should be provided (Essential). The report should describe the basis on which the behavior(s) or outcome(s) were determined to be critical or important, such as the proportion of time spent on the respective behaviors, their level of difficulty, their frequency of performance, the consequences of error, or other appropriate factors (Essential). Where two or more jobs are grouped for a validity study, the information called for in this subsection should be provided for each of the jobs, and the justification for the grouping (see section 14B(1)) should be provided (Essential).

(4) *Job titles and codes.* It is desirable to provide the user's job title(s) for the job(s) in question and the corresponding job title(s) and code(s) from U.S. Employment Service's Dictionary of Occupational Titles.

(5) *Criterion measures.* The bases for the selection of the criterion measures should be provided, together with references to the evidence considered in making the selection of criterion measures (essential). A full description of all criteria on which data were collected and means by which they were observed, recorded, evaluated, and quantified, should be provided (essential). If rating techniques are used as criterion measures, the appraisal form(s) and instructions to the rater(s) should be included as part of the validation evidence, or should be explicitly described and available (essential). All steps taken to insure that criterion measures are free from factors which would unfairly alter the scores of members of any group should be described (essential).

(6) *Sample description.* A description of how the research sample was identified and selected should be included (essential). The race, sex, and ethnic composition of the sample, including those groups set forth in section 4A above, should be described (essential). This description should include the size of each subgroup (essential). A description of how the research sample compares with the relevant labor market or work force, the method by which the relevant labor market or work force was defined, and a discussion of the likely effects on validity of differences between the sample and the relevant labor market or work force, are also desirable. Descriptions of educational levels, length of service, and age are also desirable.

(7) *Description of selection procedures.* Any measure, combination of measures, or procedure studied should be completely and explicitly described or attached (essential). If commercial-

ly available selection procedures are studied, they should be described by title, form, and publisher (essential). Reports of reliability estimates and how they were established are desirable.

(8) *Techniques and results.* Methods used in analyzing data should be described (essential). Measures of central tendency (e.g., means) and measures of dispersion (e.g., standard deviations and ranges) for all selection procedures and all criteria should be reported for each race, sex, and ethnic group which constitutes a significant factor in the relevant labor market (essential). The magnitude and direction of all relationships between selection procedures and criterion measures investigated should be reported for each relevant race, sex, and ethnic group and for the total group (essential). Where groups are too small to obtain reliable evidence of the magnitude of the relationship, need not be reported separately. Statements regarding the statistical significance of results should be made (essential). Any statistical adjustments, such as for less than perfect reliability or for restriction of score range in the selection procedure or criterion should be described and explained; and uncorrected correlation coefficients should also be shown (essential). Where the statistical technique categorizes continuous data, such as biserial correlation and the phi coefficient, the categories and the bases on which they were determined should be described and explained (essential). Studies of test fairness should be included where called for by the requirements of section 14B(8) (essential). These studies should include the rationale by which a selection procedure was determined to be fair to the group(s) in question. Where test fairness or unfairness has been demonstrated on the basis of other studies, a bibliography of the relevant studies should be included (essential). If the bibliography includes unpublished studies, copies of these studies, or adequate abstracts or summaries, should be attached (essential). Where revisions have been made in a selection procedure to assure compatibility between successful job performance and the probability of being selected, the studies underlying such revisions should be included (essential). All statistical results should be organized and presented by relevant race, sex, and ethnic group (essential).

(9) *Alternative procedures investigated.* The selection procedures investigated and available evidence of their impact should be identified (essential). The scope, method, and findings of the investigation, and the conclusions reached in light of the findings, should be fully described (essential).

(10) *Uses and applications.* The methods considered for use of the selection procedure (e.g., as a screening device with a cutoff score, for grouping or ranking, or combined with other procedures in a battery) and available evidence of their impact should be described (essential). This description should include the rationale for choosing the method for operational use, and the evidence of the validity and utility of the procedure as it is to be used (essential). The purpose for which the procedure is to be used (e.g., hiring, transfer, promotion) should be described (essential). If weights are assigned to different parts of the selection procedure, these weights and the validity of the weighted composite should be reported (essential). If the selection procedure is used with a cutoff score, the user should describe the way in which normal expectations of proficiency within the work force were determined and the way in which the cutoff score was determined (essential).

(11) *Source data.* Each user should maintain records showing all pertinent information about individual sample members and raters where they are used, in studies involving the validation of selection procedures. These records should be made available upon request of a compliance agency. In the case of individual sample members these data should include scores on the selection procedure(s), scores on criterion measures, age, sex, race, or ethnic group status, and experience on the specific job on which the validation study was conducted, and may also include such things as education, training, and prior job experience, but should not include names and social security numbers. Records should be maintained which show the ratings given to each sample member by each rater.

(12) *Contact person.* The name, mailing address, and telephone number of the person who may be contacted for further information about the validity study should be provided (essential).

(13) *Accuracy and completeness.* The report should describe the steps taken to assure the accuracy and completeness of the collection, analysis, and report of data and results.

C. *Content validity studies.* Reports of content validity for a selection procedure should include the following information:

(1) *User(s), location(s) and date(s) of study.* Dates and location(s) of the job analysis should be shown (essential).

(2) *Problem and setting.* An explicit definition of the purpose(s) of the study and the circumstances in which the study was conducted should be provided. A description of existing selection procedures and cutoff scores, if any, should be provided.

(3) *Job analysis—Content of the job.* A description of the method used to analyze the job should be provided (essential). The work behavior(s), the associated tasks, and, if the behavior results in a work product, the work products should be completely described (essential). Measures of criticality and/or importance of the work behavior(s) and the method of determining these measures should be provided (essential). Where the job analysis also identified the knowledges, skills, and abilities used in work behavior(s), an operational definition for each knowledge in terms of a body of learned information and for each skill and ability in terms of observable behaviors and outcomes, and the relationship between each knowledge, skill, or ability and each work behavior, as well as the method used to determine this relationship, should be provided (essential). The work situation should be described, including the setting in which work behavior(s) are performed, and where appropriate, the manner in which knowledges, skills, or abilities are used, and the complexity and difficulty of the knowledge, skill, or ability as used in the work behavior(s).

(4) *Selection procedure and its content.* Selection procedures, including those constructed by or for the user, specific training requirements, composites of selection procedures, and any other procedure supported by content validity, should be completely and explicitly described or attached (essential). If commercially available selection procedures are used, they should be described by title, form, and publisher (essential). The behaviors measured or sampled by the selection procedure should be explicitly described (essential). Where the selection procedure purports to measure a knowledge, skill, or ability, evidence that the selection procedure measures and is a representative sample of the knowledge, skill, or ability should be provided (essential).

(5) *Relationship between the selection procedure and the job.* The evidence demonstrating that the selection procedure is a representative work sample, a representative sample of the work behavior(s), or a representative sample of a knowledge, skill, or ability as used as a part of a work behavior and necessary for that behavior should be provided (essential). The user should identify the work behavior(s) which each item or part of the selection procedure is intended to sample or measure (essential). Where the selection procedure purports to sample a work behavior or to provide a sample of a work product, a comparison should be provided of the manner, setting, and the level of complexity of the selection procedure with those of

the work situation (essential). If any steps were taken to reduce adverse impact on a race, sex, or ethnic group in the content of the procedure or in its administration, these steps should be described. Establishment of time limits, if any, and how these limits are related to the speed with which duties must be performed on the job, should be explained. Measures of central tendency (e.g., means) and measures of dispersion (e.g., standard deviations) and estimates of reliability should be reported for all selection procedures if available. Such reports should be made for relevant race, sex, and ethnic subgroups, at least on a statistically reliable sample basis.

(6) *Alternative procedures investigated.* The alternative selection procedures investigated and available evidence of their impact should be identified (essential). The scope, method, and findings of the investigation, and the conclusions reached in light of the findings, should be fully described (essential).

(7) *Uses and applications.* The methods considered for use of the selection procedure (e.g., as a screening device with a cutoff score, for grouping or ranking, or combined with other procedures in a battery) and available evidence of their impact should be described (essential). This description should include the rationale for choosing the method for operational use, and the evidence of the validity and utility of the procedure as it is to be used (essential). The purpose for which the procedure is to be used (e.g., hiring, transfer, promotion) should be described (essential). If the selection procedure is used with a cutoff score, the user should describe the way in which normal expectations of proficiency within the work force were determined and the way in which the cutoff score was determined (essential). In addition, if the selection procedure is to be used for ranking, the user should specify the evidence showing that a higher score on the selection procedure is likely to result in better job performance.

(8) *Contact person.* The name, mailing address, and telephone number of the person who may be contacted for further information about the validity study should be provided (essential).

(9) *Accuracy and completeness.* The report should describe the steps taken to assure the accuracy and completeness of the collection, analysis, and report of data and results.

D. *Construct validity studies.* Reports of construct validity for a selection procedure should include the following information:

(1) *User(s), location(s), and date(s) of study.* Date(s) and location(s) of the job analysis and the gathering of other evidence called for by these

guidelines should be provided (essential).

(2) *Problem and setting.* An explicit definition of the purpose(s) of the study and the circumstances in which the study was conducted should be provided. A description of existing selection procedures and cutoff scores, if any, should be provided.

(3) *Construct definition.* A clear definition of the construct(s) which are believed to underlie successful performance of the critical or important work behavior(s) should be provided (essential). This definition should include the levels of construct performance relevant to the job(s) for which the selection procedure is to be used (essential). There should be a summary of the position of the construct in the psychological literature, or in the absence of such a position, a description of the way in which the definition and measurement of the construct was developed and the psychological theory underlying it (essential). Any quantitative data which identify or define the job constructs, such as factor analyses, should be provided (essential).

(4) *Job analysis.* A description of the method used to analyze the job should be provided (essential). A complete description of the work behavior(s) and, to the extent appropriate, work outcomes and measures of their criticality and/or importance should be provided (essential). The report should also describe the basis on which the behavior(s) or outcomes were determined to be important, such as their level of difficulty, their frequency of performance, the consequences of error or other appropriate factors (essential). Where jobs are grouped or compared for the purposes of generalizing validity evidence, the work behavior(s) and work product(s) for each of the jobs should be described, and conclusions concerning the similarity of the jobs in terms of observable work behaviors or work products should be made (essential).

(5) *Job titles and codes.* It is desirable to provide the selection procedure user's job title(s) for the job(s) in question and the corresponding job title(s) and code(s) from the United States Employment Service's dictionary of occupational titles.

(6) *Selection procedure.* The selection procedure used as a measure of the construct should be completely and explicitly described or attached (essential). If commercially available selection procedures are used, they should be identified by title, form and publisher (essential). The research evidence of the relationship between the selection procedure and the construct, such as factor structure, should be included (essential). Measures of central tendency, variability and reliability of

the selection procedure should be provided (essential). Whenever feasible, these measures should be provided separately for each relevant race, sex and ethnic group.

(7) *Relationship to job performance.* The criterion-related study(ies) and other empirical evidence of the relationship between the construct measured by the selection procedure and the related work behavior(s) for the job or jobs in question should be provided (essential). Documentation of the criterion-related study(ies) should satisfy the provisions of section 15B above or section 15E(1) below, except for studies conducted prior to the effective date of these guidelines (essential). Where a study pertains to a group of jobs, and, on the basis of the study, validity is asserted for a job in the group, the observed work behaviors and the observed work products for each of the jobs should be described (essential). Any other evidence used in determining whether the work behavior(s) in each of the jobs is the same should be fully described (essential).

(8) *Alternative procedures investigated.* The alternative selection procedures investigated and available evidence of their impact should be identified (essential). The scope, method, and findings of the investigation, and the conclusions reached in light of the findings should be fully described (essential).

(9) *Uses and applications.* The methods considered for use of the selection procedure (e.g., as a screening device with a cutoff score, for grouping or ranking, or combined with other procedures in a battery) and available evidence of their impact should be described (essential). This description should include the rationale for choosing the method for operational use, and the evidence of the validity and utility of the procedure as it is to be used (essential). The purpose for which the procedure is to be used (e.g., hiring, transfer, promotion) should be described (essential). If weights are assigned to different parts of the selection procedure, these weights and the validity of the weighted composite should be reported (essential). If the selection procedure is used with a cutoff score, the user should describe the way in which normal expectations of proficiency within the work force were determined and the way in which the cutoff score was determined (essential).

(10) *Accuracy and completeness.* The report should describe the steps taken to assure the accuracy and completeness of the collection, analysis, and report of data and results.

(11) *Source data.* Each user should maintain records showing all pertinent

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information relating to its study of construct validity.

(12) *Contact person.* The name, mailing address, and telephone number of the individual who may be contacted for further information about the validity study should be provided (essential).

E. *Evidence of validity from other studies.* When validity of a selection procedure is supported by studies not done by the user, the evidence from the original study or studies should be compiled in a manner similar to that required in the appropriate section of this section 15 above. In addition, the following evidence should be supplied:

(1) *Evidence from criterion-related validity studies.*—a. *Job information.* A description of the important job behavior(s) of the user's job and the basis on which the behaviors were determined to be important should be provided (essential). A full description of the basis for determining that these important work behaviors are the same as those of the job in the original study (or studies) should be provided (essential).

b. *Relevance of criteria.* A full description of the basis on which the criteria used in the original studies are determined to be relevant for the user should be provided (essential).

c. *Other variables.* The similarity of important applicant pool or sample characteristics reported in the original studies to those of the user should be described (essential). A description of the comparison between the race, sex and ethnic composition of the user's relevant labor market and the sample in the original validity studies should be provided (essential).

d. *Use of the selection procedure.* A full description should be provided showing that the use to be made of the selection procedure is consistent with the findings of the original validity studies (essential).

e. *Bibliography.* A bibliography of reports of validity of the selection procedure for the job or jobs in question should be provided (essential). Where any of the studies included an investigation of test fairness, the results of this investigation should be provided (essential). Copies of reports published in journals that are not commonly available should be described in detail or attached (essential). Where a user is relying upon unpublished studies, a reasonable effort should be made to obtain these studies. If these unpublished studies are the sole source of validity evidence they should be described in detail or attached (essential). If these studies are not available, the name and address of the source, an adequate abstract or summary of the validity study and data, and a contact person in the source organization should be provided (essential).

(2) *Evidence from content validity studies.* See section 14C(3) and section 15C above.

(3) *Evidence from construct validity studies.* See sections 14D(2) and 15D above.

F. *Evidence of validity from cooperative studies.* Where a selection procedure has been validated through a cooperative study, evidence that the study satisfies the requirements of sections 7, 8 and 15E should be provided (essential).

G. *Selection for higher level job.* If a selection procedure is used to evaluate candidates for jobs at a higher level than those for which they will initially be employed, the validity evidence should satisfy the documentation provisions of this section 15 for the higher level job or jobs, and in addition, the user should provide: (1) a description of the job progression structure, formal or informal; (2) the data showing how many employees progress to the higher level job and the length of time needed to make this progression; and (3) an identification of any anticipated changes in the higher level job. In addition, if the test measures a knowledge, skill or ability, the user should provide evidence that the knowledge, skill or ability is required for the higher level job and the basis for the conclusion that the knowledge, skill or ability is not expected to develop from the training or experience on the job.

H. *Interim use of selection procedures.* If a selection procedure is being used on an interim basis because the procedure is not fully supported by the required evidence of validity, the user should maintain and have available (1) substantial evidence of validity for the procedure, and (2) a report showing the date on which the study to gather the additional evidence commenced, the estimated completion date of the study, and a description of the data to be collected (essential).

DEFINITIONS

SEC. 16. *Definitions.* The following definitions shall apply throughout these guidelines:

A. *Ability.* A present competence to perform an observable behavior or a behavior which results in an observable product.

B. *Adverse impact.* A substantially different rate of selection in hiring, promotion, or other employment decision which works to the disadvantage of members of a race, sex, or ethnic group. See section 4 of these guidelines.

C. *Compliance with these guidelines.* Use of a selection procedure is in compliance with these guidelines if such use has been validated in accord with these guidelines (as defined below), or if such use does not result in adverse

impact on any race, sex, or ethnic group (see section 4, above), or, in unusual circumstances, if use of the procedure is otherwise justified in accord with Federal law. See section 6B, above.

D. *Content validity.* Demonstrated by data showing that the content of a selection procedure is representative of important aspects of performance on the job. See section 5B and section 14C.

E. *Construct validity.* Demonstrated by data showing that the selection procedure measures the degree to which candidates have identifiable characteristics which have been determined to be important for successful job performance. See section 5B and section 14D.

F. *Criterion-related validity.* Demonstrated by empirical data showing that the selection procedure is predictive of or significantly correlated with important elements of work behavior. See sections 5B and 14B.

G. *Employer.* Any employer subject to the provisions of the Civil Rights Act of 1964, as amended, including State or local governments and any Federal agency subject to the provisions of section 717 of the Civil Rights Act of 1964, as amended, and any Federal contractor or subcontractor or federally assisted construction contractor or subcontractor covered by Executive Order 11246, as amended.

H. *Employment agency.* Any employment agency subject to the provisions of the Civil Rights Act of 1964, as amended.

I. *Enforcement action.* For the purposes of section 4 a proceeding by a Federal enforcement agency such as a lawsuit or an administrative proceeding leading to debarment from or withholding, suspension, or termination of Federal Government contracts or the suspension or withholding of Federal Government funds; but not a finding of reasonable cause or a conciliation process or the issuance of right to sue letters under title VII or under Executive Order 11246 where such finding, conciliation, or issuance of notice of right to sue is based upon an individual complaint.

J. *Enforcement agency.* Any agency of the executive branch of the Federal Government which adopts these guidelines for purposes of the enforcement of the equal employment opportunity laws or which has responsibility for securing compliance with them.

K. *Job analysis.* A detailed statement of work behaviors and other information relevant to the job.

L. *Job description.* A general statement of job duties and responsibilities.

M. *Knowledge.* A body of information applied directly to the performance of a function.

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N. Labor organization. Any labor organization subject to the provisions of the Civil Rights Act of 1964, as amended, and any committee subject thereto controlling apprenticeship or other training.

O. Observable. Able to be seen, heard, or otherwise perceived by a person other than the person performing the action.

P. Race, sex, or ethnic group. Any group of persons identifiable on the grounds of race, color, religion, sex, or national origin.

Q. Selection procedure. Any measure, combination of measures, or procedure used as a basis for any employment decision. Selection procedures include the full range of assessment techniques from traditional paper and pencil tests, performance tests, training programs, or probationary periods and physical, educational, and work experience requirements through informal or casual interviews and unsorted application forms.

R. Selection rate. The proportion of applicants or candidates who are hired, promoted, or otherwise selected.

S. Should. The term "should" as used in these guidelines is intended to connote action which is necessary to achieve compliance with the guidelines, while recognizing that there are circumstances where alternative courses of action are open to users.

T. Skill. A present, observable competence to perform a learned psychomotor act.

U. Technical feasibility. The existence of conditions permitting the conduct of meaningful criterion-related validity studies. These conditions include: (1) An adequate sample of persons available for the study to achieve findings of statistical significance; (2) having or being able to obtain a sufficient range of scores on the selection procedure and job performance measures to produce validity results which can be expected to be representative of the results if the ranges normally expected were utilized; and (3) having or being able to devise unbiased, reliable and relevant measures of job performance or other criteria of employee adequacy. See section 14B(2). With respect to investigation of possible unfairness, the same considerations are applicable to each group for which the study is made. See section 14B(8).

V. Unfairness of selection procedure. A condition in which members of one race, sex, or ethnic group characteristically obtain lower scores on a selection procedure than members of another group, and the differences are not reflected in differences in measures of job performance. See section 14B(7).

W. User. Any employer, labor organization, employment agency, or licensing or certification board, to the

extent it may be covered by Federal equal employment opportunity law, which uses a selection procedure as a basis for any employment decision. Whenever an employer, labor organization, or employment agency is required by law to restrict recruitment for any occupation to those applicants who have met licensing or certification requirements, the licensing or certifying authority to the extent it may be covered by Federal equal employment opportunity law will be considered the user with respect to those licensing or certification requirements. Whenever a State employment agency or service does no more than administer or monitor a procedure as permitted by Department of Labor regulations, and does so without making referrals or taking any other action on the basis of the results, the State employment agency will not be deemed to be a user.

X. Validated in accord with these guidelines or properly validated. A demonstration that one or more validity study or studies meeting the standards of these guidelines has been conducted, including investigation and, where appropriate, use of suitable alternative selection procedures as contemplated by section 3B, and has produced evidence of validity sufficient to warrant use of the procedure for the intended purpose under the standards of these guidelines.

Y. Work behavior. An activity performed to achieve the objectives of the job. Work behaviors involve observable (physical) components and unobservable (mental) components. A work behavior consists of the performance of one or more tasks. Knowledge, skills, and abilities are not behaviors, although they may be applied in work behaviors.

APPENDIX

17. *Policy statement on affirmative action* (see section 13B). The Equal Employment Opportunity Coordinating Council was established by act of Congress in 1972, and charged with responsibility for developing and implementing agreements and policies designed, among other things, to eliminate conflict and inconsistency among the agencies of the Federal Government responsible for administering Federal law prohibiting discrimination on grounds of race, color, sex, religion, and national origin. This statement is issued as an initial response to the requests of a number of State and local officials for clarification of the Government's policies concerning the role of affirmative action in the overall equal employment opportunity program. While the Coordinating Council's adoption of this statement expresses only the views of the signatory agencies concerning this important subject, the principles set forth below

should serve as policy guidance for other Federal agencies as well.

(1) Equal employment opportunity is the law of the land. In the public sector of our society this means that all persons, regardless of race, color, religion, sex, or national origin shall have equal access to positions in the public service limited only by their ability to do the job. There is ample evidence in all sectors of our society that such equal access frequently has been denied to members of certain groups because of their sex, racial, or ethnic characteristics. The remedy for such past and present discrimination is twofold.

On the one hand, vigorous enforcement of the laws against discrimination is essential. But equally, and perhaps even more important are affirmative, voluntary efforts on the part of public employers to assure that positions in the public service are genuinely and equally accessible to qualified persons, without regard to their sex, racial, or ethnic characteristics. Without such efforts equal employment opportunity is no more than a wish. The importance of voluntary affirmative action on the part of employers is underscored by title VII of the Civil Rights Act of 1964, Executive Order 11246, and related laws and regulations—all of which emphasize voluntary action to achieve equal employment opportunity.

As with most management objectives, a systematic plan based on sound organizational analysis and problem identification is crucial to the accomplishment of affirmative action objectives. For this reason, the Council urges all State and local governments to develop and implement results oriented affirmative action plans which deal with the problems so identified.

The following paragraphs are intended to assist State and local governments by illustrating the kinds of analyses and activities which may be appropriate for a public employer's voluntary affirmative action plan. This statement does not address remedies imposed after a finding of unlawful discrimination.

(2) Voluntary affirmative action to assure equal employment opportunity is appropriate at any stage of the employment process. The first step in the construction of any affirmative action plan should be an analysis of the employer's work force to determine whether percentages of sex, race, or ethnic groups in individual job classifications are substantially similar to the percentages of those groups available in the relevant job market who possess the basic job-related qualifications.

When substantial disparities are found through such analyses, each element of the overall selection process should be examined to determine

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which elements operate to exclude persons on the basis of sex, race, or ethnic group. Such elements include, but are not limited to, recruitment, testing, ranking certification, interview, recommendations for selection, hiring, promotion, etc. The examination of each element of the selection process should at a minimum include a determination of its validity in predicting job performance.

(3) When an employer has reason to believe that its selection procedures have the exclusionary effect described in paragraph 2 above, it should initiate affirmative steps to remedy the situation. Such steps, which in design and execution may be race, color, sex, or ethnic "conscious," include, but are not limited to, the following:

(a) The establishment of a long-term goal, and short-range, interim goals and timetables for the specific job classifications, all of which should take into account the availability of basically qualified persons in the relevant job market;

(b) A recruitment program designed to attract qualified members of the group in question;

(c) A systematic effort to organize work and redesign jobs in ways that provide opportunities for persons lacking "journeyman" level knowledge or skills to enter and, with appropriate training, to progress in a career field;

(d) Revamping selection instruments or procedures which have not yet been validated in order to reduce or eliminate exclusionary effects on particular groups in particular job classifications;

(e) The initiation of measures designed to assure that members of the affected group who are qualified to perform the job are included within the pool of persons from which the selecting official makes the selection;

(f) A systematic effort to provide career advancement training, both classroom and on-the-job, to employees locked into dead end jobs; and

(g) The establishment of a system for regularly monitoring the effectiveness of the particular affirmative action program, and procedures for making timely adjustments in this program where effectiveness is not demonstrated.

(4) The goal of any affirmative action plan should be achievement of genuine equal employment opportunity for all qualified persons. Selection under such plans should be based

upon the ability of the applicant(s) to do the work. Such plans should not require the selection of the unqualified, or the unneeded, nor should they require the selection of persons on the basis of race, color, sex, religion, or national origin. Moreover, while the Council believes that this statement should serve to assist State and local employers, as well as Federal agencies, it recognizes that affirmative action cannot be viewed as a standardized program which must be accomplished in the same way at all times in all places.

Accordingly, the Council has not attempted to set forth here either the minimum or maximum voluntary steps that employers may take to deal with their respective situations. Rather, the Council recognizes that under applicable authorities, State and local employers have flexibility to formulate affirmative action plans that are best suited to their particular situations. In this manner, the Council believes that affirmative action programs will best serve the goal of equal employment opportunity.

Respectfully submitted,

HAROLD R. TYLER, Jr.,
*Deputy Attorney General and
Chairman of the Equal Employment
Coordinating Council.*

MICHAEL H. MOSKOW,
Under Secretary of Labor.

ETHEL BENT WALSH,
*Acting Chairman, Equal Employment
Opportunity Commission.*

ROBERT E. HAMPTON,
Chairman, Civil Service Commission.

ARTHUR E. FLEMMING,
*Chairman, Commission on Civil
Rights.*

Because of its equal employment opportunity responsibilities under the State and Local Government Fiscal Assistance Act of 1972 (the revenue sharing act), the Department of Treasury was invited to participate in the formulation of this policy statement; and it concurs and joins in the adoption of this policy statement.

Done this 26th day of August 1976.

RICHARD ALBRECHT,
*General Counsel,
Department of the Treasury.*

Section 18. Citations. The official title of these guidelines is "Uniform

Guidelines on Employee Selection Procedures (1978)". The Uniform Guidelines on Employee Selection Procedures (1978) are intended to establish a uniform Federal position in the area of prohibiting discrimination in employment practices on grounds of race, color, religion, sex, or national origin. These guidelines have been adopted by the Equal Employment Opportunity Commission, the Department of Labor, the Department of Justice, and the Civil Service Commission.

The official citation is:

"Section —, Uniform Guidelines on Employee Selection Procedure (1978); 43 FR — (August 25, 1978)."

The short form citation is:

"Section —, U.G.E.S.P. (1978); 43 FR — (August 25, 1978)."

When the guidelines are cited in connection with the activities of one of the issuing agencies, a specific citation to the regulations of that agency can be added at the end of the above citation. The specific additional citations are as follows:

Equal Employment Opportunity Commission

29 CFR Part 1607
Department of Labor
Office of Federal Contract Compliance Programs

41 CFR Part 60-3
Department of Justice
28 CFR 50.14
Civil Service Commission
5 CFR 300.103(c)

Normally when citing these guidelines, the section number immediately preceding the title of the guidelines will be from these guidelines series 1-18. If a section number from the codification for an individual agency is needed it can also be added at the end of the agency citation. For example, section 6A of these guidelines could be cited for EEOC as follows: "Section 6A, Uniform Guidelines on Employee Selection Procedures (1978); 43 FR —, (August 25, 1978); 29 CFR Part 1607, section 6A."

ELEANOR HOLMES NORTON,
*Chair, Equal Employment
Opportunity Commission.*

ALAN K. CAMPBELL,
*Chairman,
Civil Service Commission.*

RAY MARSHALL,
Secretary of Labor.

GRIFFIN B. BELL,
Attorney General.

CIVIL SERVICE COMMISSION**Title 5—Administrative Personnel****CHAPTER 1—CIVIL SERVICE
COMMISSION****PART 300—EMPLOYMENT
(GENERAL)****Uniform Guidelines on Employee
Selection Procedures (1978)**

The Uniform Guidelines on Employee Selection Procedures (1978) which are printed at the beginning of this part IV in today's FEDERAL REGISTER are adopted by the Civil Service Commission, in conjunction with the Equal Employment Opportunity Commission, Department of Justice, and the Department of Labor to establish uniformity in prohibiting discrimination in employment practices on grounds of race, color, religion, sex, or national origin. Cross reference documents are

published at 29 CFR parts 1607 (Equal Employment Opportunity Commission), 28 CFR 50.14 (Department of Justice), and 41 CFR 60-3 (Department of Labor) elsewhere in this issue of the FEDERAL REGISTER.

By virtue of the authority vested in it by sections 3301, 3302, 7151, 7154, and 7301 of title 5 and section 4763(b) of title 42, United States Code, and Executive Order 10577, 3 CFR 1954-58 comp. page 218 and Executive Order 11478, 3 CFR 1959 comp. 133, and section 717 of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000e-16), the Civil Service Commission amends title 5, part 300, subpart A, § 300.103(c) of the Code of Federal Regulations to read as follows:

§ 300.103 Basic requirements.

“(c) Equal employment opportunity. An employment practice shall not discriminate on the basis of race, color, religion, sex, age, national origin, partisan political affiliation, or other non-merit factor. Employee selection procedures shall meet the standards established by the “Uniform Guidelines

on Employee Selection Procedures (1978), 43 FR— (August 25, 1978).”

The Civil Service Commission rescinds the Guidelines on Employee Selection Procedures, 41 FR 51752, Federal Personnel Manual part 900, subpart F and adopts the Uniform Guidelines on Employee Selection Procedures (1978), to be issued as identical supplement appendices to supplements 271-1, Development of Qualification Standards; 271-2, Tests and Other Applicant Appraisal Procedures; 335-1, Evaluation of Employees for Promotion and Internal Placement; and 990-1 (Book III), part 900, subpart F, Administration of Standards for a Merit System of Personnel Administration of the Federal Personnel Manual in order to insure the examining, testing standards, and employment practices are not affected by discrimination on the basis of race, color, religion, sex or national origin.

Effective date: September 25, 1978.

ALAN K. CAMPBELL,
Chairman,
Civil Service Commission.

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DEPARTMENT OF JUSTICE

Title 28—Judicial Administration

CHAPTER 1—DEPARTMENT OF JUSTICE

PART 50—STATEMENTS OF POLICY

Uniform Guidelines on Employee Selection Procedures (1978)

The Uniform Guidelines on Employee Selection Procedures which are provided at the beginning of this part IV in today's FEDERAL REGISTER are adopted by the Department of Justice, in conjunction with the Civil Service Commission, Equal Employment Opportunity Commission, and the Department of Labor to establish a uni-

prohibiting discrimination in employment practices on grounds of race, color, religion, sex, or national origin. Cross reference documents are published at 5 CFR 300.103(c), (Civil Service Commission) 29 CFR 1607 (Equal Employment Opportunity Commission), and 41 CFR 60-3 (Department of Labor), elsewhere in this issue of the FEDERAL REGISTER.

By virtue of the authority vested in me by 28 U.S.C. 509 and 5 U.S.C. 301, Sec. 50.14 of part 50 of chapter 1 of title 28 of the Code of Federal Regulations is amended by substituting the Uniform Guidelines on Employee Selection Procedures (1978) for part I through part IV.

Effective date: September 25, 1978.

GRIFFIN B. BELL,
Attorney General.

[6570-06]

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION**Title 29—Labor****CHAPTER XIV—EQUAL EMPLOYMENT OPPORTUNITY COMMISSION****PART 1607—UNIFORM GUIDELINES ON EMPLOYEE SELECTION PROCEDURES (1978)**

The Uniform Guidelines on Employee Selection Procedures, which are printed at the beginning of this part IV in today's FEDERAL REGISTER are adopted by the Equal Employment Opportunity Commission, in conjunction with the Civil Service Commission, Department of Justice, and the Department of Labor to establish a uniform Federal position in the area of prohibiting discrimination in employment practices on grounds of race, color, religion, sex, or national origin. Cross reference documents are published at 5 CFR 300.103(c) (Civil Service Commission), 28 CFR 50.14 (Department of Justice) and 41 CFR 60-3 (Department of Labor), elsewhere in this issue.

By virtue of the authority vested in it by sections 713 and 709 of title VII of the Civil Rights Act of 1964 (78 Stat. 265), as amended by the Equal Employment Opportunity Act of 1972 (Pub. L. 92-261), (42 U.S.C. 2000e-12 and 2000e-8), the Equal Employment Opportunity Commission hereby revises part 1607 of chapter XIV of title 29 of the Code of Federal Regulations by rescinding the Guidelines on Employee Selection Procedures (see 35 FR 12333, August 1, 1970; and 41 FR 51984, November 24, 1976) and adopting the Uniform Guidelines on Employee Selection Procedures (1978) as a new part 1607.

Effective date: September 25, 1978.

ELEANOR HOLMES NORTON,
Chair.

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[6570-06]

DEPARTMENT OF LABOR**Title 41—Public Contracts and
Property Management****CHAPTER 60—OFFICE OF FEDERAL
CONTRACT COMPLIANCE PRO-
GRAMS, DEPARTMENT OF LABOR****PART 60-3—UNIFORM GUIDELINES
ON EMPLOYEE SELECTION PROCE-
DURES (1978)**

The Uniform Guidelines on Employee Selection Procedures which are printed at the beginning of this part IV of today's FEDERAL REGISTER are adopted by the Department of Labor, in conjunction with the Civil Service Commission, Department of Justice, and the Equal Employment Opportunity Commission to establish a uniform Federal position in the area of prohibiting discrimination in employment practices on grounds of race, color, religion, sex, or national origin. Cross reference documents are published at 5 CFR 300.103(c) (Civil Service Commission), 28 CFR 50.14 (Department of Justice) and 29 CFR 1607 (Equal Employment Opportunity Commission), elsewhere in this issue of the FEDERAL REGISTER.

By virtue of the authority of sections 201, 202, 203, 203(a), 205, 206(a), 301, 303(b), and 403(b) of Executive Order 11246, as amended, 30 FR 12319; 32 FR 14303; section 60-1.2 of part 60-1 of 41 CFR chapter 60, and section 715 of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000e-14), part 60-3 of chapter 60 of title 41 of the Code of Federal Regulations is revised by rescinding the Guidelines on Employee Selection Procedures (see 41 FR 51744, November 23, 1976) and adopting the Uniform Guidelines on Employee Selection Procedures (1978) as a new part 60-3.

Effective date: September 25, 1978.

RAY MARSHALL,
Secretary of Labor.

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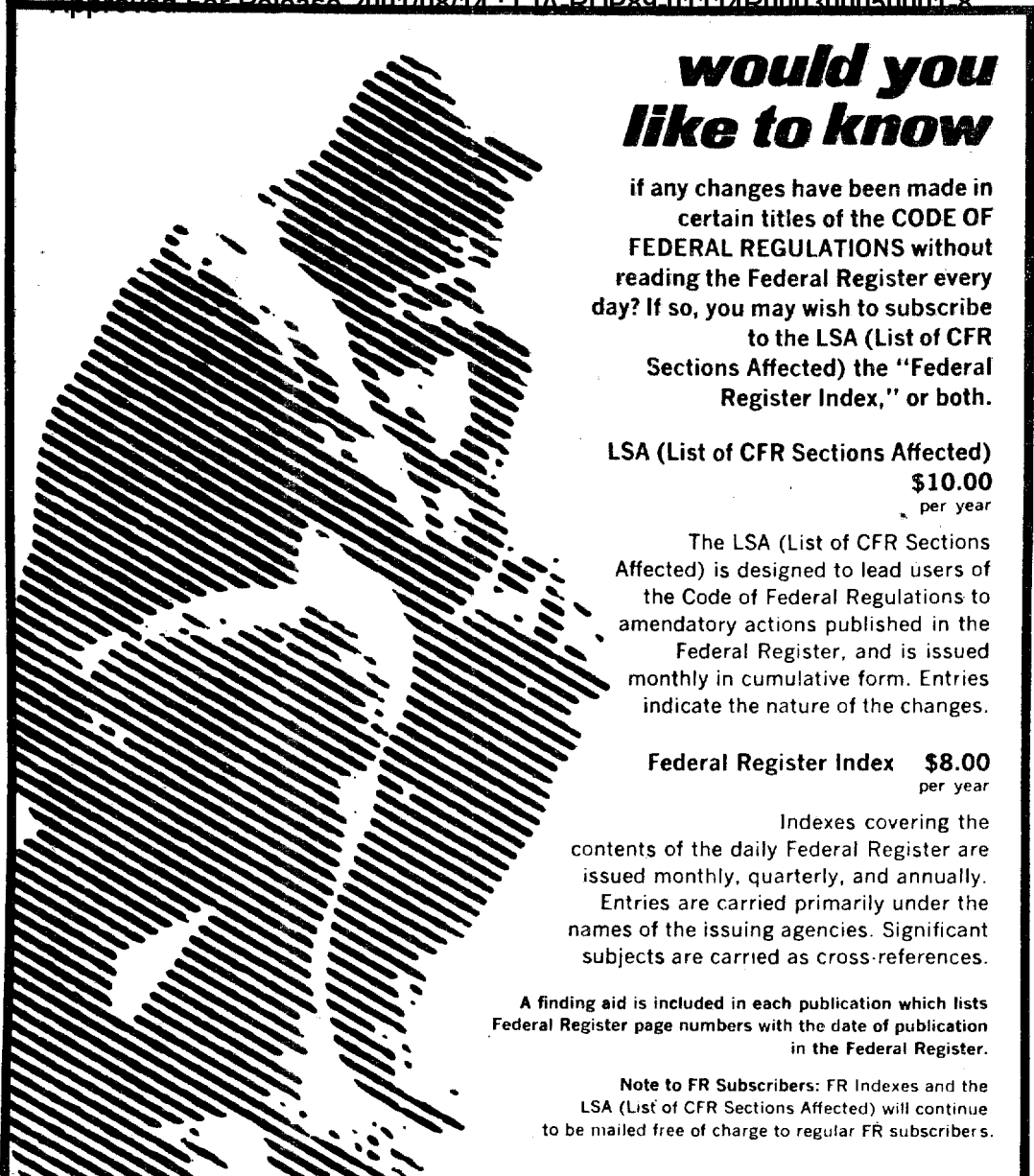
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PART IV



**EQUAL EMPLOYMENT
OPPORTUNITY
COMMISSION**

**OFFICE OF PERSONNEL
MANAGEMENT**

DEPARTMENT OF JUSTICE

DEPARTMENT OF LABOR

**DEPARTMENT OF THE
TREASURY**

■

**ADOPTION OF QUESTIONS AND
ANSWERS TO CLARIFY AND
PROVIDE A COMMON
INTERPRETATION OF THE
UNIFORM GUIDELINES ON
EMPLOYEE SELECTION
PROCEDURES**

[6570-06-M]

Title 29—Labor

CHAPTER XIV—EQUAL EMPLOYMENT
OPPORTUNITY COMMISSIONPART 1607—UNIFORM GUIDELINES
ON EMPLOYEE SELECTION PROCEDURE
S (1978)

Title 5—Administrative Personnel

OFFICE OF PERSONNEL
MANAGEMENTPART 300—EMPLOYMENT
(GENERAL)

Title 28—Judicial Administration

CHAPTER I—DEPARTMENT OF
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PART 50—STATEMENTS OF POLICY

Title 31—Money and Finance:
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DEPARTMENT OF THE TREASURYPART 51—FISCAL ASSISTANCE TO
STATE AND LOCAL GOVERNMENTSTitle 41—Public Contracts and
Property ManagementCHAPTER 60—OFFICE OF FEDERAL
CONTRACT COMPLIANCE PRO-
GRAMS, DEPARTMENT OF LABORPART 60-3—UNIFORM GUIDELINES
ON EMPLOYEE SELECTION PROCEDURE
S (1978)Adoption of Questions and Answers
To Clarify and Provide a Common
Interpretation of the Uniform
Guidelines on Employee Selection
Procedures

AGENCIES: Equal Employment Opportunity Commission, Office of Personnel Management, Department of Justice, Department of Labor and Department of Treasury.

ACTION: Adoption of questions and answers designed to clarify and provide a common interpretation of the Uniform Guidelines on Employee Selection Procedures.

SUMMARY: The Uniform Guidelines on Employee Selection Procedures were issued by the five Federal agen-

cies having primary responsibility for the enforcement of Federal equal employment opportunity laws, to establish a uniform Federal government position. See 43 FR 38290, et seq. (Aug. 25, 1978) and 43 FR 40223 (Sept. 11, 1978). They became effective on September 25, 1978. The issuing agencies recognize the need for a common interpretation of the Uniform Guidelines, as well as the desirability of providing additional guidance to employers and other users, psychologists, and investigators, compliance officers and other Federal enforcement personnel. These Questions and Answers are intended to address that need and to provide such guidance.

EFFECTIVE DATE: March 2, 1979.

FOR FURTHER INFORMATION
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INTRODUCTION

The problems addressed by the Uniform Guidelines on Employee Selection Procedures (43 FR 38290 et seq., August 25, 1978) are numerous and im-

portant, and some of them are complex. The history of the development of those Guidelines is set forth in the introduction to them (43 FR 38290-95). The experience of the agencies has been that a series of answers to commonly asked questions is helpful in providing guidance not only to employers and other users, but also to psychologists and others who are called upon to conduct validity studies, and to investigators, compliance officers and other Federal personnel who have enforcement responsibilities.

The Federal agencies which issued the Uniform Guidelines—the Departments of Justice and Labor, the Equal Employment Opportunity Commission, the Civil Service Commission (which has been succeeded in relevant part by the Office of Personnel Management), and the Office of Revenue Sharing, Treasury Department—recognize that the goal of a uniform position on these issues can best be achieved through a common interpretation of the same guidelines. The following Questions and Answers are part of such a common interpretation. The material included is intended to interpret and clarify, but not to modify, the provisions of the Uniform Guidelines. The questions selected are commonly asked questions in the field and those suggested by the Uniform Guidelines themselves and by the extensive comments received on the various sets of proposed guidelines prior to their adoption. Terms are used in the questions and answers as they are defined in the Uniform Guidelines.

The agencies recognize that additional questions may be appropriate for similar treatment at a later date, and contemplate working together to provide additional guidance in interpreting the Uniform Guidelines. Users and other interested persons are invited to submit additional questions.

ELEANOR HOLMES NORTON,
*Chair, Equal Employment
Opportunity Commission.*

ALAN K. CAMPBELL,
*Director, Office of
Personnel Management.*

DREW S. DAYS III,
*Assistant Attorney General,
Civil Rights Division, Department
of Justice.*

WELDEN ROUGEAU,
*Director, Office of Federal Contract
Compliance, Department
of Labor.*

KENT A. PETERSON,
*Acting Deputy Director,
Office of Revenue Sharing.*

I. PURPOSE AND SCOPE

1. Q. What is the purpose of the Guidelines?

A. The guidelines are designed to aid in the achievement of our nation's

goal of equal employment opportunity without discrimination on the grounds of race, color, sex, religion or national origin. The Federal agencies have adopted the Guidelines to provide a uniform set of principles governing use of employee selection procedures which is consistent with applicable legal standards and validation standards generally accepted by the psychological profession and which the Government will apply in the discharge of its responsibilities.

2. Q. What is the basic principle of the Guidelines?

A. A selection process which has an adverse impact on the employment opportunities of members of a race, color, religion, sex, or national origin group (referred to as "race, sex, and ethnic group," as defined in Section 16P) and thus disproportionately screens them out is unlawfully discriminatory unless the process or its component procedures have been validated in accord with the Guidelines, or the user otherwise justifies them in accord with Federal law. See Sections 3 and 6. This principle was adopted by the Supreme Court unanimously in *Griggs v. Duke Power Co.*, 401 U.S. 424, and was ratified and endorsed by the Congress when it passed the Equal Employment Opportunity Act of 1972, which amended Title VII of the Civil Rights Act of 1964.

3. Q. Who is covered by the Guidelines?

A. The Guidelines apply to private and public employers, labor organizations, employment agencies, apprenticeship committees, licensing and certification boards (see Question 7), and contractors or subcontractors, who are covered by one or more of the following provisions of Federal equal employment opportunity law: Title VII of the Civil Rights Act of 1964, as amended by the Equal Employment Opportunity Act of 1972 (hereinafter Title VII); Executive Order 11246, as amended by Executive Orders 11375 and 12086 (hereinafter Executive Order 11246); the State and Local Fiscal Assistance Act of 1972, as amended; Omnibus Crime Control and Safe Streets Act of 1968, as amended; and the Intergovernmental Personnel Act of 1970, as amended. Thus, under Title VII, the Guidelines apply to the Federal Government with regard to

Federal employment. Through Title VII they apply to most private employers who have 15 or more employees for 20 weeks or more a calendar year, and to most employment agencies, labor organizations and apprenticeship committees. They apply to state and local governments which employ 15 or more employees, or which receive revenue sharing funds, or which receive funds from the Law Enforcement Assistance Administration to impose and strengthen law enforcement and criminal justice, or which receive grants or other federal assistance under a program which requires maintenance of personnel standards on a merit basis. They apply through Executive Order 11246 to contractors and subcontractors of the Federal Government and to contractors and subcontractors under federally-assisted construction contracts.

4. Q. Are college placement officers and similar organizations considered to be users subject to the Guidelines?

A. Placement offices may or may not be subject to the Guidelines depending on what services they offer. If a placement office uses a selection procedure as a basis for any employment decision, it is covered under the definition of "user". Section 16. For example, if a placement office selects some students for referral to an employer but rejects others, it is covered. However, if the placement office refers all interested students to an employer, it is not covered, even though it may offer office space and provision for informing the students of job openings. The Guidelines are intended to cover all users of employee selection procedures, including employment agencies, who are subject to Federal equal employment opportunity law.

5. Q. Do the Guidelines apply only to written tests?

A. No. They apply to all selection procedures used to make employment decisions, including interviews, review of experience or education from application forms, work samples, physical requirements, and evaluations of performance. Sections 2B and 16Q, and see Question 6.

6. Q. What practices are covered by the Guidelines?

A. The Guidelines apply to employee selection procedures which are used in making employment decisions, such as hiring, retention, promotion, transfer, demotion, dismissal or referral. Section 2B. Employee selection procedures include job requirements (physical, education, experience), and evaluation of applicants or candidates on the basis of application forms, interviews, performance tests, paper and pencil tests, performance in training programs or probationary periods, and any other procedures used to make an employment decision whether admin-

istered by the employer or by an employment agency. See Section 2B.

7. Q. Do the Guidelines apply to the licensing and certification functions of state and local governments?

A. The Guidelines apply to such functions to the extent that they are covered by Federal law. Section 2B. The courts are divided on the issue of such coverage. The Government has taken the position that at least some kinds of licensing and certification which deny persons access to employment opportunity may be enjoined in an action brought pursuant to Section 707 of the Civil Rights Act of 1964, as amended.

8. Q. What is the relationship between Federal equal employment opportunity law, embodied in these Guidelines, and State and Local government merit system laws or regulations requiring rank ordering of candidates and selection from a limited number of the top candidates?

A. The Guidelines permit ranking where the evidence of validity is sufficient to support that method of use. State or local laws which compel rank ordering generally do so on the assumption that the selection procedure is valid. Thus, if there is adverse impact and the validity evidence does not adequately support that method of use, proper interpretation of such a state law would require validation prior to ranking. Accordingly, there is no necessary or inherent conflict between Federal law and State or local laws of the kind described.

Under the Supremacy Clause of the Constitution (Art. VI, Cl. 2), however, Federal law or valid regulation overrides any contrary provision of state or local law. Thus, if there is any conflict, Federal equal opportunity law prevails. For example, in *Rosenfeld v. So. Pacific Co.*, 444 F. 2d 1219 (9th Cir., 1971), the court held invalid state protective laws which prohibited the employment of women in jobs entailing long hours or heavy labor, because the state laws were in conflict with Title VII. Where a State or local official believes that there is a possible conflict, the official may wish to consult with the State Attorney General, County or City attorney, or other legal official to determine how to comply with the law.

II. ADVERSE IMPACT, THE BOTTOM LINE AND AFFIRMATIVE ACTION

9. Q. Do the Guidelines require that only validated selection procedures be used?

A. No. Although validation of selection procedures is desirable in personnel management, the Uniform Guidelines require users to produce evidence of validity only when the selection procedure adversely affects the opportunities of a race, sex, or ethnic group

¹Section references throughout these questions and answers are to the sections of the *Uniform Guidelines on Employee Selection Procedures* (herein referred to as "Guidelines") that were published by the Equal Employment Opportunity Commission, the Civil Service Commission, the Department of Labor, and the Department of Justice on Aug. 25, 1978, 43 FR 38290. The Uniform Guidelines were adopted by the Office of Revenue Sharing of the Department of Treasury on September 11, 1978. 43 FR 40223.

for hire, transfer, promotion, retention or other employment decision. If there is no adverse impact, there is no validation requirement under the Guidelines. Sections 1B and 3A. See also, Section 6A.

10. Q. What is adverse impact?

A. Under the Guidelines adverse impact is a substantially different rate of selection in hiring, promotion or other employment decision which works to the disadvantage of members of a race, sex or ethnic group. Sections 4D and 16B. See Questions 11 and 12.

11. Q. What is a substantially different rate of selection?

A. The agencies have adopted a rule of thumb under which they will generally consider a selection rate for any race, sex, or ethnic group which is less than four-fifths (4/5ths) or eighty percent (80%) of the selection rate for the group with the highest selection rate as a substantially different rate of selection. See Section 4D. This "4/5ths" or "80%" rule of thumb is not intended as a legal definition, but is a practical means of keeping the attention of the enforcement agencies on serious discrepancies in rates of hiring, promotion and other selection decisions.

For example, if the hiring rate for whites other than Hispanics is 60%, for American Indians 45%, for Hispanics 48%, and for Blacks 51%, and each of these groups constitutes more than 2% of the labor force in the relevant labor area (see Question 16), a comparison should be made of the selection rate for each group with that of the highest group (whites). These comparisons show the following impact ratios: American Indians 45/60 or 75%; Hispanics 48/60 or 80%; and Blacks 51/60 or 85%. Applying the 4/5ths or 80% rule of thumb, on the basis of the above information alone, adverse impact is indicated for American Indians but not for Hispanics or Blacks.

12. Q. How is adverse impact determined?

A. Adverse impact is determined by a four step process.

(1) calculate the rate of selection for each group (divide the number of persons selected from a group by the number of applicants from that group).

(2) observe which group has the highest selection rate.

(3) calculate the impact ratios, by comparing the selection rate for each group with that of the highest group (divide the selection rate for a group by the selection rate for the highest group).

(4) observe whether the selection rate for any group is substantially less (i.e., usually less than 4/5ths or 80%) than the selection rate for the highest group. If it is, adverse impact is indi-

cated in most circumstances. See Section 4D.

For example:

Applicants	Hires	Selection rate Percent hired
80 White.....	48	48/80 or 60%
40 Black.....	12	12/40 or 30%

A comparison of the black selection rate (30%) with the white selection rate (60%) shows that the black rate is 30/60, or one-half (or 50%) of the white rate. Since the one-half (50%) is less than 4/5ths (80%) adverse impact is usually indicated.

The determination of adverse impact is not purely arithmetic however; and other factors may be relevant. See, Section 4D.

13. Q. Is adverse impact determined on the basis of the overall selection process or for the components in that process?

A. Adverse impact is determined first for the overall selection process for each job. If the overall selection process has an adverse impact, the adverse impact of the individual selection procedure should be analyzed. For any selection procedures in the process having an adverse impact which the user continues to use in the same manner, the user is expected to have evidence of validity satisfying the Guidelines. Sections 4C and 5D. If there is no adverse impact for the overall selection process, in most circumstances there is no obligation under the Guidelines to investigate adverse impact for the components, or to validate the selection procedures used for that job. Section 4C. But see Question 25.

14. Q. The Guidelines designate the "total selection process" as the initial basis for determining the impact of selection procedures. What is meant by the "total selection process"?

A. The "total selection process" refers to the combined effect of all selection procedures leading to the final employment decision such as hiring or promoting. For example, appraisal of candidates for administrative assistant positions in an organization might include initial screening based upon an application blank and interview, a written test, a medical examination, a background check, and a supervisor's interview. These in combination are the total selection process. Additionally, where there is more than one route to the particular kind of employment decision, the total selection process encompasses the combined results of all routes. For example, an employer may select some applicants for a particular kind of job through appropriate written and performance tests. Others may be selected through an internal upward mobility program, on the basis

of successful performance in a directly related trainee type of position. In such a case, the impact of the total selection process would be the combined effect of both avenues of entry.

15. Q. What is meant by the terms "applicant" and "candidate" as they are used in the Uniform Guidelines?

A. The precise definition of the term "applicant" depends upon the user's recruitment and selection procedures. The concept of an applicant is that of a person who has indicated an interest in being considered for hiring, promotion, or other employment opportunities. This interest might be expressed by completing an application form, or might be expressed orally, depending upon the employer's practice.

The term "candidate" has been included to cover those situations where the initial step by the user involves consideration of current employees for promotion, or training, or other employment opportunities, without inviting applications. The procedure by which persons are identified as candidates is itself a selection procedure under the Guidelines.

A person who voluntarily withdraws formally or informally at any stage of the selection process is no longer an applicant or candidate for purposes of computing adverse impact. Employment standards imposed by the user which discourage disproportionately applicants of a race, sex or ethnic group may, however, require justification. Records should be kept for persons who were applicants or candidates at any stage of the process.

16. Q. Should adverse impact determinations be made for all groups regardless of their size?

A. No. Section 15A(2) calls for annual adverse impact determinations to be made for each group which constitutes either 2% or more of the total labor force in the relevant labor area, or 2% or more of the applicable workforce. Thus, impact determinations should be made for any employment decision for each group which constitutes 2% or more of the labor force in the relevant labor area. For hiring, such determination should also be made for groups which constitute more than 2% of the applicants; and for promotions, determinations should also be made for those groups which constitute at least 2% of the user's workforce. There are record keeping obligations for all groups, even those which are less than 2%. See Question 86.

17. Q. In determining adverse impact, do you compare the selection rates for males and females, and blacks and whites, or do you compare selection rates for white males, white females, black males and black females?

A. The selection rates for males and females are compared, and the selection rates for the race and ethnic groups are compared with the selection rate of the race or ethnic group with the highest selection rate. Neutral and objective selection procedures free of adverse impact against any race, sex or ethnic group are unlikely to have an impact against a subgroup. Thus there is no obligation to make comparisons for subgroups (e.g., white male, white female, black male, black female). However, there are obligations to keep records (see Question 87), and any apparent exclusion of a subgroup may suggest the presence of discrimination.

18. Q. Is it usually necessary to calculate the statistical significance of differences in selection rates when investigating the existence of adverse impact?

A. No. Adverse impact is normally indicated when one selection rate is less than 80% of the other. The federal enforcement agencies normally will use only the 80% (2/3) rule of thumb, except where large numbers of selections are made. See Questions 20 and 22.

19. Q. Does the 2/3 rule of thumb mean that the Guidelines will tolerate up to 20% discrimination?

A. No. The 2/3 rule of thumb speaks only to the question of adverse impact, and is not intended to resolve the ultimate question of unlawful discrimination. Regardless of the amount of difference in selection rates, unlawful discrimination may be present, and may be demonstrated through appropriate evidence. The 2/3 rule merely establishes a numerical basis for drawing an initial inference and for requiring additional information.

With respect to adverse impact, the Guidelines expressly state (section 4D) that differences in selection rates of less than 20% may still amount to adverse impact where the differences are significant in both statistical and practical terms. See Question 20. In the absence of differences which are large enough to meet the 2/3 rule of thumb or a test of statistical significance, there is no reason to assume that the differences are reliable, or that they are based upon anything other than chance.

20. Q. Why is the 2/3 rule called a rule of thumb?

A. Because it is not intended to be controlling in all circumstances. If, for the sake of illustration, we assume that nationwide statistics show that use of an arrest record would disqualify 10% of all Hispanic persons but only 4% of all whites other than Hispanic (hereafter non-Hispanic), the selection rate for that selection procedure is 90% for Hispanics and 96% for non-Hispanics. Therefore, the 2/3 rule

of thumb would not indicate the presence of adverse impact (90% is approximately 94% of 96%). But in this example, the information is based upon nationwide statistics, and the sample is large enough to yield statistically significant results, and the difference (Hispanics are 2 1/2 times as likely to be disqualified as non-Hispanics) is large enough to be practically significant. Thus, in this example the enforcement agencies would consider a disqualification based on an arrest record alone as having an adverse impact. Likewise, in *Gregory v. Litton Industries*, 472 F. 2d 631 (9th Cir., 1972), the court held that the employer violated Title VII by disqualifying persons from employment solely on the basis of an arrest record, where that disqualification had an adverse impact on blacks and was not shown to be justified by business necessity.

On the other hand, a difference of more than 20% in rates of selection may not provide a basis for finding adverse impact if the number of persons selected is very small. For example, if the employer selected three males and one female from an applicant pool of 20 males and 10 females, the 2/3 rule would indicate adverse impact (selection rate for women is 10%; for men 15%; 10/15 or 66 2/3% is less than 80%), yet the number of selections is too small to warrant a determination of adverse impact. In these circumstances, the enforcement agency would not require validity evidence in the absence of additional information (such as selection rates for a longer period of time) indicating adverse impact. For recordkeeping requirements, see Section 15A(2)(c) and Questions 84 and 85.

21. Q. Is evidence of adverse impact sufficient to warrant a validity study or an enforcement action where the numbers involved are so small that it is more likely than not that the difference could have occurred by chance? For example:

Applicants	Not hired	Hired	Selection rate percent hired
80 White	64	16	20
20 Black	17	3	15
White Selection Rate.....			20
Black Selection Rate			15
15 divided by 20 = 75% (which is less than 80%).			

A. No. If the numbers of persons and the difference in selection rates are so small that it is likely that the difference could have occurred by chance, the Federal agencies will not assume the existence of adverse impact, in the absence of other evidence. In this example, the difference in selection rates is too small, given the small number of black applicants, to constitute adverse

impact in the absence of other information (see Section 4D). If only one more black had been hired instead of a white the selection rate for blacks (20%) would be higher than that for whites (18.7%). Generally, it is inappropriate to require validity evidence or to take enforcement action where the number of persons and the difference in selection rates are so small that the selection of one different person for one job would shift the result from adverse impact against one group to a situation in which that group has a higher selection rate than the other group.

On the other hand, if a lower selection rate continued over a period of time, so as to constitute a pattern, then the lower selection rate would constitute adverse impact, warranting the need for validity evidence.

22. Q. Is it ever necessary to calculate the statistical significance of differences in selection rates to determine whether adverse impact exists?

A. Yes. Where large numbers of selections are made, relatively small differences in selection rates may nevertheless constitute adverse impact if they are both statistically and practically significant. See Section 4D and Question 20. For that reason, if there is a small difference in selection rates (one rate is more than 80% of the other), but large numbers of selections are involved, it would be appropriate to calculate the statistical significance of the difference in selection rates.

23. Q. When the 2/3 rule of thumb shows adverse impact, is there adverse impact under the Guidelines?

A. There usually is adverse impact, except where the number of persons selected and the difference in selection rates are very small. See Section 4D and Questions 20 and 21.

24. Q. Why do the Guidelines rely primarily upon the 2/3 rule of thumb, rather than tests of statistical significance?

A. Where the sample of persons selected is not large, even a large real difference between groups is likely not to be confirmed by a test of statistical significance (at the usual .05 level of significance). For this reason, the Guidelines do not rely primarily upon a test of statistical significance, but use the 2/3 rule of thumb as a practical and easy-to-administer measure of whether differences in selection rates are substantial. Many decisions in day-to-day life are made without reliance upon a test of statistical significance.

25. Q. Are there any circumstances in which the employer should evaluate components of a selection process, even though the overall selection process results in no adverse impact?

A. Yes, there are such circumstances: (1) Where the selection process

sure is a significant factor in the continuation of patterns of assignments of incumbent employees caused by prior discriminatory employment practices. Assume, for example, an employer who traditionally hired blacks as employees for the "laborer" department in a manufacturing plant, and traditionally hired only whites as skilled craftsmen. Assume further that the employer in 1962 began to use a written examination not supported by a validity study to screen incumbent employees who sought to enter the apprenticeship program for skilled craft jobs. The employer stopped making racial assignments in 1972. Assume further that for the last four years, there have been special recruitment efforts aimed at recent black high school graduates and that the selection process, which includes the written examination, has resulted in the selection of black applicants for apprenticeship in approximately the same rates as white applicants.

In those circumstances, if the written examination had an adverse impact, its use would tend to keep incumbent black employees in the laborer department, and deny them entry to apprenticeship programs. For that reason, the enforcement agencies would expect the user to evaluate the impact of the written examination, and to have validity evidence for the use of the written examination if it has an adverse impact.

(2) Where the weight of court decisions or administrative interpretations holds that a specific selection procedure is not job related in similar circumstances.

For example, courts have held that because an arrest is not a determination of guilt, an applicant's arrest record by itself does not indicate inability to perform a job consistent with the trustworthy and efficient operation of a business. Yet a no arrest record requirement has a nationwide adverse impact on some minority groups. Thus, an employer who refuses to hire applicants solely on the basis of an arrest record is on notice that this policy may be found to be discriminatory. *Gregory v. Litton Industries*, 472 F. 2d 631 (9th Cir., 1972) (excluding persons from employment solely on the basis of arrests, which has an adverse impact, held to violate Title VII). Similarly, a minimum height requirement disproportionately disqualifies women and some national origin groups, and has been held not to be job related in a number of cases. For example, in *Dothard v. Rawlinson*, 433 U.S. 321 (1977), the Court held that height and weight requirements not shown to be job related were violative of Title VII. Thus an employer using a minimum height requirement should have evidence of its validity.

(3) In addition, there may be other circumstances in which an enforcement agency may decide to request an employer to evaluate components of a selection process, but such circumstances would clearly be unusual. Any such decision will be made only at a high level in the agency. Investigators and compliance officers are not authorized to make this decision.

26. Q. Does the bottom line concept of Section 4C apply to the administrative processing of charges of discrimination filed with an issuing agency, alleging that a specific selection procedure is discriminatory?

A. No. The bottom line concept applies only to enforcement actions as defined in Section 16 of the Guidelines. Enforcement actions include only court enforcement actions and other similar proceedings as defined in Section 16I. The EEOC administrative processing of charges of discrimination (investigation, finding of reasonable cause/no cause, and conciliation) required by Section 706(b) of Title VII are specifically exempted from the bottom line concept by the definition of an enforcement action. The bottom line concept is a result of a decision by the various enforcement agencies that, as a matter of prosecutorial discretion, they will devote their limited enforcement resources to the most serious offenders of equal employment opportunity laws. Since the concept is not a rule of law, it does not affect the discharge by the EEOC of its statutory responsibilities to investigate charges of discrimination, render an administrative finding on its investigation, and engage in voluntary conciliation efforts. Similarly, with respect to the other issuing agencies, the bottom line concept applies not to the processing of individual charges, but to the initiation of enforcement action.

27. Q. An employer uses one test or other selection procedure to select persons for a number of different jobs. Applicants are given the test, and the successful applicants are then referred to different departments and positions on the basis of openings available and their interests. The Guidelines appear to require assessment of adverse impact on a job-by-job basis (Section 15A(2)(a)). Is there some way to show that the test as a whole does not have adverse impact even though the proportions of members of each race, sex or ethnic group assigned to different jobs may vary?

A. Yes, in some circumstances. The Guidelines require evidence of validity only for those selection procedures which have an adverse impact, and which are part of a selection process which has an adverse impact. If the test is administered and used in the same fashion for a variety of jobs, the impact of that test can be assessed in

the aggregate. The records showing the results of the test, and the total number of persons selected, generally would be sufficient to show the impact of the test. If the test has no adverse impact, it need not be validated.

But the absence of adverse impact of the test in the aggregate does not end the inquiry. For there may be discrimination or adverse impact in the assignment of individuals to, or in the selection of persons for, particular jobs. The Guidelines call for records to be kept and determinations of adverse impact to be made of the overall selection process on a job by job basis. Thus, if there is adverse impact in the assignment or selection procedures for a job even though there is no adverse impact from the test, the user should eliminate the adverse impact from the assignment procedure or justify the assignment procedure.

28. Q. The Uniform Guidelines apply to the requirements of Federal law prohibiting employment practices which discriminate on the grounds of race, color, religion, sex or national origin. However, records are required to be kept only by sex and by specified race and ethnic groups. How can adverse impact be determined for religious groups and for national origin groups other than those specified in Section 4B of the Guidelines?

A. The groups for which records are required to be maintained are the groups for which there is extensive evidence of continuing discriminatory practices. This limitation is designed in part to minimize the burden on employers for recordkeeping which may not be needed.

For groups for which records are not required, the person(s) complaining may obtain information from the employer or others (voluntarily or through legal process) to show that adverse impact has taken place. When that has been done, the various provisions of the Uniform Guidelines are fully applicable.

Whether or not there is adverse impact, Federal equal employment opportunity law prohibits any deliberate discrimination or disparate treatment on grounds of religion or national origin, as well as on grounds of sex, color, or race.

Whenever "ethnic" is used in the Guidelines or in these Questions and Answers, it is intended to include national origin and religion, as set forth in the statutes, executive orders, and regulations prohibiting discrimination. See Section 16P.

29. Q. What is the relationship between affirmative action and the requirements of the Uniform Guidelines?

A. The two subjects are different, although related. Compliance with the Guidelines does not relieve users of

their affirmative action obligations, including those of Federal contractors and subcontractors under Executive Order 11246. Section 13.

The Guidelines encourage the development and effective implementation of affirmative action plans or programs in two ways. First, in determining whether to institute action against a user on the basis of a selection procedure which has adverse impact and which has not been validated, the enforcement agency will take into account the general equal employment opportunity posture of the user with respect to the job classifications for which the procedure is used and the progress which has been made in carrying out any affirmative action program. Section 4E. If the user has demonstrated over a substantial period of time that it is in fact appropriately utilizing in the job or group of jobs in question the available race, sex or ethnic groups in the relevant labor force, the enforcement agency will generally exercise its discretion by not initiating enforcement proceedings based on adverse impact in relation to the applicant flow. Second, nothing in the Guidelines is intended to preclude the use of selection procedures, consistent with Federal law, which assist in the achievement of affirmative action objectives. Section 13A. See also, Questions 30 and 31.

30. Q. When may a user be race, sex or ethnic-conscious?

A. The Guidelines recognize that affirmative action programs may be race, sex or ethnic conscious in appropriate circumstances. (See Sections 4E and 13; See also Section 17, Appendix). In addition to obligatory affirmative action programs (See Question 29), the Guidelines encourage the adoption of voluntary affirmative action programs. Users choosing to engage in voluntary affirmative action are referred to EEOC's Guidelines on Affirmative Action (44 F.R. 4422, January 19, 1979). A user may justifiably be race, sex or ethnic-conscious in circumstances where it has reason to believe that qualified persons of specified race, sex or ethnicity have been or may be subject to the exclusionary effects of its selection procedures or other employment practices in its work force or particular jobs therein. In establishing long and short range goals, the employer may use the race, sex, or ethnic classification as the basis for such goals (Section 17(3) (a)).

In establishing a recruiting program, the employer may direct its recruiting activities to locations or institutions which have a high proportion of the race, sex, or ethnic group which has been excluded or underutilized (section 17(3) (b)). In establishing the pool of qualified persons from which final

selections are to be made, the employer may take reasonable steps to assure that members of the excluded or underutilized race, sex, or ethnic group are included in the pool (Section 17(3) (e)).

Similarly, the employer may be race, sex or ethnic-conscious in determining what changes should be implemented if the objectives of the programs are not being met (Section 17(3) (g)).

Even apart from affirmative action programs a user may be race, sex or ethnic-conscious in taking appropriate and lawful measures to eliminate adverse impact from selection procedures (Section 6A).

31. Q. Section 6A authorizes the use of alternative selection procedures to eliminate adverse impact, but does not appear to address the issue of validity. Thus, the use of alternative selection procedures without adverse impact seems to be presented as an option in lieu of validation. Is that its intent?

A. Yes. Under Federal equal employment opportunity law the use of any selection procedure which has an adverse impact on any race, sex or ethnic group is discriminatory unless the procedure has been properly validated, or the use of the procedure is otherwise justified under Federal law. *Griggs v. Duke Power Co.*, 401 U.S. 424 (1971); Section 3A. If a selection procedure has an adverse impact, therefore, Federal equal employment opportunity law authorizes the user to choose lawful alternative procedures which eliminate the adverse impact rather than demonstrating the validity of the original selection procedure.

Many users, while wishing to validate all of their selection procedures, are not able to conduct the validity studies immediately. Such users have the option of choosing alternative techniques which eliminate adverse impact, with a view to providing a basis for determining subsequently which selection procedures are valid and have as little adverse impact as possible.

Apart from Federal equal employment opportunity law, employers have economic incentives to use properly validated selection procedures. Nothing in Section 6A should be interpreted as discouraging the use of properly validated selection procedures; but Federal equal employment opportunity law does not require validity studies to be conducted unless there is adverse impact. See Section 2C.

III. GENERAL QUESTIONS CONCERNING VALIDITY AND THE USE OF SELECTION PROCEDURES

32. Q. What is "validation" according to the Uniform Guidelines?

A. Validation is the demonstration of the job relatedness of a selection procedure. The Uniform Guidelines

recognize the same three validity strategies recognized by the American Psychological Association:

(1) Criterion-related validity—a statistical demonstration of a relationship between scores on a selection procedure and job performance of a sample of workers.

(2) Content validity—a demonstration that the content of a selection procedure is representative of important aspects of performance on the job.

(3) Construct validity—a demonstration that (a) a selection procedure measures a construct (something believed to be an underlying human trait or characteristic, such as honesty) and (b) the construct is important for successful job performance.

33. Q. What is the typical process by which validity studies are reviewed by an enforcement agency?

A. The validity study is normally requested by an enforcement officer during the course of a review. The officer will first determine whether the user's data show that the overall selection process has an adverse impact, and if so, which component selection procedures have an adverse impact. See Section 15A(3). The officer will then ask for the evidence of validity for each procedure which has an adverse impact. See Sections 15B, C, and D. This validity evidence will be referred to appropriate personnel for review. Agency findings will then be communicated to the user.

34. Q. Can a user send its validity evidence to an enforcement agency before a review, so as to assure its validity?

A. No. Enforcement agencies will not review validity reports except in the context of investigations or reviews. Even in those circumstances, validity evidence will not be reviewed without evidence of how the selection procedure is used and what impact its use has on various race, sex, and ethnic groups.

35. Q. May reports of validity prepared by publishers of commercial tests and printed in test manuals or other literature be helpful in meeting the Guidelines?

A. They may be. However, it is the user's responsibility to determine that the validity evidence is adequate to meet the Guidelines. See Section 7, and Questions 43 and 66. Users should not use selection procedures which are likely to have an adverse impact without reviewing the evidence of validity to make sure that the standards of the Guidelines are met.

The following questions and answers (36-81) assume that a selection procedure has an adverse impact and is part of a selection process that has an adverse impact.

36. Q. How can users justify continued use of a procedure on a basis other than validity?

A. Normally, the method of justifying selection procedures with an adverse impact and the method to which the Guidelines are primarily addressed, is validation. The method of justification of a procedure by means other than validity is one to which the Guidelines are not addressed. See Section 6B. In *Griggs v. Duke Power Co.*, 401 U.S. 424, the Supreme Court indicated that the burden on the user was a heavy one, but that the selection procedure could be used if there was a "business necessity" for its continued use; therefore, the Federal agencies will consider evidence that a selection procedure is necessary for the safe and efficient operation of a business to justify continued use of a selection procedure.

37. Q. Is the demonstration of a rational relationship (as that term is used in constitutional law) between a selection procedure and the job sufficient to meet the validation requirements of the Guidelines?

A. No. The Supreme Court in *Washington v. Davis*, 426 U.S. 229 (1976) stated that different standards would be applied to employment discrimination allegations arising under the Constitution than would be applied to employment discrimination allegations arising under Title VII. The *Davis* case arose under the Constitution, and no Title VII violation was alleged. The Court applied a traditional constitutional law standard of "rational relationship" and said that it would defer to the "seemingly reasonable acts of administrators and executives." However, it went on to point out that under Title VII, the appropriate standard would still be an affirmative demonstration of the relationship between the selection procedure and measures of job performance by means of accepted procedures of validation and it would be an "insufficient response to demonstrate some rational basis" for a selection procedure having an adverse impact. Thus, the mere demonstration of a rational relationship between a selection procedure and the job does not meet the requirement of Title VII of the Civil Rights Act of 1964, or of Executive Order 11246, or the State and Local Fiscal Assistance Act of 1972, as amended (the revenue sharing act) or the Omnibus Crime Control and Safe Streets Act of 1968, as amended, and will not meet the requirements of these Guidelines for a validity study. The three validity strategies called for by these Guidelines all require evidence that the selection procedure is related to successful performance on the job. That evidence may be obtained

through local validation or through validity studies done elsewhere.

38. Q. Can a user rely upon written or oral assertions of validity instead of evidence of validity?

A. No. If a user's selection procedures have an adverse impact, the user is expected to produce evidence of the validity of the procedures as they are used. Thus, the unsupported assertion by anyone, including representatives of the Federal government or State Employment Services, that a test battery or other selection procedure has been validated is not sufficient to satisfy the Guidelines.

39. Q. Are there any formal requirements imposed by these Guidelines as to who is allowed to perform a validity study?

A. No. A validity study is judged on its own merits, and may be performed by any person competent to apply the principles of validity research, including a member of the user's staff or a consultant. However, it is the user's responsibility to see that the study meets validity provisions of the Guidelines, which are based upon professionally accepted standards. See Question 42.

40. Q. What is the relationship between the validation provisions of the Guidelines and other statements of psychological principles, such as the *Standards for Educational and Psychological Tests*, published by the American Psychological Association (Wash., D.C., 1974) (hereinafter "American Psychological Association *Standards*")?

A. The validation provisions of the Guidelines are designed to be consistent with the generally accepted standards of the psychological profession. These Guidelines also interpret Federal equal employment opportunity law, and embody some policy determinations of an administrative nature. To the extent that there may be differences between particular provisions of the Guidelines and expressions of validation principles found elsewhere, the Guidelines will be given precedence by the enforcement agencies.

41. Q. When should a validity study be carried out?

A. When a selection procedure has adverse impact on any race, sex or ethnic group, the Guidelines generally call for a validity study or the elimination of adverse impact. See Sections 3A and 6, and Questions 9, 31, and 36. If a selection procedure has adverse impact, its use in making employment decisions without adequate evidence of validity would be inconsistent with the Guidelines. Users who choose to continue the use of a selection procedure with an adverse impact until the procedure is challenged increase the risk that they will be found to be engaged in discriminatory practices and will be

liable for back pay awards, plaintiffs' attorneys' fees, loss of Federal contracts, subcontracts or grants, and the like. Validation studies begun on the eve of litigation have seldom been found to be adequate. Users who choose to validate selection procedures should consider the potential benefit from having a validation study completed or well underway before the procedures are administered for use in employment decisions.

42. Q. Where can a user obtain professional advice concerning validation of selection procedures?

A. Many industrial and personnel psychologists validate selection procedures, review published evidence of validity and make recommendations with respect to the use of selection procedures. Many of these individuals are members or fellows of Division 14 (Industrial and Organizational Psychology) or Division 5 (Evaluation and Measurement) of the American Psychological Association. They can be identified in the membership directory of that organization. A high level of qualification is represented by a diploma in Industrial Psychology awarded by the American Board of Professional Psychology.

Individuals with the necessary competence may come from a variety of backgrounds. The primary qualification is pertinent training and experience in the conduct of validation research.

Industrial psychologists and other persons competent in the field may be found as faculty members in colleges and universities (normally in the departments of psychology or business administration) or working as individual consultants or as members of a consulting organization.

Not all psychologists have the necessary expertise. States have boards which license and certify psychologists, but not generally in a specialty such as industrial psychology. However, State psychological associations may be a source of information as to individuals qualified to conduct validation studies. Addresses of State psychological associations or other sources of information may be obtained from the American Psychological Association, 1200 Seventeenth Street, NW., Washington, D.C. 20036.

43. Q. Can a selection procedure be a valid predictor of performance on a job in a certain location and be invalid for predicting success on a different job or the same job in a different location?

A. Yes. Because of differences in work behaviors, criterion measures, study samples or other factors, a selection procedure found to have validity in one situation does not necessarily have validity in different circumstances. Conversely, a selection procedure

... dure not found to have validity in one situation may have validity in different circumstances. For these reasons, the Guidelines requires that certain standards be satisfied before a user may rely upon findings of validity in another situation. Section 7 and Section 14D. See also, Question 66. Cooperative and multi-unit studies are however encouraged, and, when those standards of the Guidelines are satisfied, validity evidence specific to each location is not required. See Section 7C and Section 8.

44. Q. Is the user of a selection procedure required to develop the procedure?

A. No. A selection procedure developed elsewhere may be used. However, the user has the obligation to show that its use for the particular job is consistent with the Guidelines. See Section 7.

45. Q. Do the Guidelines permit users to engage in cooperative efforts to meet the Guidelines?

A. Yes. The Guidelines not only permit but encourage such efforts. Where users have participated in a cooperative study which meets the validation standards of these Guidelines and proper account has been taken of variables which might affect the applicability of the study to specific users, validity evidence specific to each user will not be required. Section 8.

46. Q. Must the same method for validation be used for all parts of a selection process?

A. No. For example, where a selection process includes both a physical performance test and an interview, the physical test might be supported on the basis of content validity, and the interview on the basis of a criterion-related study.

47. Q. Is a showing of validity sufficient to assure the lawfulness of the use of a selection procedure?

A. No. The use of the selection procedure must be consistent with the validity evidence. For example, if a research study shows only that, at a given passing score the test satisfactorily screens out probable failures, the study would not justify the use of substantially different passing scores, or of ranked lists of those who passed. See Section 5G. Similarly, if the research shows that a battery is valid when a particular set of weights is used, the weights actually used must conform to those that were established by the research.

48. Q. Do the Guidelines call for a user to consider and investigate alternative selection procedures when conducting a validity study?

A. Yes. The Guidelines call for a user, when conducting a validity study, to make a reasonable effort to become aware of suitable alternative selection procedures and methods of

use which have as little adverse impact as possible, and to investigate those which are suitable. Section 3B.

An alternative procedure may not previously have been used by the user for the job in question and may not have been extensively used elsewhere. Accordingly, the preliminary determination of the suitability of the alternative selection procedure for the user and job in question may have to be made on the basis of incomplete information. If on the basis of the evidence available, the user determines that the alternative selection procedure is likely to meet its legitimate needs, and is likely to have less adverse impact than the existing selection procedure, the alternative should be investigated further as a part of the validity study. The extent of the investigation should be reasonable. Thus, the investigation should continue until the user has reasonably concluded that the alternative is not useful or not suitable, or until a study of its validity has been completed. Once the full validity study has been completed, including the evidence concerning the alternative procedure, the user should evaluate the results of the study to determine which procedure should be used. See Section 3B and Question 50.

49. Q. Do the Guidelines call for a user continually to investigate "suitable alternative selection procedures and suitable alternative methods of using the selection procedure which have as little adverse impact as possible"?

A. No. There is no requirement for continual investigation. A reasonable investigation of alternatives is called for by the Guidelines as a part of any validity study. Once the study is complete and validity has been found, however, there is generally no obligation to conduct further investigations, until such time as a new study is called for. See, Sections 3B and 5K. If a government agency, complainant, civil rights organization or other person having a legitimate interest shows such a user an alternative procedure with less adverse impact and with substantial evidence of validity for the same job in similar circumstances, the user is obliged to investigate only the particular procedure which has been presented. Section 3B.

50. Q. In what circumstances do the Guidelines call for the use of an alternative selection procedure or an alternative method of using the procedure?

A. The alternative selection procedure (or method of use) should be used when it has less adverse impact and when the evidence shows that its validity is substantially the same or greater for the same job in similar circumstances. Thus, if under the original selection procedure the selection rate for black applicants was only one

half (50 percent) that of the selection rate for white applicants, whereas under the alternative selection procedure the selection rate for blacks is two-thirds (67 percent) that of white applicants, the new alternative selection procedure should be used when the evidence shows substantially the same or greater validity for the alternative than for the original procedure. The same principles apply to a new user who is deciding what selection procedure to institute.

51. Q. What are the factors to be considered in determining whether the validity for one procedure is substantially the same as or greater than that of another procedure?

A. In the case of a criterion-related validity study, the factors include the importance of the criteria for which significant relationships are found, the magnitude of the relationship between selection procedure scores and criterion measures, and the size and composition of the samples used. For content validity, the strength of validity evidence would depend upon the proportion of critical and/or important job behaviors measured, and the extent to which the selection procedure resembles actual work samples or work behaviors. Where selection procedures have been validated by different strategies, or by construct validity, the determination should be made on a case by case basis.

52. Q. The Guidelines require consideration of alternative procedures and alternative methods of use, in light of the evidence of validity and utility and the degree of adverse impact of the procedure. How can a user know that any selection procedure with an adverse impact is lawful?

A. The Uniform Guidelines (Section 5G) expressly permit the use of a procedure in a manner supported by the evidence of validity and utility, even if another method of use has a lesser adverse impact. With respect to consideration of alternative selection procedures, if the user made a reasonable effort to become aware of alternative procedures, has considered them and investigated those which appear suitable as a part of the validity study, and has shown validity for a procedure, the user has complied with the Uniform Guidelines. The burden is then on the person challenging the procedure to show that there is another procedure with better or substantially equal validity which will accomplish the same legitimate business purposes with less adverse impact. Section 3B. See also, *Albemarle Paper Co. v. Moody*, 422 U.S. 405.

53. Q. Are the Guidelines consistent with the decision of the Supreme Court in *Furnco Construction Corp. v. Waters*, — U.S. —, 98 S. Ct. 2943 (1978) where the Court stated: "Title

VII * * * does not impose a duty to adopt a hiring procedure that maximizes hiring of minority employees."

A. Yes. The quoted statement in *Furnco v. Waters* was made on a record where there was no adverse impact in the hiring process, no differential treatment, no intentional discrimination, and no contractual obligations under E.O. 11246. Section 3B of the Guidelines is predicated upon a finding of adverse impact. Section 3B indicates that, when two or more selection procedures are available which serve a legitimate business purpose with substantially equal validity, the user should use the one which has been demonstrated to have the lesser adverse impact. Part V of the Overview of the Uniform Guidelines, in elaborating on this principle, states: "Federal equal employment opportunity law has added a requirement to the process of validation. In conducting a validation study, the employer should consider available alternatives which will achieve its legitimate purpose with lesser adverse impact."

Section 3B of the Guidelines is based on the principle enunciated in the Supreme Court decision in *Albermarle Paper Co. v. Moody*, 422 U.S. 405 (1975) that, even where job relatedness has been proven, the availability of other tests or selection devices which would also serve the employer's legitimate interest in "efficient and trustworthy workmanship" without a similarly undesirable racial effect would be evidence that the employer was using its tests merely as a pretext for discrimination.

Where adverse impact still exists, even though the selection procedure has been validated, there continues to be an obligation to consider alternative procedures which reduce or remove that adverse impact if an opportunity presents itself to do so without sacrificing validity. Where there is no adverse impact, the *Furnco* principle rather than the *Albermarle* principle is applicable.

IV. TECHNICAL STANDARDS

54. Q. How does a user choose which validation strategy to use?

A. A user should select a validation strategy or strategies which are (1) appropriate for the type of selection procedure, the job, and the employment situation, and (2) technically and administratively feasible. Whatever method of validation is used, the basic logic is one of prediction; that is, the presumption that level of performance on the selection procedure will, on the average, be indicative of level of performance on the job after selection. Thus, a criterion-related study, particularly a predictive one, is often regarded as the closest to such an ideal.

See American Psychological Association *Standards*, pp. 26-27.

Key conditions for a criterion-related study are a substantial number of individuals for inclusion in the study, and a considerable range of performance on the selection and criterion measures. In addition, reliable and valid measures of job performance should be available, or capable of being developed. Section 14B(1). Where such circumstances exist, a user should consider use of the criterion-related strategy.

Content validity is appropriate where it is technically and administratively feasible to develop work samples or measures of operationally defined skills, knowledges, or abilities which are a necessary prerequisite to observable work behaviors. Content validity is not appropriate for demonstrating the validity of tests of mental processes or aptitudes or characteristics; and is not appropriate for knowledges, skills or abilities which an employee will be expected to learn on the job. Section 14C(1)

The application of a construct validity strategy to support employee selection procedures is newer and less developed than criterion-related or content validity strategies. Continuing research may result in construct validity becoming more widely used. Because construct validity represents a generalization of findings, one situation in which construct validity might hold particular promise is that where it is desirable to use the same selection procedures for a variety of jobs. An overriding consideration in whether or not to consider construct validation is the availability of an individual with a high level of expertise in this field.

In some situations only one kind of validation study is likely to be appropriate. More than one strategy may be possible in other circumstances, in which case administrative considerations such as time and expense may be decisive. A combination of approaches may be feasible and desirable.

55. Q. Why do the Guidelines recognize only content, construct and criterion-related validity?

A. These three validation strategies are recognized in the Guidelines since they represent the current professional consensus. If the professional community recognizes new strategies or substantial modifications of existing strategies, they will be considered and, if necessary, changes will be made in the Guidelines. Section 5A.

56. Q. Why don't the Uniform Guidelines state a preference for criterion-related validity over content or construct validity?

A. Generally accepted principles of the psychological profession support the use of criterion-related, content or

construct validity strategies as appropriate. American Psychological Association *Standards*, E, pp. 25-26. This use was recognized by the supreme Court in *Washington v. Davis*, 426 U.S. 229, 247, fn. 13. Because the Guidelines describe the conditions under which each validity strategy is inappropriate, there is no reason to state a general preference for any one validity strategy.

57. Q. Are the Guidelines intended to restrict the development of new testing strategies, psychological theories, methods of job analysis or statistical techniques?

A. No. The Guidelines are concerned with the validity and fairness of selection procedures used in making employment decisions, and are not intended to limit research and new developments. See Question 55.

58. Q. Is a full job analysis necessary for all validity studies?

A. It is required for all content and construct studies, but not for all criterion-related studies. See Sections 14A and 14B(2). Measures of the results or outcomes of work behaviors such as production rate or error rate may be used without a full job analysis where a review of information about the job shows that these criteria are important to the employment situation of the user. Similarly, measures such as absenteeism, tardiness or turnover may be used without a full job analysis if these behaviors are shown by a review of information about the job to be important in the specific situation. A rating of overall job performance may be used without a full job analysis only if the user can demonstrate its appropriateness for the specific job and employment situation through a study of the job. The Supreme Court held in *Albermarle Paper Co. v. Moody*, 422 U.S. 405 (1975), that measures of overall job performance should be carefully developed and their use should be standardized and controlled.

59. Q. Section 5J on interim use requires the user to have available substantial evidence of validity. What does this mean?

A. For purposes of compliance with 5J, "substantial evidence" means evidence which may not meet all the validation requirements of the Guidelines but which raises a strong inference that validity pursuant to these standards will soon be shown. Section 5J is based on the proposition that it would not be an appropriate allocation of Federal resources to bring enforcement proceedings against a user who would soon be able to satisfy fully the standards of the Guidelines. For example, a criterion-related study may have produced evidence which meets almost all of the requirements of the Guidelines with the exception that the gathering of the data of test fair-

now is still in progress and the fairness study has not yet produced results. If the correlation coefficient for the group as a whole permits the strong inference that the selection procedure is valid, then the selection procedure may be used on an interim basis pending the completion of the fairness study.

60. Q. What are the potential consequences to a user when a selection procedure is used on an interim basis?

A. The fact that the Guidelines permit interim use of a selection procedure under some conditions does not immunize the user from liability for back pay, attorney fees and the like, should use of the selection procedure later be found to be in violation of the Guidelines. Section 5J. For this reason, users should take steps to come into full compliance with the Guidelines as soon as possible. It is also appropriate for users to consider ways of minimizing adverse impact during the period of interim use.

61. Q. Must provisions for retesting be allowed for job-knowledge tests, where knowledge of the test content would assist in scoring well on it the second time?

A. The primary intent of the provision for retesting is that an applicant who was not selected should be given another chance. Particularly in the case of job-knowledge tests, security precautions may preclude retesting with the same test after a short time. However, the opportunity for retesting should be provided for the same job at a later time, when the applicant may have acquired more of the relevant job knowledges.

62. Q. Under what circumstances may a selection procedure be used for ranking?

A. Criterion-related and construct validity strategies are essentially empirical, statistical processes showing a relationship between performance on the selection procedure and performance on the job. To justify ranking under such validity strategies, therefore, the user need show mathematical support for the proposition that persons who receive higher scores on the procedure are likely to perform better on the job.

Content validity, on the other hand, is primarily a judgmental process concerned with the adequacy of the selection procedure as a sample of the work behaviors. Use of a selection procedure on a ranking basis may be supported by content validity if there is evidence from job analysis or other empirical data that what is measured by the selection procedure is associated with differences in levels of job performance. Section 14C(9); see also Section 5G.

Any conclusion that a content validated procedure is appropriate for

ranking must rest on an inference that higher scores on the procedure are related to better job performance. The more closely and completely the selection procedure approximates the important work behaviors, the easier it is to make such an inference. Evidence that better performance on the procedure is related to greater productivity or to performance of behaviors of greater difficulty may also support such an inference.

Where the content and context of the selection procedure are unlike those of the job, as, for example, in many paper-and-pencil job knowledge tests, it is difficult to infer an association between levels of performance on the procedure and on the job. To support a test of job knowledge on a content validity basis, there must be evidence of a specific tie-in between each item of knowledge tested and one or more work behaviors. See Question 79. To justify use of such a test for ranking, it would also have to be demonstrated from empirical evidence either that mastery of more difficult work behaviors, or that mastery of a greater scope of knowledge corresponds to a greater scope of important work behaviors.

For example, for a particular warehouse worker job, the job analysis may show that lifting a 50-pound object is essential, but the job analysis does not show that lifting heavier objects is essential or would result in significantly better job performance. In this case a test of ability to lift 50 pounds could be justified on a content validity basis for a pass/fail determination. However, ranking of candidates based on relative amount of weight that can be lifted would be inappropriate.

In another instance, a job analysis may reflect that, for the job of machine operator, reading of simple instructions is not a major part of the job but is essential. Thus, reading would be a critical behavior under the Guidelines. See Section 14C(8). Since the job analysis in this example did not also show that the ability to read such instructions more quickly or to understand more complex materials would be likely to result in better job performance, a reading test supported by content validity alone should be used on a pass/fail rather than a ranking basis. In such circumstances, use of the test for ranking would have to be supported by evidence from a criterion-related (or construct) validity study.

On the other hand, in the case of a person to be hired for a typing pool, the job analysis may show that the job consists almost entirely of typing from manuscript, and that productivity can be measured directly in terms of finished typed copy. For such a job,

typing constitutes not only a critical behavior, but it constitutes most of the job. A higher score on a test which measured words per minute typed, with adjustments for errors, would therefore be likely to predict better job performance than a significantly lower score. Ranking or grouping based on such a typing test would therefore be appropriate under the Guidelines.

63. Q. If selection procedures are administered by an employment agency or a consultant for an employer, is the employer relieved of responsibilities under the Guidelines?

A. No. The employer remains responsible. It is therefore expected that the employer will have sufficient information available to show: (a) What selection procedures are being used on its behalf; (b) the total number of applicants for referral by race, sex and ethnic group; (c) the number of persons, by race, sex and ethnic group, referred to the employer; and (d) the impact of the selection procedures and evidence of the validity of any such procedure having an adverse impact as determined above.

A. CRITERION-RELATED VALIDITY

64. Q. Under what circumstances may success in training be used as a criterion in criterion-related validity studies?

A. Success in training is an appropriate criterion when it is (1) necessary for successful job performance or has been shown to be related to degree of proficiency on the job and (2) properly measured. Section 14B(3). The measure of success in training should be carefully developed to ensure that factors which are not job related do not influence the measure of training success. Section 14B(3).

65. Q. When may concurrent validity be used?

A. A concurrent validity strategy assumes that the findings from a criterion-related validity study of current employees can be applied to applicants for the same job. Therefore, if concurrent validity is to be used, differences between the applicant and employee groups which might affect validity should be taken into account. The user should be particularly concerned with those differences between the applicant group and current employees used in the research sample which are caused by work experience or other work related events or by prior selection of employees and selection of the sample. See Section 14B(4).

66. Q. Under what circumstances can a selection procedure be supported (on other than an interim basis) by a criterion-related validity study done elsewhere?

A. A validity study done elsewhere may provide sufficient evidence if four conditions are met (Sec. 7B):

1. The evidence from the other studies clearly demonstrates that the procedure was valid in its use elsewhere.

2. The job(s) for which the selection procedure will be used closely matches the job(s) in the original study as shown by a comparison of major work behaviors as shown by the job analyses in both contexts.

3. Evidence of fairness from the other studies is considered for those groups constituting a significant factor in the user's labor market. Section 7B(3). Where the evidence is not available the user should conduct an internal study of test fairness, if technically feasible. Section 7B(3).

4. Proper account is taken of variables which might affect the applicability of the study in the new setting, such as performance standards, work methods, representativeness of the sample in terms of experience or other relevant factors, and the currency of the study.

67. Q. What does "unfairness of a selection procedure" mean?

A. When a specific score on a selection procedure has a different meaning in terms of expected job performance for members of one race, sex or ethnic group than the same score does for members of another group, the use of that selection procedure may be unfair for members of one of the groups. See section 16V. For example, if members of one group have an average score of 40 on the selection procedure, but perform on the job as well as another group which has an average score of 50, then some uses of the selection procedure would be unfair to the members of the lower scoring group. See Question 70.

68. Q. When should the user investigate the question of fairness?

A. Fairness should be investigated generally at the same time that a criterion-related validity study is conducted, or as soon thereafter as feasible. Section 14B(8).

69. Q. Why do the Guidelines require that users look for evidence of unfairness?

A. The consequences of using unfair selection procedures are severe in terms of discriminating against applicants on the basis of race, sex or ethnic group membership. Accordingly, these studies should be performed routinely where technically feasible and appropriate, whether or not the probability of finding unfairness is small. Thus, the Supreme Court indicated in *Albemarle Paper Co. v. Moody*, 422 U.S. 405, that a validation study was "materially deficient" because, among other reasons, it failed to investigate fairness where it was not shown to be unfeasible to do so. Moreover,

the American Psychological Association *Standards* published in 1974 call for the investigation of test fairness in criterion-related studies wherever feasible (pp. 43-44).

70. Q. What should be done if a selection procedure is unfair for one or more groups in the relevant labor market?

A. The Guidelines discuss three options. See Section 14B(8)(d). First, the selection instrument may be replaced by another validated instrument which is fair to all groups. Second, the selection instrument may be revised to eliminate the sources of unfairness. For example, certain items may be found to be the only ones which cause the unfairness to a particular group, and these items may be deleted or replaced by others. Finally, revisions may be made in the method of use of the selection procedure to ensure that the probability of being selected is compatible with the probability of successful job performance.

The Federal enforcement agencies recognize that there is serious debate in the psychological profession on the question of test fairness, and that information on that concept is developing. Accordingly, the enforcement agencies will consider developments in this field in evaluating actions occasioned by a finding of test unfairness.

71. Q. How is test unfairness related to differential validity and to differential prediction?

A. Test unfairness refers to use of selection procedures based on scores when members of one group characteristically obtain lower scores than members of another group, and the differences are not reflected in measures of job performance. See Sections 16V and 14B(8)(a), and Question 67.

Differential validity and test unfairness are conceptually distinct. Differential validity is defined as a situation in which a given instrument has significantly different validity coefficients for different race, sex or ethnic groups. Use of a test may be unfair to some groups even when differential validity is not found.

Differential prediction is a central concept for one definition of test unfairness. Differential prediction occurs when the use of the same set of scores systematically overpredicts or underpredicts job performance for members of one group as compared to members of another group.

Other definitions of test unfairness which do not relate to differential prediction may, however, also be appropriately applied to employment decisions. Thus these Guidelines are not intended to choose between fairness models as long as the model selected is appropriate to the manner in which the selection procedure is used.

72. Q. What options does a user have if a criterion-related study is appropriate but is not feasible because there are not enough persons in the job?

A. There are a number of options the user should consider, depending upon the particular facts and circumstances, such as:

1. Change the procedure so as to eliminate adverse impact (see Section 6A);

2. Validate a procedure through a content validity strategy, if appropriate (see Section 14C and Questions 54 and 74);

3. Use a selection procedure validated elsewhere in conformity with the Guidelines (see Sections 7-8 and Question 66);

4. Engage in a cooperative study with other facilities or users (in cooperation with such users either bilaterally or through industry or trade associations or governmental groups), or participate in research studies conducted by the state employment security system. Where different locations are combined, care is needed to insure that the jobs studied are in fact the same and that the study is adequate and in conformity with the Guidelines (see Sections 8 and 14 and Question 45).

5. Combine essentially similar jobs into a single study sample. See Section 14B(1).

B. CONTENT VALIDITY

73. Q. Must a selection procedure supported by content validity be an actual "on the job" sample of work behaviors?

A. No. The Guidelines emphasize the importance of a close approximation between the content of the selection procedure and the observable behaviors or products of the job, so as to minimize the inferential leap between performance on the selection procedure and job performance. However, the Guidelines also permit justification on the basis of content validity of selection procedures measuring knowledges, skills, or abilities which are not necessarily samples of work behaviors if: (1) The knowledge, skill, or ability being measured is operationally defined in accord with Section 14C(4); and (2) that knowledge, skill, or ability is a prerequisite for critical or important work behaviors. In addition users may justify a requirement for training, or for experience obtained from prior employment or volunteer work, on the basis of content validity, even though the prior training or experience does not duplicate the job. See Section 14B(6).

74. Q. Is the use of a content validity strategy appropriate for a procedure measuring skills or knowledges which are taught in training after initial employment?

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A. Usually not. The Guidelines state (Section 14C(1)) that content validity is not appropriate where the selection procedure involves knowledges, skills, or abilities which the employee will be expected to learn "on the job". The phrase "on the job" is intended to apply to training which occurs after hiring, promotion or transfer. However, if an ability, such as speaking and understanding a language, takes a substantial length of time to learn, is required for successful job performance, and is not taught to those initial hires who possess it in advance, a test for that ability may be supported on a content validity basis.

75. Q. Can a measure of a trait or construct be validated on the basis of content validity?

A. No. Traits or constructs are by definition underlying characteristics which are intangible and are not directly observable. They are therefore not appropriate for the sampling approach of content validity. Some selection procedures, while labeled as construct measures, may actually be samples of observable work behaviors. Whatever the label, if the operational definitions are in fact based upon observable work behaviors, a selection procedure measuring those behaviors may be appropriately supported by a content validity strategy. For example, while a measure of the construct "dependability" should not be supported on the basis of content validity, promptness and regularity of attendance in a prior work record are frequently inquired into as a part of a selection procedure, and such measures may be supported on the basis of content validity.

76. Q. May a test which measures what the employee has learned in a training program be justified for use in employment decisions on the basis of content validity?

A. Yes. While the Guidelines (Section 14C(1)) note that content validity is not an appropriate strategy for knowledges, skills or abilities which an employee "will be expected to learn on the job", nothing in the Guidelines suggests that a test supported by content validity is not appropriate for determining what the employee has learned on the job, or in a training program. If the content of the test is relevant to the job, it may be used for employment decisions such as retention or assignment. See Section 14C(7).

77. Q. Is a task analysis necessary to support a selection procedure based on content validity?

A. A description of all tasks is not required by the Guidelines. However, the job analysis should describe all important work behaviors and their relative importance and their level of difficulty. Sections 14C(2) and 15C(3). The

job analysis should focus on observable work behaviors and, to the extent appropriate, observable work products, and the tasks associated with the important observable work behaviors and/or work products. The job analysis should identify how the critical or important work behaviors are used in the job, and should support the content of the selection procedure.

78. Q. What is required to show the content validity of a paper-and-pencil test that is intended to approximate work behaviors?

A. Where a test is intended to replicate a work behavior, content validity is established by a demonstration of the similarities between the test and the job with respect to behaviors, products, and the surrounding environmental conditions. Section 14B(4).

Paper-and-pencil tests which are intended to replicate a work behavior are most likely to be appropriate where work behaviors are performed in paper and pencil form (e.g., editing and bookkeeping). Paper-and-pencil tests of effectiveness in interpersonal relations (e.g., sales or supervision), or of physical activities (e.g., automobile repair) or ability to function properly under danger (e.g., firefighters) generally are not close enough approximations of work behaviors to show content validity.

The appropriateness of tests of job knowledge, whether or not in pencil and paper form, is addressed in Question 79.

79. Q. What is required to show the content validity of a test of a job knowledge?

A. There must be a defined, well recognized body of information, and knowledge of the information must be prerequisite to performance of the required work behaviors. The work behavior(s) to which each knowledge is related should be identified on an item by item basis. The test should fairly sample the information that is actually used by the employee on the job, so that the level of difficulty of the test items should correspond to the level of difficulty of the knowledge as used in the work behavior. See Section 14C(1) and (4).

80. Q. Under content validity, may a selection procedure for entry into a job be justified on the grounds that the knowledges, skills or abilities measured by the selection procedure are prerequisites to successful performance in a training program?

A. Yes, but only if the training material and the training program closely approximate the content and level of difficulty of the job and if the knowledges, skills or abilities are not those taught in the training program. For example, if training materials are at a level of reading difficulty substantially in excess of the reading difficulty of

materials used on the job, the Guidelines would not permit justification on a content validity basis of a reading test based on those training materials for entry into the job.

Under the Guidelines a training program itself is a selection procedure if passing it is a prerequisite to retention or advancement. See Section 2C and 14C(17). As such, the content of the training program may only be justified by the relationship between the program and critical or important behaviors of the job itself, or through a demonstration of the relationship between measures of performance in training and measures of job performance.

Under the example given above, therefore, where the requirements in the training materials exceed those on the job, the training program itself could not be validated on a content validity basis if passing it is a basis for retention or promotion.

C. CONSTRUCT VALIDITY

81. Q. In Section 5, "General Standards for Validity Studies," construct validity is identified as no less acceptable than criterion-related and content validity. However, the specific requirements for construct validity, in Section 14D, seem to limit the generalizability of construct validity to the rules governing criterion-related validity. Can this apparent inconsistency be reconciled?

A. Yes. In view of the developing nature of construct validation for employment selection procedures, the approach taken concerning the generalizability of construct validity (section 14D) is intended to be a cautious one. However, construct validity may be generalized in circumstances where transportability of tests supported on the basis of criterion-related validity would not be appropriate. In establishing transportability of criterion-related validity, the jobs should have substantially the same major work behaviors. Section 7B(2). Construct validity, on the other hand, allows for situations where only some of the important work behaviors are the same. Thus, well-established measures of the construct which underlie particular work behaviors and which have been shown to be valid for some jobs may be generalized to other jobs which have some of the same work behaviors but which are different with respect to other work behaviors. Section 14D(4).

As further research and professional guidance on construct validity in employment situations emerge, additional extensions of construct validity for employee selection may become generally accepted in the profession. The agencies encourage further research and professional guidance with respect

to the appropriate use of construct validity.

V. RECORDS AND DOCUMENTATION

82. Q. Do the Guidelines have simplified recordkeeping for small users (employers who employ one hundred or fewer employees and other users not required to file EEO-1, *et seq.* reports)?

A. Yes. Although small users are fully covered by Federal equal employment opportunity law, the Guidelines have reduced their record-keeping burden. See option in Section 15A(1). Thus, small users need not make adverse impact determinations nor are they required to keep applicant data on a job-by-job basis. The agencies also recognize that a small user may find that some or all validation strategies are not feasible. See Question 54. If a small user has reason to believe that its selection procedures have adverse impact and validation is not feasible, it should consider other options. See Sections 7A and 8 and Questions 31, 36, 45, 66, and 72.

83. Q. Is the requirement in the Guidelines that users maintain records of the race, national origin, and sex of employees and applicants constitutional?

A. Yes. For example, the United States Court of Appeals for the First Circuit rejected a challenge on constitutional and other grounds to the Equal Employment Opportunity Commission regulations requiring State and local governmental units to furnish information as to race, national origin and sex of employees. *United States v. New Hampshire*, 539 F. 2d 277 (1st Cir. 1976), *cert. denied*, sub nom. *New Hampshire v. United States*, 429 U.S. 1023. The Court held that the recordkeeping and reporting requirements promulgated under Title VII of the Civil Rights Act of 1964, as amended, were reasonably necessary for the Federal agency to determine whether the state was in compliance with Title VII and thus were authorized and constitutional. The same legal principles apply to recordkeeping with respect to applicants.

Under the Supremacy Clause of the Constitution, the Federal law requiring maintenance of records identifying race, sex and national origin overrides any contrary provision of State law. See Question 8.

The agencies recognize, however, that such laws have been enacted to prevent misuse of this information. Thus, employers should take appropriate steps to ensure proper use of all data. See Question #88.

84. Q. Is the user obliged to keep records which show whether its selection processes have an adverse impact on race, sex, or ethnic groups?

A. Yes. Under the Guidelines users are obliged to maintain evidence indicating the impact which their selection processes have on identifiable race, sex or ethnic groups. Sections 4 A and B. If the selection process for a job does have an adverse impact on one or more such groups, the user is expected to maintain records showing the impact for the individual procedures. Section 15A(2).

85. Q. What are the recordkeeping obligations of a user who cannot determine whether a selection process for a job has adverse impact because it makes an insufficient number of selections for that job in a year?

A. In such circumstances the user should collect, maintain, and have available information on the impact of the selection process and the component procedures until it can determine that adverse impact does not exist for the overall process or until the job has changed substantially. Section 15A(2)(c).

86. Q. Should applicant and selection information be maintained for race or ethnic groups constituting less than 2% of the labor force and the applicants?

A. Small employers and other small users are not obliged to keep such records. Section 15A(1). Employers with more than 100 employees and other users required to file EEO-1 *et seq.* reports should maintain records and other information upon which impact determinations could be made, because section 15A2 requires the maintenance of such information for "any of the groups for which records are called for by section 4B above." See also, Section 4A.

No user, regardless of size, is required to make adverse impact determinations for race or ethnic groups constituting less than 2% of the labor force and the applicants. See Question 16.

87. Q. Should information be maintained which identifies applicants and persons selected both by sex and by race or ethnic group?

A. Yes. Although the Federal agencies have decided not to require computations of adverse impact by subgroups (white males, black males, white females, black females—see Question 17), the Guidelines call for record keeping which allows identification of persons by sex, combined with race or ethnic group, so as to permit the identification of discriminatory practices on any such basis. Section 4A and 4B.

88. Q. How should a user collect data on race, sex or ethnic classifications for purposes of determining the impact of selection procedures?

A. The Guidelines have not specified any particular procedure, and the enforcement agencies will accept differ-

ent procedures that capture the necessary information. Where applications are made in person, a user may maintain a log or applicant flow chart based upon visual observation, identifying the number of persons expressing an interest, by sex and by race or national origin; may in some circumstances rely upon personal knowledge of the user; or may rely upon self-identification. Where applications are not made in person and the applicants are not personally known to the employer, self-identification may be appropriate. Wherever a self-identification form is used, the employer should advise the applicant that identification by race, sex and national origin is sought, not for employment decisions, but for record-keeping in compliance with Federal law. Such self-identification forms should be kept separately from the application, and should not be a basis for employment decisions; and the applicants should be so advised. See Section 4B.

89. Q. What information should be included in documenting a validity study for purposes of these Guidelines?

A. Generally, reports of validity studies should contain all the information necessary to permit an enforcement agency to conclude whether a selection procedure has been validated. Information that is critical to this determination is denoted in Section 15 of the Guidelines by the word "(essential)".

Any reports completed after September 25, 1978, (the effective date of the Guidelines) which do not contain this information will be considered incomplete by the agencies unless there is good reason for not including the information. Users should therefore prepare validation reports according to the format of Section 15 of the Guidelines, and should carefully document the reasons if any of the information labeled "(essential)" is missing.

The major elements for all types of validation studies include the following:

When and where the study was conducted.

A description of the selection procedure, how it is used, and the results by race, sex, and ethnic group.

How the job was analyzed or reviewed and what information was obtained from this job analysis or review.

The evidence demonstrating that the selection procedure is related to the job. The nature of this evidence varies, depending upon the strategy used.

What alternative selection procedures and alternative methods of using the selection procedure were studied and the results of this study.

The name, address and telephone number of a contact person who can

provide further information about the study.

The documentation requirements for each validation strategy are set forth in detail in Section 15 B, C, D, E, F, and G. Among the requirements for each validity strategy are the following:

1. Criterion-Related Validity

A description of the criterion measures of job performance, how and why they were selected, and how they were used to evaluate employees.

A description of the sample used in the study, how it was selected, and the size of each race, sex, or ethnic group in it.

A description of the statistical methods used to determine whether scores on the selection procedure are related to scores on the criterion measures of job performance, and the results of these statistical calculations.

2. Content Validity

The content of the job, as identified from the job analysis.

The content of the selection procedure.

The evidence demonstrating that the content of the selection procedure is a representative sample of the content of the job.

3. Construct Validity

A definition of the construct and how it relates to other constructs in the psychological literature.

The evidence that the selection procedure measures the construct.

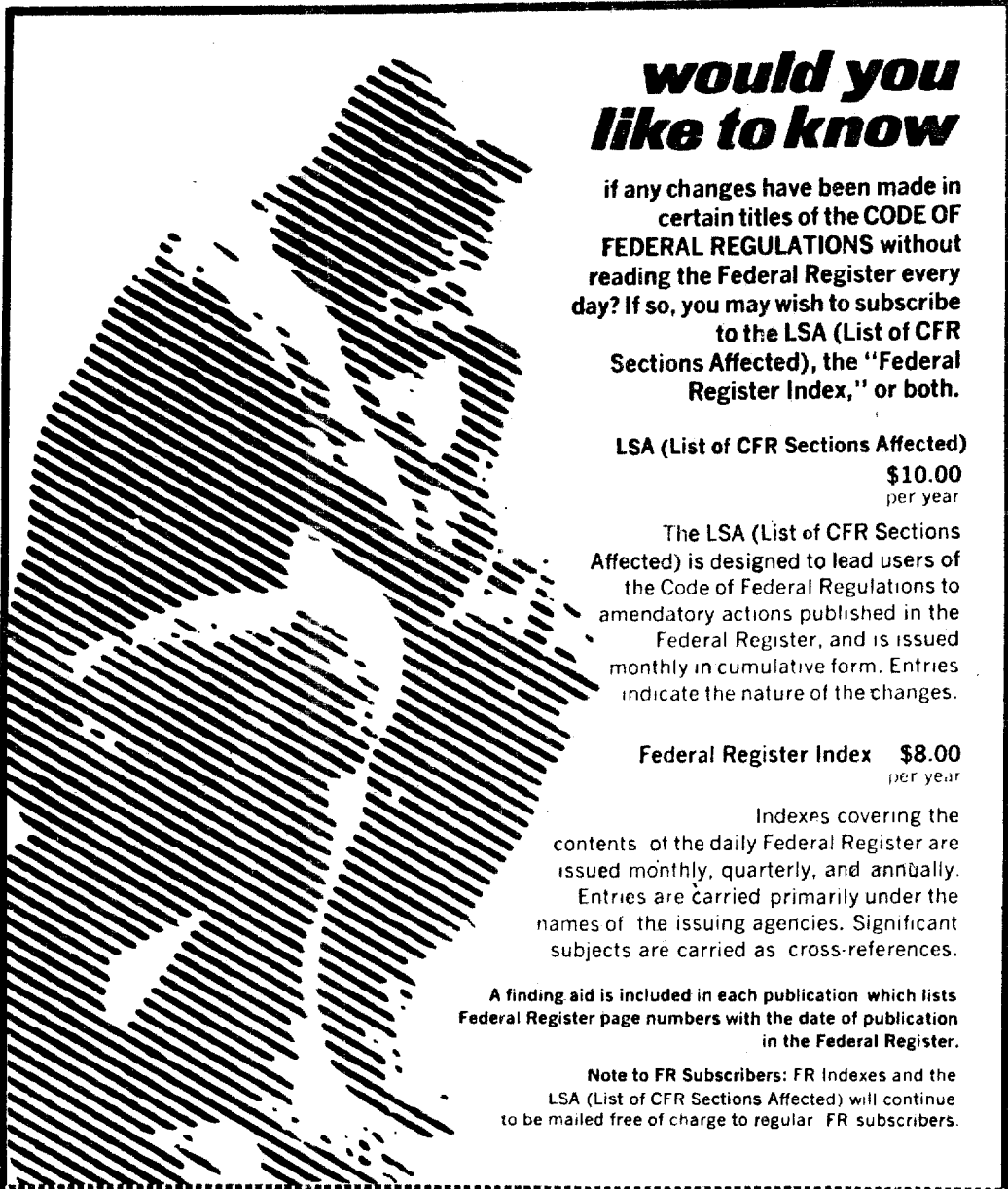
The evidence showing that the measure of the construct is related to

work behaviors which involve the construct.

90. Q. Although the records called for under "Source Data", Section 15B(11) and section 15D(11), are not listed as "Essential", the Guidelines state that each user should maintain such records, and have them available upon request of a compliance agency. Are these records necessary? Does the absence of complete records preclude the further use of research data compiled prior to the issuance of the Guidelines?

A. The Guidelines require the maintenance of these records in some form "as a necessary part of the study." Section 15A(3)(c). However, such records need not be compiled or maintained in any specific format. The term "Essential" as used in the Guidelines refers to information considered essential to the validity report. Section 15A(3)(b). The Source Data records need not be included with reports of validation or other formal reports until and unless they are specifically requested by a compliance agency. The absence of complete records does not preclude use of research data based on those records that are available. Validation studies submitted to comply with the requirements of the Guidelines may be considered inadequate to the extent that important data are missing or there is evidence that the collected data are inaccurate.

[FR Doc. 79-6323 Filed 3-1-79; 8:45 am]



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The new Uniform Guidelines are rooted in Title VII of the Civil Rights Act of 1964, specifically the Tower Amendment, which authorized the use of "any professionally developed ability test, provided that such test, its administration or action upon the results, is not designed, intended or used to discriminate..." At first some employers contended that this allowed them to use any test developed by a professional so long as they did not intend to exclude women or minorities, even if such exclusion was a consequence to test use.

In 1966, the Equal Employment Opportunity Commission (EEOC) adopted the first set of guidelines to advise employers that their intent was irrelevant: if a test or other practice had an adverse impact on women and minorities, it was unlawful unless it could be justified; that is, the employer would have to show that it fairly measured or predicted performance on the job. In succeeding years, the EEOC, as well as the Department of Labor's Office of Federal Contract Compliance Programs (OFCCP), elaborated on these guidelines and in 1970 expanded their application to include all selection procedures.

Then, in 1971, in Griggs V. Duke Power Company, the Supreme Court announced the principle that employer practices that had an adverse impact on minorities and that were not justified by business necessity constituted illegal discrimination under Title VII. The next year Congress confirmed this interpretation in its amendments to Title VII, collectively called the Equal Employment Opportunity Act. By this time, the EEOC, OFCCP and the Civil Service Commission (CSC) each had its own set of selection guidelines and had received much criticism for the different and sometimes

contradictory standards.

Congress recognized this absurdity, and the 1972 Act created the Equal Employment Opportunity Coordinating Council (EEOCC), whose membership consisted of the CSC, EEOC, OFCCP, Civil Rights Commission and Department of Justice. The first major effort of the Council was to prepare a set of uniform guidelines on employee selection procedures to standardize the position of the various agencies. Over the next few years, the Council produced a seemingly endless procession of drafts and proposals, but it failed to realize its major objective.

Finally, in November 1976, three of the five members of the Council -- the OFCCP, CSC and Justice -- issued a new set of guidelines known as the "Federal Executive Agency Guidelines on Employee Selection Procedures" (or FEA Guidelines). The EEOC, which together with the Civil Rights Commission refused to endorse the new guidelines, then reissued its own 1970 selection guidelines.

This situation continued until 1977 when, with the advent of the Carter administration, efforts were intensified to produce a unified government position. Eventually an agreement was achieved, and on December 30, 1977 a new proposal on uniform guidelines was published in the Federal Register.

A public hearing was held in April 1978, certain changes based on comments received were subsequently made, but the new Uniform Guidelines stayed essentially intact. They were issued in final form in August, 1978, went into effect the following month, and now supercede both the 1970 EEOC and 1976 EEA guidelines.

The new Uniform Guidelines represent a compromise between the two previous sets. Unchanged, however, is the fundamental principle underlying all guidelines since 1966: employer policies or practices having an adverse impact on employment opportunities of any race, sex or ethnic group are illegal unless justified by business necessity. Normally, "by business necessity" means by validation which demonstrates the relation between the selection procedure and performance on the job. A selection procedure that has no adverse impact generally does not violate Title VII; that is, an employer may usually avoid the validation requirements of the Guidelines by using selection procedures that have no adverse impact.

The Guidelines require that the employer maintain and have available for inspection records or other information that disclose the impact which its tests and other selection procedures have upon employment opportunities of persons by sex and five specified race and ethnic classification groups. (If there are large numbers involved, the information may be based on appropriate samples.) If the employer does not maintain this information, the enforcement agencies may draw an inference of adverse impact, determine whether a protected group is underutilized in a job category, and require validation of the selection procedures.

Employers will be judged in the overall results of their selection process, or against what is viewed as the "bottom line" concept. If the information required shows that the total selection process does not have an adverse impact, the employer under most circumstances will not have to evaluate the individual components of the selection process for adverse impact. If on the other hand this information does show that

the total selection process for a particular job or group of jobs has adverse impact, the individual components of that process must consequently be evaluated for adverse impact.

Once the employer has established adverse impact, it can do one of three things: modify or eliminate the procedure producing the adverse impact, or justify the use of the procedure on grounds of "business necessity". This latter step ordinarily means that the employer must show a clear relation between performance on the selection procedure and performance on the job. In the language of industrial psychology, the employer must validate the selection procedure. For this reason the bulk of the guidelines, indeed the most technical and controversial sections, consists of the Government's interpretation of standards for validation.

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The Uniform Guidelines on Employee Selection Procedures discuss, among other things, adverse impact and the four-fifths rule. Adverse impact is a substantially different rate of selection in hiring, promotion, or other employment decision that works to the disadvantage of members of racial, sex or ethnic group. The Guidelines state that a "selection rate for any racial, ethnic or sex group which is less than four-fifths (4/5 or eighty percent) of the rate for the group with the highest rate will be regarded as evidence of adverse impact . . ."

STATINTL

This is probably translated best by a couple of examples: suppose [REDACTED] the Agency had 120 applicants, 80 white and 40 black. Of this total, 60 were hired -- 48 white, 12 black. The selection rate for white applicants was thus 48/80 or 60 percent while that for the black applicants was 12/40 or 30 percent. In this example, the selection process adversely affected the employment opportunities of blacks, because their selection rate (30%) was only one half that of whites (60%).

On the other hand, suppose there were 120 applicants of which 80 were white and 40 black, and the Agency selected 42 whites and 18 blacks. In this case the selection rate for blacks would be 18/40, or 45%, while that for whites would be 42/80, or 52.5%. Because the selection rate for blacks as compared to that for whites is 45/52.5, or 85% (that is, more than 80% or 4/5), the difference in impact would not be regarded as substantial in the absence of additional information.

In some instances, a difference of more than 20% in selection rates may not indicate adverse impact if the numbers involved are very small.

For example, if a promotion panel recommended three men and one woman from a list of 20 men and 10 women, the 4/5 rule would indicate adverse impact, because this selection rate for women is 10%, that for men is 15%; 10/15 is 66 2/3%, less than 80%. Yet these numbers are so small that a difference in one person recommended would show an adverse impact the other way. In such circumstances, according to the Guidelines, the Agency would not be required to show validity for the selection process in the absence of additional information.

It should be pointed out that the 4/5 rule speaks only to the question of adverse impact and is not intended to resolve the ultimate question of unlawful discrimination. Regardless of the amount of difference in selection rates, unlawful discrimination may still be present and may be demonstrated through other evidence. The 4/5 rule simply establishes a numerical basis for drawing initial inference of impact and for requiring additional information.

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Simply stated, validation is the demonstration of the relation between a selection procedure (for example, a test) and performance on the job. Validity refers to how appropriate are the inferences drawn from test scores or results of other selection procedures.

Under the Guidelines, there are three concepts that can be used to validate a selection procedure: (1) criterion-related validity, (2) content validity, and (3) construct validity. These concepts reflect difference approaches to demonstrating the job relatedness of selection procedures but may be interrelated in actual application. Again, each approach, in a fundamental sense, requires a definition of what is to be inferred from the scores and supporting data to show that there is an acceptable basis for such inferences. (Note again that validity is itself inferred, not measured.)

Criterion-related validity involves (1) the administration of some assessment (selection) procedure, for example, an aptitude test, to a group of people; (2) the collection of criterion data (e.g., performance) on that same group of people; and (3) correlating the assessment procedure and the criterion. The stronger the correlation, the more valid the assessment procedure for that criterion is said to be. It is important to note that one does not establish the validity of an assessment procedure alone; rather, one establishes the validity of an assessment procedure for a particular criterion or set of criteria. Thus a selection procedure is never valid per se. It must always be evaluated in the setting in which it is used.

There are two kinds of criterion-related validity: concurrent,

when the predictor and criterion data are collected at the same time, and predictive, when the criterion data are collected at some later point in time.

Content validity is accomplished through judgments rather than through the formal process of correlating assessments with criteria. The judgment involves estimating the relevance of a selection procedure for a specific criterion or set of criteria without actually collecting the criterion data. The administration of a typing test as a selection procedure for hiring typists is an example of an assessment procedure judged to have content validity. When the assessment procedure is an actual sample of the criterion, the procedure will have a higher probability of being judged to have content validity.

Construct validity refers to underlying characteristics of the job performer, such as verbal ability or achievement motivation, of the kind often measured by psychological tests. For construct validity to apply, the particular theoretical construct must be well defined, the selection procedure must be well established as a measure of the construct, and an important component of a job behavior must involve the construct. Establishing this type of validity requires rational inference from a body of research involving the construct, usually a sizeable body of research of a programmatic nature. For instance, a particular measure of numerical ability might be shown to have a close relationship with other measures of numerical ability and to be less closely related to measures of other mental abilities. In addition, however, the relevance of the construct, say numerical ability, to the work itself must be

demonstrated, and it is at this point that practical difficulties arise because of the non-observable nature of the construct.

Construct validity, like content validity and, most often, criterion-related validity, is, of course, a function of a thorough job analysis.

Validation has become highly technical and complex, yet is constantly changing as a set of concepts in industrial psychology. However, a degree in industrial psychology is not necessarily a prerequisite to conducting validity studies, and personnel specialists and others without this background can do much of the work involved themselves. In large organizations, assistance with the statistical analyses required in validation research frequently can be obtained from the company's computer staff.

Under the Uniform Guidelines, validation is legally required only in situations where it has been shown that the selection process has an adverse impact. A strong case can be made, however, that all selection procedures used for employment decisions be validated by whatever method is most appropriate in terms of the types of jobs and number of employees involved. Thus, whether there is adverse impact or not, an employer should determine whether any selection procedure is job related; otherwise, there is little if any justification for using the procedure. Random selection, frequently advocated by some, may very well be as effective as unvalidated selection procedures. Both of these approaches, however, involve costs in terms of diminished employee effectiveness and other detrimental effects that can be avoided with the use of validated selection procedures.

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PERSONNEL

AGENCY IMPLEMENTATION OF THE UNIFORM GUIDELINES
ON EMPLOYEE SELECTION PROCEDURESBackground

The Uniform Guidelines on Employee Selection Procedures are a set of federal regulations that govern the use of tests and other selection procedures used by private employers, contractors under federally funded contracts, employment agencies, certain state and local governments, and executive agencies of federal government, including the Central Intelligence Agency. The Uniform Guidelines apply to any selection procedure used as a basis for any "employment decision" such as hiring, promotion, demotion and retention and require an employer to maintain records that disclose the "impact" that its tests and other selection procedures have upon employment opportunities of persons by race, sex, and ethnic groups.

The records required are based upon the "total selection process" for a particular job or job category, that is, the "bottom line". When the information suffices, an inference is drawn as to "adverse impact," which the Uniform Guidelines define as "a substantially different rate of selection in hiring, promotion, or other employment decisions which works to the disadvantage of members of a racial, sex, or ethnic group." The rule of thumb adopted by the Uniform Guidelines for this purpose is the "four-fifths or 80% rule," which means that, if the selection rate for one group is less than four-fifths or 80% of that for another group,

adverse impact is inferred.

If the records show that the total selection process for a job or job category does not support an inference of adverse impact, the employer usually need do nothing more. If the records do support an inference of adverse impact, the total selection process for the job or job category concerned must be "evaluated" to identify which individual procedure (e.g., test, interview, etc.) is causing the adverse impact. Once the procedure is identified, the Uniform Guidelines allow the employer essentially three options: (1) eliminate it, (2) modify it to lessen the adverse impact, or (3) justify its use as a "business necessity". This last option involves "validation," which is the demonstration of the relation between performance on a selection procedure and performance on the job.

Implementation

Implementation of the Uniform Guidelines into Agency personnel selection procedures will be accomplished in two "phases". Implementation of Phase I will begin on 1 April 1980 and will focus on hires and promotions, selection procedures for which are clearly identified in the Uniform Guidelines as employment decisions. Phase II is scheduled to commence by FY 82. During this phase the Agency will make determinations as to, among other things, other selection procedures used as a basis for employment decisions, alternative selection procedures, testing policy, and job analysis. Agency employees will be informed of Agency policy as implementation progresses.

Responsibilities and Functions

The Director of Personnel will be responsible for the recording of applicant flow data for all clericals and of data on applicants rejected for medical and security reasons.

In the Directorate of Operations, the Career Management Staff will record applicant flow data for professionals and technicals other than Career Trainees.

The Career Trainee Program, and, in the DCI area and Directorates other than the Directorate of Operations, each Office level component, will record applicant flow data for all other professionals and technicals.

Promotion data by race and sex will be recorded by the appropriate Career Service or component.

Components will forward applicant flow and promotion data monthly to the Directorate level for consolidation.

Directorates and offices in the DCI area will forward consolidated applicant flow and promotion data, including copies of monthly component data, quarterly to the Office of EEO and Office of Personnel.

The Director of Equal Employment Opportunity will be responsible for:

- (1) providing forms, instructions, and guidance to components for the recording of applicant flow and promotion data;
- (2) responding to inquiries regarding the collection and submission of applicant flow and promotion data;
- (3) determining whether there may be adverse impact for a particular job or job category; and

(4) if adverse impact exists, determining at his discretion, subsequent actions to be taken, which may include:

(a) appointment of an E0 Specialist as an investigator to evaluate the total selection process for the job or job category concerned; and

(b) attempting resolution of the problems causing the adverse impact.

The Deputy Director for Central Intelligence will make the final decision regarding resolution of adverse impact problems and direct action to be taken by the component concerned, in those cases brought to his attention for appeal.

(SEE ALTERNATIVE PAGE 4 FOLLOWING)

(4) if adverse impact exists, determining at his discretion, subsequent actions to be taken, which may include:

- (a) appointment of an EO Specialist as an investigator to evaluate the total selection process for the job or job category concerned;
- (b) attempting informal resolution of the adverse impact; and
- (c) submission of cases that cannot be resolved informally to the Adverse Impact Review Board.

The Adverse Impact Review Board, comprised of the General Counsel, Comptroller, and Inspector General, will review cases submitted by the Director of Equal Employment Opportunity and recommend to the DDCI which of the options (e.g., elimination, modification or justification as business necessity) ought to be taken by the component concerned. The Director of Personnel and Chief, Psychological Services Staff will serve as advisors to the Board.

The Deputy Director for Central Intelligence will make the final decision regarding action to be taken by the component concerned, considering the recommendation of the Adverse Impact Review Board.

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SELF-IDENTIFICATION SHEET

General Instructions

The Uniform Guidelines on Employee Selection Procedures require the collection of race, sex, and ethnic group information from those persons seeking employment with the Central Intelligence Agency and other Federal agencies. This information will be used for research and statistical purposes only to help ensure that the personnel practices of CIA are fair to all applicants. Your responses are voluntary and non-completion of this form will not affect your employment opportunities.

1. Name _____
2. Year of birth _____
3. Social Security Number _____
4. Sex _____ Male _____ Female
5. Ethnicity and Race (self-identify yourself as one of the following:)
 - _____ Hispanic (A person of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race.)
 - _____ Black (A person having origins in any of the black racial groups of Africa.)
 - _____ Asian or Pacific Islander (A person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian sub-continent, or the Pacific Islands. This area includes, for example, China, India, Japan, Korea, the Philippine Islands, and Samoa.)
 - _____ American Indian or Alaskan Native (A person having origins in any of the original peoples of North America, and who maintain cultural identification through tribal affiliation or community recognition.)
 - _____ White (A person having origins in any of the original peoples of Europe, North Africa, or the Middle East.)

COMPONENT OR DIRECTORATE _____

UNIFORM SELECTION PROCEDURES
SUMMARY REPORT
NEW HIRES

PERIOD COVERED FROM _____ TO _____

PAGE ____ OF ____

OCCUPATIONAL SERIES	STATUS	TOTAL	WHITE		BLACK		HISPANIC		NATIVE AMER.		ASIAN		OTHER		ALL RACES	
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UNIFORM SELECTION PROCEDURES
SUMMARY REPORT
PROMOTIONS

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ROUTING AND RECORD SHEET

SUBJECT: (Optional)

Explanation of Non-Selection for Employment

FROM:		EXTENSION	NO.
			DATE
TO: (Officer designation, room number, and building)	DATE		OFFICER'S INITIALS
	RECEIVED	FORWARDED	
1.			<p>COMMENTS (Number each comment to show from whom to whom. Draw a line across column after each comment.)</p> <p>The responsible official <u>must</u> indicate one or more of the following reasons for non-selection.</p> <p>_____ (Name of Applicant) has been considered for employment as a _____ job/job category in this office and was not selected because he/she does not:</p> <p>_____ meet academic criteria, specifically: _____</p> <p>_____ meet prior job experience criteria, specifically: _____</p> <p>_____ meet testing criteria, specifically: _____</p> <p>_____ meet language competency criteria, specifically: _____</p> <p>_____ meet other stated criteria, specifically: _____</p> <p>_____</p> <p>_____</p> <p>Signature of responsible Official</p> <p>_____</p> <p>Title</p>
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