



# Uniform Guidelines On Employee Selection Procedures Should Be Reviewed And Revised

## General Accounting Office

REPORT BY THE U.S.

The Uniform Guidelines on Employee Selection Procedures were adopted in 1978 by the Equal Employment Opportunity Commission, the Office of Personnel Management, the Departments of Justice and Labor, and the Department of the Treasury's Office of Revenue Sharing. The Guidelines were designed to assist employers, labor organizations, employment agencies, and licensing and certification boards to comply with Federal equal employment opportunity laws (EEO) laws. They also provide a framework for determining the proper use of tests and other selection procedures.

The importance of the Guidelines to EEO enforcement is well recognized. As an enforcement issue, GAO believes that employers can have a major role in ensuring compliance with EEO laws. However, the Guidelines are outdated and do not reflect current provisions and developments. GAO believes that the Guidelines should be reviewed and revised.

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4-75000-1-82

UNITED STATES GENERAL ACCOUNTING OFFICE

WASHINGTON, D.C. 20548



FEDERAL PERSONNEL AND  
COMPENSATION DIVISION

B-205215

The Honorable Clarence Thomas  
Chairman, Equal Employment  
Opportunity Commission

The Honorable Donald J. Devine  
Director, Office of Personnel  
Management

The Honorable William French Smith  
The Attorney General

The Honorable Raymond J. Donovan  
The Secretary of Labor

The Honorable Donald T. Regan  
The Secretary of the Treasury

This report discusses our conclusion that the Uniform  
Guidelines on Employee Selection Procedures need to be reviewed  
and revised. We made this study because we believe the Uniform  
Guidelines are important to equal employment opportunity enforce-  
ment and because of public criticisms of the guidelines by their  
users.

This report contains recommendations on pages 17 and 18. As  
you know, section 236 of the Legislative Reorganization Act of  
1970 requires the head of a Federal agency to submit a written  
statement on actions taken on our recommendations. This written  
statement must be submitted to the House Committee on Government  
Operations and the Senate Committee on Governmental Affairs not  
later than 60 days after the date of the report. A written  
statement must also be submitted to the House and Senate Commit-  
tees on Appropriations with an agency's first request for appro-  
priations made more than 60 days after the date of the report.

Copies of the report are being sent to the Executive Director, Presidential Task Force on Regulatory Relief, and to other interested persons.

*Clifford I. Gould*  
Clifford I. Gould  
Director

D I G E S T

The Uniform Guidelines on Employee Selection Procedures should be reviewed and revised because of reported problems with their technical and policy provisions and their understandability.

The guidelines describe how tests should be used to make employment decisions which are consistent with Federal equal employment opportunity (EEO) laws. They were intended to establish a uniform Federal position on prohibiting discrimination in employment practices on the basis of race, color, religion, sex, or national origin. Also, they were designed to assist employers and other users to comply with Federal EEO laws and to provide a framework for determining the proper use of tests and other selection procedures.

GAO made its study because it believes that the guidelines are important to EEO enforcement and because of public criticisms of the guidelines by some of their users.

MANY USERS BELIEVE GUIDELINES SHOULD BE REVISED

The guidelines' technical provisions describe how to demonstrate that tests or other selection procedures are related to jobs for which they are used. These provisions are intended to be consistent with professionally accepted methods of the psychological profession for demonstrating the relationship of a test to job performance. However, several professional organizations knowledgeable about the guidelines believe this consistency does not exist and recommend revising the guidelines' technical provisions. (See pp. 6 and 7.)

The Office of Personnel Management, the Department of Justice, and the Department of

AGENCIES THAT ADOPTED THE GUIDELINES: OPINIONS  
DIFFER ON NEED FOR REVIEW AND REVISION

Representatives of two civil rights groups with whom GAO spoke believe the guidelines should not be revised. They believe that calls for revision are based on unproven testing theories and that changes to the guidelines could adversely affect the government's antidiscrimination efforts. (See p. 11.)

The guidelines also have been criticized as unclear and difficult to read. A study of a draft of the guidelines concluded that their level of reading difficulty exceeded the Doctor of Philosophy education level. While some changes were made to the guidelines before issuance, these changes do not appear to GAO to have materially improved the guidelines' overall readability. (See pp. 10 and 11.)

--Apparent inconsistency with merit laws under which Federal and some State and local employers operate. (See pp. 9 and 10.)

--Perceived inconsistency with a Supreme Court decision on the responsibility to search for alternative selection procedures. (See pp. 8 and 9.)

--Unclear time limits for retaining adverse impact data. (See p. 8)

--Lack of a workable definition of an applicant as the basis of adverse impact determinations. (See pp. 7 and 8.)

The policy provisions describe the responsibilities of employers and other guidelines' users for detecting the adverse impact of a selection procedure and the options a user has if adverse impact is found. (Adverse impact is usually indicated when one race, sex, or ethnic group's selection rate is less than 80 percent of the rate for the group with the highest selection rate.) Users of the guidelines are critical of these provisions in a number of areas, including:

A joint committee from the educational and psychological professions is revising the professional testing standards and is willing to coordinate its efforts with a review of the guidelines. The chairman of that committee believes that such coordination could be achieved without compromising the integrity

The Department of Labor agreed that the guidelines should be reviewed but also believed that the review should begin only after the new professional standards are issued. The Department was concerned that premature and misguided changes might be made to the guidelines if the review were to begin now and that professional-governmental cooperation in that review may be undesirable. (See pp. 13 and 14.)

The Equal Employment Opportunity Commission did not comment on the draft report sent to them for review. However, the official who was Acting Chairman of the Commission when GAO made its review said the Commission was opposed to revising the guidelines at that time. He said his agency was unconvinced that revisions to the policy provisions of the guidelines were necessary then and believed the technical provisions should remain unchanged until new professional testing standards are issued. The former Acting Chairman believed revising the guidelines before new standards are adopted might be interpreted as governmental interference with an independent group's establishment of professional standards. (See pp. 12 and 13.)

Treasury said that a review of the guidelines is appropriate and that the review should not be delayed. The Office of Personnel Management suggested that all the signatory agencies, acting as a joint commission, should review the guidelines and, as appropriate, rescind or revise them. However, Reorganization Plan No. 1 of 1978, as elaborated by Executive Order 12067, specifically charges the Equal Employment Opportunity Commission with providing leadership in developing such guidelines. (See pp. 14 to 16.)

The review and revisions should be made in consultation with, and utilize the special expertise of, Federal departments and agencies having EEO responsibilities. GAO recommends also that the heads of the other agencies that adopted the guidelines cooperate with the Commission in this important effort. (See p. 18.)

--determining how to make the guidelines more understandable to their users. (See pp. 17 and 18.)

--examining the problems associated with (1) collecting and maintaining adverse impact data, (2) searching for alternatives during validation, and (3) the relationship of merit laws to the guidelines; and

--coordinating the review of the technical provisions with the joint committee's revisions of the professional testing standards;

The Equal Employment Opportunity Commission, as the lead agency in the EEO enforcement area, should initiate a review of the guidelines and revise them. This effort should include

RECOMMENDATIONS

While revisions to the guidelines' technical provisions could be postponed until after the new professional standards are published, beginning the review now could prevent unnecessary delay between issuance of those standards and any revisions to the guidelines. (See p. 17.)

The importance of the guidelines to EEO enforcement is not, in GAO's opinion, at issue. On the basis of the preponderance of views and experiences expressed to GAO, it believes the guidelines can have a major role in insuring compliance with the spirit and intent of Federal EEO laws. Nevertheless, the reported problems with the guidelines indicate that it is now time to review and revise them.

CONCLUSIONS

of its work and that it is likely both reviews would benefit. (See pp. 12 and 13.)



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APA	American Psychological Association	
EEO	Equal Employment Opportunity	
EEOC	Equal Employment Opportunity Commission	
GAO	General Accounting Office	
IPMA	International Personnel Management Association	
OMB	Office of Management and Budget	
OPM	Office of Personnel Management	

2/The guidelines apply to almost all public and private employers having 15 or more employees, labor organizations, employment agencies, apprenticeship committees, licensing and certification boards, and contractors and subcontractors. In this report, the word "user" applies to both those directly covered by the guidelines and those who, although not directly covered, use the guidelines in their work, such as business consultants, professional groups, readability experts, and others.

1/In this report, the words "test" and "selection procedure" are used interchangeably and denote any of a variety of measurement methods, such as evaluation of information on application forms, job interviews, performance tests, and training programs. "Employment decisions," according to the guidelines, "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."

The Uniform Guidelines on Employee Selection Procedures describe the Federal Government's position on how tests should be used in making employment decisions which are consistent with Federal equal employment opportunity (EEO) law. 1/ The guidelines were adopted on August 25, 1978, by the Equal Employment Opportunity Commission (EEOC), the Civil Service Commission (now the Office of Personnel Management (OPM)), and the Department of Justice and Labor. The Department of the Treasury's Office of Revenue Sharing adopted the guidelines on September 11, 1978.

The guidelines were intended to establish a uniform Federal position on prohibiting discrimination in employment practices on the basis of race, color, religion, sex, or national origin. Also, they were designed to assist employers, labor organizations, employment agencies, and licensing and certification boards to comply with Federal EEO law and to provide a framework for determining the proper use of tests and other selection procedures. The guidelines state that those persons and organizations covered by their provisions 2/ should collect data on the effect of their selection procedures by sex and various racial and ethnic groups. The data is used to determine whether those procedures have an adverse impact on the employment opportunities of members of any of these groups. According to the guidelines,

INTRODUCTION

CHAPTER 1

1/On June 21, 1982, the United States Supreme Court ruled that the absence of bottom-line adverse impact does not preclude an employee from establishing a prima facie case and does not provide an employer with a valid defense to a claim of racial discrimination in violation of Title VII of the Civil Rights Act of 1964, as amended, State of Connecticut, et al. v. Winnie Teal, et al., 50 U.S.L.W. 4716 (1982).

EEOC, established by title VII, was to carry out this and other provisions of the law.

" \* \* \* any professionally developed ability test provided that such test, its administration or action upon the results is not designed, intended or used to discriminate \* \* \* ."

The guidelines' origins can be traced to the Civil Rights Act of 1964. In title VII of the act, the Congress tried to strike a balance between eliminating discriminatory employment practices in the private sector and allowing the use of pre-employment tests to select qualified employees. The Congress specifically authorized the use of

HOW THE GUIDELINES EVOLVED

"Validation" is the process for determining whether a test is related to performance on the job for which it is used. The guidelines describe the procedures for validating a test and state that the user, when performing such a validation, should search for alternative selection procedures with substantially equal validity but with less adverse impact. The validity evidence should also support the way the procedure is used. For example, if a selection procedure is used to rank applicants according to their scores, the validity evidence should indicate that persons who receive higher scores are likely to perform better on the job.

adverse impact is usually indicated when one group's selection rate is less than 80 percent of the rate for the group having the highest selection rate. With certain exceptions, adverse impact is determined for each job on a bottom-line basis--that is, the rate is determined by the combined effect of all selection procedures an employer uses, such as written tests, interviews, and reference checks. 1/ If adverse impact is not found, the user generally has no further obligations under the guidelines. If adverse impact is found, the user has three basic options: (1) modify the selection procedures to eliminate the adverse impact, (2) use alternate selection procedures that have no adverse impact, or (3) validate the selection procedures.

1/"Problems With Federal Equal Employment Opportunity Guidelines on Employee Selection Procedures Need To Be Resolved" (FPD-77-54, Feb. 2, 1978).

The Council was unable to issue uniform guidelines before being dissolved by Reorganization Plan No. 1 of 1978. The re-organization, as implemented by Executive Order 12067 (June 30, 1978), transferred all Council functions to EEOC and made that agency responsible for providing leadership and coordination to all Federal EEO enforcement efforts. Less than 2 months later,

In 1976, the Civil Service Commission and the Departments of Labor and Justice issued common guidelines, but EEOC did not accept them and republished its 1970 guidelines. With two different sets of guidelines in existence, negotiations were renewed in 1977 to develop uniform guidelines. In early 1978, we reported on the problems in developing uniform guidelines and urged that a single set of such guidelines be issued to eliminate conflict and promote efficiency and credibility. 1/

In its June 29, 1973, report to the President, the Council emphasized the development of a uniform set of guidelines on employee selection procedures as its "primary project for the year."

" \* \* \* maximize effort, promote efficiency, and eliminate conflict, competition, duplication and inconsistency among the operations, functions and jurisdictions of the various departments, agencies and branches of the Federal Government responsible for the implementation and enforcement of equal employment opportunity legislation, orders, and policies."

The Council's objective was to develop and implement "agreements, policies, and practices" which would

In 1972, title VII was amended, expanding the coverage of the act to public employers and establishing the Equal Employment Opportunity Coordinating Council. The Council consisted of the Secretary of Labor, the Chairman of EEOC, the Attorney General, the Chairman of the Commission on Civil Rights, and the Chairman of the Civil Service Commission, or their respective designees.

During the late 1960's and early 1970's, EEOC, the Department of Labor, and the Civil Service Commission, under separate legal authorities, each developed and issued guidelines on the proper use of tests and other selection procedures. However, many persons and organizations considered those guidelines as inconsistent and resulting in inefficient use of government and employer resources. Enforcing such inconsistent standards was considered to be unfair and poor governmental policy.

Our study, conducted from July 1981 to January 1982, was made in accordance with our Office's current "Standards for Audit of Governmental Organizations, Programs, Activities, and Functions." We reviewed applicable laws and a wide range of documents showing how the guidelines were developed, the experiences individuals and organizations have had with the guidelines, and current views on the need for review and revision. These documents included reports of Federal agencies and consultants, departmental and agency regulations, interagency and intra-agency correspondence, and publications from experts in relevant fields.

--obtaining expert opinion about the understandability of the guidelines, based on their reading difficulty and users' educational levels.

--determining the position of each signatory agency on the need to review and revise the guidelines and actions each had taken that might lead to future revisions; and

--identifying the guidelines' policy provisions that users believe need to be reviewed and revised;

--determining the views of relevant professional organizations about the consistency of the guidelines' technical provisions with accepted criteria for evaluating standardized tests and other selection procedures;

We made this study because we believe that the guidelines are important to EEO enforcement and because of public criticisms of the guidelines by some of their users. Our objective was to determine whether those responsible for administering the guidelines and those who use them were experiencing any problems in applying the guidelines. We therefore concentrated our study on

OBJECTIVE, SCOPE, AND METHODOLOGY

Since 1978, critics have pointed out problems with the guidelines. As a result of criticisms from businesses, educational institutions, and State and local governments, the guidelines were targeted for review by the Presidential Task Force on Regulatory Relief on August 12, 1981. That review is being made by EEOC, with oversight from the Office of Management and Budget (OMB). As currently designed, the review is not a comprehensive study of the guidelines, since it is limited to the guidelines' recordkeeping provisions.

the Uniform Guidelines on Employee Selection Procedures were completed and were subsequently adopted by the five signatory agencies. (See p. 1.)

(For a list of publications, see app. I.) We also interviewed officials in the signatory agencies, representatives of public and private sector employer groups, representatives of civil rights groups, consultants, and leaders in the psychological profession. (See app. II.)

On March 19, 1981, the American Psychological Association's (APA's) Committee on Psychological Tests and Assessment, the body of the APA responsible for issues involving testing and assessment, notified the heads of the four original signatory agencies that, in its opinion, the guidelines reflect a reliance on and use of measurement theory that does not represent the current state of research and theory in psychological testing. The Committee recommended that preliminary steps be taken to revise the guidelines to reflect the current body of empirical knowledge and recent theoretical developments in the area. The APA Board of Scientific Affairs, the Committee's parent board, endorsed this recommendation. Less than a month later, the President of APA's Division of Industrial and Organizational Psychology (Division 14) urged the heads of the four agencies to promptly open the guidelines for needed updating and revision. Noting that the Division's Executive Committee had just passed a resolution to that effect, the Division President said the guidelines placed a number of costly

The technical provisions of the guidelines have been criticized by groups from the psychological and personnel professions as not representing those professionally accepted methods.

" \* \* \* 'professionally acceptable methods' of the psychological profession for demonstrating whether a selection procedure validly predicts or measures performance for a particular job."

The technical provisions, which comprise the bulk of the guidelines, describe the methods that can be used and the documentation required to validate selection procedures if adverse impact is indicated. The guidelines' preamble states that the guidelines are intended to represent

#### PROFESSIONAL GROUPS RECOMMEND REVISING THE GUIDELINES' TECHNICAL PROVISIONS

Professional groups, readability experts, and other users have reported problems with the guidelines. Several professional groups believe the guidelines' technical provisions do not provide an up-to-date framework for validating selection procedures. Users have criticized the policy provisions as being difficult, if not impossible, to satisfy. Also, critics contend that the guidelines are too difficult to understand and that this is contributing to compliance problems. However, representatives of civil rights groups with whom we spoke believe the guidelines should not be revised.

#### NEEDING RESOLUTION

#### MANY GUIDELINES' USERS IDENTIFY PROBLEMS

#### CHAPTER 2



1/The guidelines call for somewhat more simplified recordkeeping for employers with less than 100 employees and for certain other organizations. Analyses of adverse impact need be made only for groups constituting 2 percent or more of the labor force in the relevant labor market.

Guidelines users argue that a more workable definition of "applicant" is needed. Since the guidelines call for determining adverse impact on the basis of applicant statistics, the definition

The guidelines call for users to collect, maintain, and analyze race, sex, and ethnic group selection data on virtually all applicants for all employment decisions for all jobs. 1/ The term "applicants" is not defined in the guidelines, although the "Questions and Answers," issued by the five signatory agencies in 1979 to clarify the guidelines, state that the definition can vary according to a user's recruitment and selection procedures. They also state that the concept of "applicant" is that of a person who has indicated an interest in being considered for hiring, promotion, or other employment opportunities.

Collecting and maintaining adverse impact data

The guidelines' policy provisions are concerned with detecting the adverse impact of selection procedures and the options a user has to satisfy. Some of the policy-related problems reported to us are discussed in the following sections.

SOME USERS BELIEVE POLICY PROVISIONS NEED REVIEW AND REVISION

The International Personnel Management Association (IPMA), an association representing 55,000 personnel managers and professionals at all levels of government in a number of countries, has also called for revising the guidelines. At its annual business meeting on October 7, 1981, the IPMA adopted a resolution urging the Reagan administration to retain the guidelines, but to begin revising them to make them consistent with professional standards and current knowledge. While supporting development and retention of uniform Federal regulations to help achieve equal employment opportunity, the IPMA said such regulations should be reviewed frequently to reflect technological and theoretical advances in the field of psychological testing.

technical requirements on employers which were shown to be unnecessary and unrelated to the goal of insuring nondiscriminatory hiring.

of "applicant" is important to EEO enforcement. A user-determined definition with no upper or lower limits or one that is extremely broad does little to guide that enforcement. To carry this to an extreme, an employer could use a definition of applicant which effectively screens out all potential employees of a particular race, sex, or ethnic group. Guidelines users suggest limiting the definition to those who meet certain bona fide job requirements which, they believe, would provide a more accurate representation of employers' EEO positions. For example, the Ad Hoc Group on Uniform Selection Guidelines suggests defining an applicant as a person who has completed and filed a formal written application for a specific job for which an employer was accepting applications and the person was minimally qualified for the job.

Also, according to the guidelines, users should maintain and have available for inspection, records showing whether their tests adversely affect the employment opportunities of any group covered by the guidelines. The guidelines state that such determinations should be made annually for groups constituting at least 2 percent of the labor force in the relevant labor area or 2 percent of the applicable work force. However, the guidelines do not indicate how long such records should be maintained if no adverse impact exists. Guidelines' users said that, if a clear time limit for retaining the records were established, unneeded documentation could be discarded.

EEOC is now reviewing the guidelines' recordkeeping requirements for the Presidential Task Force on Regulatory Relief. The current work plan for that review, however, does not address either the applicant definition or data maintenance problems.

Search for alternatives during validation

The guidelines state that, whenever a validity study is called for, users should include, as part of that study, a search for suitable alternative selection procedures which have as little adverse impact as possible. Some guidelines' users contend, however, that they should not have to search for alternatives and believe this provision of the guidelines is inconsistent with the decision of the Supreme Court in Albemarle Paper Company v. Moody, 422 U.S. 405 (1975). In that case, the court stated that:

"If an employer does then meet the burden of proving that its tests are 'job related,' it remains open to the complaining party to show that other tests or selection devices, without a similarly undesirable racial effect, would also serve the employer's legitimate interest in 'efficient and trustworthy work-manship.'"

In view of the perceived inconsistency between the procedures called for in the guidelines and those enunciated by the Supreme Court in Albemarle, we believe it would be appropriate to reconsider the guidelines' provision that users are responsible, as a matter of course, for searching for alternate selection procedures.

Guidelines and merit laws

The guidelines call for validating a selection procedure only if it adversely affects the employment opportunity of a race, sex, or ethnic group. Even where adverse impact is indicated, users may avoid validation by either modifying or eliminating the procedure which produces the adverse impact. The guidelines do, however, encourage the use of selection procedures that are valid, especially when used by organizations operating under merit principles.

While the guidelines encourage the use of valid selection procedures, some users believe that laws prescribing merit principles require their use by public employers operating under those principles. In the Civil Service Act of 1883 (the Pendleton Act), as codified at 5 U.S.C. § 3304 (1976), the Congress empowered the President to

" \* \* \* prescribe rules \* \* \* for \* \* \* open, competitive examinations for testing applicants for appointment in the competitive service."

Under those rules, examinations should be

" \* \* \* practical in character and, as far as possible, relate to matters that fairly test the relative capacity and fitness of candidates for the jobs to be filled (Underscoring supplied.)

The Civil Service Reform Act of 1978 imposed additional merit principles on Federal personnel procedures (5 U.S.C. § 2301 [Supp. III 1979]). Further, some state and local governments have passed merit laws with similar provisions governing their selection procedures.

APA's Division 14 revised "Principles for the Validation and Use of Personnel Selection Procedures" define "validity" as the degree to which inferences from scores on tests or assessments are justified or supported by evidence. The principles state that validity permits the attainment of "the highest level of accuracy in prediction or assessment of qualifications." We therefore believe the rules implementing the Pendleton Act's requirement to test the fitness of applicants for the position "as far as possible" and similar requirements in state and local

1/W. S. Blumenthal and E. R. Blumenthal, "Readability of Proposed Uniform Federal Guidelines on Employee Selection Procedures." Paper presented at the meeting of the Southeast Regional Meeting of the American Society for Public Administration, Charleston, S.C., October 1978.

An EEOC official told us that the guidelines were not meant for use by laymen but, rather, by lawyers and psychologists. However, the aforementioned study authors reported that the reading difficulty of the guidelines draft they studied was probably beyond that of most personnel managers, lawyers, and psychologists and that the guidelines should be made more readable.

We compared the text of the issued guidelines with the text of the 1977 draft reviewed by the study authors. While there were some changes in wording, captions added, and additions and deletions, those changes did not appear to materially improve the guidelines' overall readability.

A study of a December 1977 draft of the guidelines assessed their reading difficulty level at about grade 23--that is, beyond the Doctor of Philosophy education level. 1/ The reading difficulty of the "Standards for Educational and Psychological Tests" (commonly known as the APA Standards) was about four grades lower. (The APA Standards are cited in the guidelines as an example of "generally accepted professional standards" with which the technical provisions should be consistent.)

A particular problem identified with the guidelines is their level of reading difficulty. The reading difficulty level of a document is commonly stated as a grade level that roughly indicates the years of education required to understand it. For example, a document with a reading difficulty level of grade 12 should be understandable by a reader with a high school education.

For any guidelines to assist users, they must be written so they can be understood. Critics of the guidelines contend that, because the guidelines are difficult to understand, users have problems in complying with them.

#### CRITICIZED UNDERSTANDABILITY OF THE GUIDELINES

merit laws imply the use of valid tests. That being the case, just encouraged, to use valid selection procedures. Further, those employers may risk violating such laws by replacing valid procedures that have adverse impact with procedures of unknown validity that do not have adverse impact. This apparent inconsistency between the guidelines and merit laws should be resolved.

A representative of the NAACP Legal Defense and Educational Fund, Inc., said that the guidelines should not be revised because they remain consistent with current professional standards for test validation. He, too, believed that calls for revision were premised upon theories of validation which were not accepted by the psychological profession. Incorporation of those theories in the guidelines would, in his opinion, be a significant blow to the Government's antidiscrimination efforts.

Representatives of the two civil rights groups with whom we spoke believe the guidelines should not be revised. A representative of the Lawyers' Committee for Civil Rights Under Law said that, although some sections warranted criticism and could be changed, the guidelines as a whole should not be reopened. This, he believes, could lead to changes in other sections which need no amending and could adversely affect civil rights enforcement. He said that calls for revisions of the guidelines were based on theories of validation which, in his opinion, were unproven.

REPRESENTATIVES OF CIVIL RIGHTS GROUPS BELIEVE GUIDELINES SHOULD NOT BE REVISED

Problems with the guidelines' clarity have existed since their issuance. The "White House" commented on the guidelines' high reading level when they were issued, according to the former Chairman, Staff Committee of the EEO Coordinating Council. To improve the guidelines' clarity, 93 "Questions and Answers" have been published by the signatory agencies. Notwithstanding these actions, users with whom we spoke reported that the guidelines were still too difficult to understand.

The Federal Section of IPMA recommended that the guidelines be modified, considering simplicity and practicality.

"This state of affairs is making it difficult for agencies to practice responsible, professional personnel management; it is doing real damage to the reputations of the agencies that issued the guidelines, and it is doing little to promote the goal of equal employment opportunity."

On January 11, 1982, after consulting with a cross section of Federal Personnel Directors, the immediate past president of IPMA's Federal Section wrote to the Director, OPM, about a number of Federal personnel-related subjects. Regarding the Uniform Guidelines, the IPMA official commented on their complexity and the operational burden they placed on agencies. He wrote:



1/Immediately before issuing this report, GAO learned that OMB notified EEOC that the practical utility survey was no longer required for approval of the guidelines' information collection provisions.

In commenting on suggestions in our draft report, the Department of Labor agreed that the guidelines should be reviewed and that EEOC should lead any review and/or revision. It did not agree, however, that the review should be undertaken at this time

#### DEPARTMENT OF LABOR

While believing the guidelines should not be revised at this time, EEOC is conducting a questionnaire survey of the "practical utility" of the guidelines' recordkeeping requirements as a condition for temporary OMB approval of the guidelines' information collection provisions. The study was requested by OMB in April 1979 and is intended to assess the effectiveness of the recordkeeping requirements in advancing the purposes of the guidelines. However, as of May 24, 1982, the survey questionnaires had not been mailed to addressees. Responses to the questionnaires are to be an important part of the review that EEOC is conducting for the Presidential Task Force on Regulatory Relief. A Task Force representative in OMB said that the pace of this review should not delay other efforts to review or revise the guidelines. 1/

#### Survey of recordkeeping requirements

As discussed in chapter 2, we believe there are a number of problems with the guidelines' policy provisions which need to be resolved.

Also, EEOC's former Acting Chairman said his agency had been presented with no evidence justifying revision of the guidelines' policy provisions at this time. He said that, in the absence of such evidence, the guidelines should continue operating in their present form. He concluded that revising the guidelines without having evidence showing the need for revision would severely impair the confidence of the courts and the public in the commitment and expertise of the agencies charged with enforcing equal opportunity law.

Informal so there would be no implication that either the joint committee or the group reviewing and revising the guidelines approved the work of the other. He also said it was likely that coordination of the two groups' efforts would benefit both projects.

as appendix IV.

The Department's comments on the draft report are included

The Department believes that any revisions of the guidelines' technical provisions should follow the revisions of the professional standards upon which they are based. Therefore, the Department anticipates that any actual revisions to the guidelines would occur some time after the joint committee has completed the new professional standards. It is the Department's opinion, however, that the review process should begin at an early date in light of the joint committee's willingness to work cooperatively with a governmental review of the guidelines and in order that Federal agencies may be responsive to the needs of guidelines' users and to developments in professional standards.

The Department of Justice has studied the Uniform Guidelines to determine whether revisions to the policy and technical provisions are needed. As a result of that study, the Department believes that the Uniform Guidelines should be reviewed and that it should participate in that review.

DEPARTMENT OF JUSTICE

as appendix III.

The Department's comments on the draft report are included

As indicated in the preceding section, the Department's concern about reviewing the guidelines before publication of new professional testing standards are not shared by the joint committee developing those standards or by the APA Committee on Psychological Tests and Assessment. Further, those concerns are apparently not shared by the Departments of Justice and the Treasury and OPM since they believe the review should begin now.

The Department agreed with our suggestions that the review of the policy sections of the guidelines include the areas discussed in this report and that the review should determine how to make the guidelines more understandable to their users. However, the Department believed the review in these areas should also be delayed until after the APA Standards are published so that they may all be reviewed concurrently. The Department suggested, as an interim measure, preparation and dissemination of additional clarifying materials to assist test users who are not satisfactorily conversant with professional terminology.

or that the review should be coordinated with the joint committee's review of the APA Standards. The Department believed the review should be delayed until after the new professional standards are published. Beginning the review now would, in the Department's view, risk making premature and misguided changes that might have to be amended later. The Department was also concerned that professional-governmental cooperation in this effort may evolve into a mutually undesirable form of collaboration.



During our study, the Director, OPM, said he believed the guidelines should be reviewed. In his opinion, a serious, Government-wide review of the guidelines would benefit the United States in insuring that administrative pronouncements of civil rights policies (1) actually further, rather than inhibit, the purposes of civil rights laws, (2) state rules with a clarity and logic that result in understanding and compliance, (3) provide reasonable and cost-efficient enforcement mechanisms, and (4) reflect the state of advancement of relevant sciences.

The Director believed the first question to be addressed was whether such guidelines are needed at all. If so, he believed that their scope should be explored so that it would be consistent with the scope of the civil rights laws whose enforcement they are intended to aid. He said his agency was willing to participate in a full review of the guidelines and to make available the technical expertise and leadership interest it possesses.

OPM said its only major reservation with the draft report was our suggestion that EEOC initiate a review and make needed revisions of the guidelines. OPM believed that all the signatory agencies should constitute a joint commission to review the guidelines and, as appropriate, to rescind or revise them.

Conducting the review in this manner would, in our opinion, be contrary to the provisions of Reorganization Plan No. 1 of 1978, as elaborated by Executive Order 12067, which charges EEOC with responsibility to develop uniform standards, guidelines, and policies defining the nature of employment discrimination on the grounds of race, color, religion, sex, national origin, age, or handicap. The order does emphasize, however, that EEOC should act in concert with affected agencies in developing or revising uniform guidelines or standards.

OPM's comments on the draft report are included as appendix V.

OFFICE OF REVENUE SHARING

During our study, Office of Revenue Sharing officials said that they found the guidelines useful and that local governments that have been investigated for employment discrimination have not raised the guidelines as a major point of contention. However, these officials believed that, since the guidelines had been in effect for more than 3 years, it would be appropriate to make a review to determine whether modifications are warranted.

The Department of the Treasury, of which the Office of Revenue Sharing is a part, commented on the report draft. The Department said it concurred in all of our suggestions, particularly the one

calling for all signatory agencies to cooperate with EEOC in the review and possible revision of the guidelines. The Department told us that it intends to cooperate and participate in this effort when it occurs.

The Department's comments on the draft report are included as appendix VI.

--examining the problems associated with (1) collecting and maintaining adverse impact data, (2) searching for alternatives during validation, and (3) the relationship of merit laws to the guidelines; and

--coordinating the review of the technical provisions with the joint committee revising the APA Standards;

We recommend that EEOC initiate a review of the guidelines and revise them. This effort should include

RECOMMENDATIONS

The Government should take full advantage of this unique opportunity for professional-governmental cooperation. While any revisions to the guidelines' technical provisions could wait until new professional standards are adopted in 1984, beginning the review now could prevent a significant timelag between the joint committee's issuance of new testing standards and any revision of the guidelines. Starting the review now would also expedite resolving the issues discussed in this report. Waiting until the new standards are published in 1984 before beginning a review of the guidelines could unnecessarily delay needed revisions.

EEOC and the Department of Labor have expressed concern that reviewing the guidelines would be inappropriate at this time. A major concern of both organizations was that revising the guidelines now might be interpreted as an attempt by the Government to influence the work of the joint committee that is revising the APA Standards. However, the joint committee said it would be pleased to informally coordinate its efforts with review of the guidelines. Also, the joint committee believes that such coordination could be accomplished without compromising the integrity of its work and that it is likely both reviews would benefit.

The importance of the guidelines to EEO enforcement is not, in our opinion, at issue. On the basis of the preponderance of views and experiences expressed to us, we believe the guidelines can have a major role in insuring compliance with the spirit and intent of Federal EEO laws. Nevertheless, the reported problems with the guidelines' technical and policy provisions and their understandability indicate that it is now time to review the guidelines and revise them.

CONCLUSIONS

CONCLUSIONS AND RECOMMENDATIONS

--determining how to make the guidelines more understandable to their users.

Consistent with EEOC's responsibilities under the Executive order, the review and revisions should be made in consultation with, and utilize the special expertise of, Federal departments and agencies having EEO responsibilities. We recommend also that the heads of the other signatory agencies cooperate with EEOC in this important effort.

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Equal Employment Opportunity Commission, Washington, D.C.:  
 --Chairman  
 --Acting Chairman  
 --Acting Associate General Counsel for Appellate Work  
 --Chief Psychologist  
 --Office of Policy Implementation staff  
 Office of Personnel Management, Washington, D.C.:  
 --Director  
 --Acting General Counsel  
 --Director and staff, Personnel Research and Development Center  
 Department of Justice, Washington, D.C.:  
 --Assistant Attorney General, Civil Rights Division  
 --Civil Rights Division staff  
 Department of the Treasury, Washington, D.C.:  
 --Chief Counsel, Office of Revenue Sharing  
 --Personnel Psychologist, Office of the Secretary  
 Department of Labor, Washington, D.C.:  
 --Director, Office of Federal Contract Compliance Programs  
 --Director, Division of Program Policy, Office of Federal Contract Compliance Programs  
 --Assistant Secretary for Administration and Management  
 Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, D.C.:  
 --Deputy Administrator  
 --Regulatory Analysis Division staff  
 --Reports Management Division staff  
 Department of Commerce, Bureau of the Census, Associate Director for Statistical Standards and Methodology, Bethesda, Md.  
 Department of Agriculture, Chief, EEO Division, Washington, D.C.  
 Lawyers' Committee for Civil Rights Under Law, Washington, D.C.  
 NAACP Legal Defense and Educational Fund, Inc., Washington, D.C.

DEPARTMENTS, AGENCIES, ORGANIZATIONS  
AND INDIVIDUALS CONTACTED



Equal Employment Advisory Council, Subcommittee on Employee Selection Procedures, Technical Task Force, Washington, D.C. (The Equal Employment Advisory Council was founded in 1976 to present the views of employers, generally in litigation involving equal employment laws and regulations. Its members include a national cross section of both Fortune 500 companies and trade associations.)

American Psychological Association, Washington, D.C.

International Personnel Management Association, Washington, D.C.

Booz, Allen & Hamilton Inc., Bethesda, Md.

Richardson, Belows, Henry & Co., Inc., Washington, D.C.

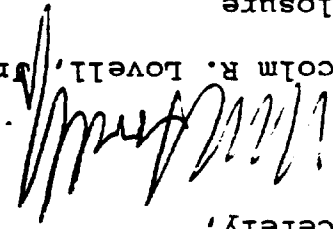
Epstein, Becker, Borsody, and Green, Washington, D.C.

Dr. Warren S. Blumenfeld, Research Professor of Management and Professor of Psychology, Georgia State University, Atlanta, Ga.

Dr. Melvin R. Novick, Chairman, Committee to Develop Joint Technical Standards for Educational and Psychological Testing

Enclosure

Malcolm R. Lovell, Jr.



Sincerely,

The Department appreciates the opportunity to comment on this report.

In reply to your letter to Secretary Donovan requesting comments on the draft GAO report entitled, "Uniform Guidelines on Employee Selection Procedures Should be Reviewed and Revised Where Necessary," the Department's response is enclosed.

Dear Mr. Ahart:

Mr. Gregory J. Ahart  
Director  
Human Resources Division  
U.S. General Accounting Office  
Washington, D.C. 20548

MAY 24 1982

WASHINGTON  
THE UNDER SECRETARY OF LABOR



U.S. Department of Labor's Response  
to the Draft General Accounting  
Office Report Entitled:

Uniform Guidelines on Employee  
Selection Procedures Should be Reviewed  
and Revised Where Necessary

Recommendation: The Equal Employment Opportunity Commission  
should initiate a review of the guidelines at this time and  
make revisions where necessary.

Response: The Department does not concur.

The Department agrees with GAO's recommendation that (a) the  
guidelines be reviewed, and (b) the Equal Employment Opportunity  
Commission (EEOC) should take the lead in any review and/or revi-  
sion with the Department of Labor, along with the other signatory  
agencies assisting EEOC in any such review. However, it does  
not agree that the review of the guidelines should be undertaken  
at this time. In the Department's view, the review of the guide-  
lines should be undertaken only after final publication of the  
American Psychological Association's (APA) revised "Standards for  
Educational and Psychological Tests" (APA Standards).

As the GAO Draft Report mentioned, the APA Standards are currently  
undergoing revision. The APA Committee in charge of these revi-  
sions, the Committee to Develop Joint Technical Standards for Edu-  
cational and Psychological Testing, plans to complete its draft of  
the employment section during its June 24-27, 1982, meeting. In  
July, this draft will be distributed for comment to the Committee's  
advisers and to Federal agencies such as the Department of Labor.  
The Committee plans to address the comments it receives during a  
September 24-26, 1982, meeting. The draft will then be reviewed,  
appropriately revised, and distributed for public comment. A  
public hearing on the proposed standards is slated to take place  
on November 19, 1982. The Committee will meet again in February  
1983, to finalize the proposed standards which will then be sent  
out for ratification.

The guidelines are intended to reflect generally accepted profes-  
sional standards for validation of selection procedures. Since  
APA, which is the primary professional association in the test  
validation field, is in the process of revising its own technical  
standards, review and revision of the guidelines at this time are  
not appropriate. After APA has finalized its revisions, EEOC  
should lead the guidelines signatory agencies in reviewing the  
revised APA Standards and then making recommendations for appro-  
priate revisions in the guidelines.

Recommendation: The review of the technical provisions should be coordinated concurrently with the review and revisions of the APA Standards.

Response: The Department does not concur.

The revision of the 1974 APA Standards is scheduled to be completed in early 1983. Since the APA Standards have served as the principal criteria for judging the technical adequacy of the Guidelines, any decisions regarding the latter obviously should take close account of changes made in the former. Consequently, it seems only reasonable to await the findings and determinations of the APA Review Committee before proceeding with the kind of comprehensive review of the Guidelines recommended by the GAO report.

The GAO report, on the other hand, argues that any delay in conducting the Guidelines review would "unnecessarily delay needed revisions." However, there is not yet a satisfactory basis for making confident judgments as to what revisions might in fact be necessary. To anticipate the results of the APA review is to take the risk of making premature and misguided changes which might then have to be further amended only one year later. Such an exercise would necessarily add more confusion to that which already exists.

The GAO report correctly points out that the offer of assistance tendered by APA would be a "unique opportunity for professional-governmental cooperation." However, care must be taken to ensure that cooperation does not evolve into a mutually undesirable form of collaboration, with the Government exerting too much influence over the conduct of purely professional affairs or APA (and the constituency it represents) inadvertently compromising what should be the independent judgment of the Government. At a time when APA has concluded its own review, its interests and expertise assuredly can and should be introduced into Government deliberations over the Guidelines, as should those of other concerned groups. The minimal delay required by this more orderly process can only work to the benefit of all parties.

Recommendation: The review of the policy provisions should include the problems associated with collecting and maintaining adverse impact data, searching for alternatives during validation, and the relationship of merit laws to the Guidelines.

Response: The Department concurs.

The Department concurs that these are appropriate areas for review when a substantive review of the Guidelines is undertaken. At the present time EEOC is engaged in reviewing the recordkeeping

While the Department agrees that the guidelines could be made more readable, in order to conserve resources and time and to eliminate the possibility of revising sections which are subsequently altered as a result of APA revisions, a review for this purpose would be more appropriate at the time the EEOC-led substantive review is undertaken. However, it should be possible, as an interim measure, to prepare and disseminate some additional clarifying materials which might assist test users who are not satisfactorily conversant with professional terminology.

Response: The Department concurs.

Recommendation: The review should determine how to make the guidelines more understandable to their users.

requirements of the guidelines in conjunction with the work of the Presidential Task Force on Regulatory Relief. In light of this ongoing study and in the interest of conserving time and resources taken by EEOC and the other signatory agencies in conjunction with their review of the technical standards after the completion of the APA Standards.

In order that Federal agencies may be responsive to the needs of the users of the Uniform Guidelines and to developments in professional standards, and in light of the Committee's willingness to work cooperatively, the review process should begin at an early date. Under Executive Order 12067, the Equal Employment Opportunity Commission is the appropriate agency to coordinate that process. In conformity with the recommendations of the draft report, other Federal agencies with major employment opportunity enforcement responsibilities should be participants in this effort.

Technical provisions of the Uniform Guidelines are based upon the standards of the psychological profession. The American Psychological Association, through the Committee to Develop Joint Technical Standards for Educational and Psychological Testing, is now engaged in a review of professional standards to determine what changes are appropriate in published professional standards. The Committee has indicated its willingness to coordinate its activities with a Government review of the Uniform Guidelines as stated in the enclosed November 16, 1981, letter of Dr. Melvin R. Novick, Chairman of the Committee. Any actual revision of the Uniform Guidelines' technical provisions should, of course, follow the revision by the psychological profession of its statement of professional standards for test validation, so as to be based upon the most recent standards available. Accordingly, we anticipate that any actual revisions to the Uniform Guidelines would occur some time after the Committee has completed Joint Technical Standards.

This letter is in response to your request for comments from the Department of Justice (Department) on the draft report entitled "Uniform Guidelines on Employee Selection Procedures Should be Revised and Revised Where Necessary." The Department has studied the Uniform Guidelines to determine whether revisions of policy and technical provisions are needed. As a result of that study, this Department believes the Uniform Guidelines should be reviewed and that this Department should participate in any such review.

Dear Mr. Anderson:

Mr. William J. Anderson  
Director  
General Government Division  
United States General Accounting Office  
Washington, D.C. 20548

MAY 17 1982

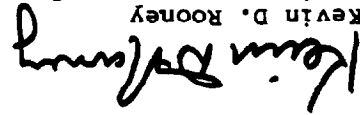
Washington, D.C. 20530



U.S. Department of Justice

Enclosure

Assistant Attorney General  
for Administration  
Kevin D. Rooney



Sincerely,

We appreciate the opportunity to comment on the draft report.  
Should you desire any additional information pertaining to our  
response, please feel free to contact me.

COMMITTEE TO DEVELOP  
JOINT TECHNICAL STANDARDS  
FOR EDUCATIONAL AND PSYCHOLOGICAL TESTING

Sponsored by:

- American Educational Research Association
- American Psychological Association
- National Council on Measurement in Education

Committee Chair:  
Melvin R. Novick, Ph.D.

Ludquist Center for  
Measurement

The University of Iowa  
Iowa City, IA 52242  
13191 353-6705

Committee Members:

John P. Campbell, Ph.D.  
University of Minnesota

Goldine C. Clark, Ph.D.  
University of Cincinnati

Robert L. Linn, Ph.D.  
University of Illinois

George F. Meadus, Ph.D.  
Boston College

Richard E. Snow, Ph.D.  
Stanford University

Carol Kohn-Tiller, Ph.D.  
University of North Carolina

Conception Valdez, Ph.D.  
University of California  
at Los Angeles

La Monte C. Wyche, Ph.D.  
Howard University

Staff Liaison  
Carlson O'Brien  
Association  
American Psychological  
1200 17th Street, NW  
Washington, D.C. 20036  
(202) 832-7596

November 16, 1981

Mr. Joseph L. Kline

Group Director

Federal Personnel and

Compensation Division

United States General

Accounting Office

Washington, DC 20548

Dear Mr. Kline:

It is our hope that the new Joint Technical Standards for Educational and Psychological Testing, (JTS), will be transmitted to the sponsoring organizations on December 31, 1982. We believe that this document will be a very substantial revision of the current Standards. With respect to the proposed revision of the Uniform Guidelines for Employee Selection Procedures, (UCESP), you pose four questions that I shall answer as best I can.

We believe that any revision of the UGESP should take full cognizance of the anticipated substantial changes in the relevant sections of the JTS. This can be done either after the completion of our work or in concert with it. That decision is not ours to make, but we note that you do have advice on this issue from the APA Testing Committee. Certainly, there is something to be said for work being done in concert: It is likely that both projects would benefit.

With respect to your second question, the JTS Committee would be pleased to coordinate its work with that of the UGESP Committee in a variety of ways. Following our March meeting, we could make available drafts of relevant new Standards and would be happy to receive comments from the UGESP technical staff. We could also receive similar materials from the UGESP Committee and discuss, by telephone or in informal meetings, any potential conflicts that might become evident. We believe that the coordination should be informal so that there not be any implication that either committee has approved the work of the other. We expect to complete our second draft in June, 1982, and hold public hearings in August. Further comment from the UGESP Committee would be useful at that time.

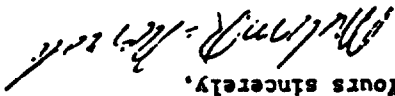


We believe that the kind of coordination described above would be very desirable. We have been encouraged by the APA Committee on Psychological Tests and Assessments, the APA Board of Scientific Affairs and by NCFE and ALRA to coordinate our activities with you and we shall be pleased to do so.

Your fourth question is difficult, given the history of work on Uniform Guidelines. Certainly, if the UGESP defers to the JTS on technical issues, as most people think it should, this date might be reasonable, though a slipage of a month or two would not be unlikely.

I hope I have given useful answers to your four good questions. If I can be of further assistance please do call on me.

Yours sincerely,




Melvin R. Novick

MRN/skr

cc: Standards Committee  
Don Bersoff

Donald J. Devine  
Director

Sincerely,  


Our only major reservation about your draft report is its suggestion that the Equal Employment Opportunity Commission be charged with initiating the review and making the needed revisions. We disagree with your recommendation of such an assignment for several reasons, including a practical one noted by you in your report: the EEOC (at least under the leadership interviewed at the time of your study) is the one signatory to the guidelines which is opposed to their review and revision or revision. The Office of Personnel Management believes that all of the guidelines' signatory agencies of Government should constitute a joint commission to review the Uniform Guidelines and, as appropriate, to rescind or to revise them.

You have forwarded a draft of a proposed report to be entitled: "Uniform Guidelines on Employee Selection Procedures Should be Revised and Revised Where Necessary." We appreciate the opportunity to comment. Without committing ourselves to concurrence with all of the details of your proposed report, we do find it a useful summary of Uniform Guidelines issues. We agree that a review of the guidelines should be pursued, and that they should be rescinded or revised where necessary. We especially appreciate your recognition of the inconsistency which exists between the guidelines, on the one hand, and merit selection laws and principles, on the other. As your report correctly concludes, this incompatibility places employers--including the Federal Government--in an untenable position.

Dear Mr. Bowers:

Honorable Charles A. Bowers  
Comptroller General of the United States  
General Accounting Office  
Washington, D.C. 20548

MAY 3 1982

Your Reference:

United States of America  
Office of  
Personnel Management  
Washington, D.C. 20415

DEPARTMENT OF THE TREASURY

WASHINGTON, D.C. 20220

ASSISTANT SECRETARY



May 6, 1982

Dear Mr. Anderson:

We have reviewed the draft report Uniform Guidelines on Employee Selection Procedures should be reviewed and revised where necessary. After consulting our Director of Personnel and the Office of Revenue Sharing, we believe that the body of the report accurately represents our position that the guidelines are a useful enforcement tool, but that review is necessary due to the length of time since adoption. However, the digest of the report, at page iv, does not accurately reflect the differences between the Office of Revenue Sharing position and that of the Office of Personnel Management toward the extent of the first full paragraph on page iv should read as follows: "For different reasons, the Office of Personnel Management and the Department of the Treasury's Office of Revenue Sharing believe a review of the guidelines is warranted."

We concur with the recommendations, particularly the recommendation that all signatory agencies to the Uniform Guidelines cooperate with the Equal Employment Opportunity Commission in the review and possible revision of the guidelines. We intend to cooperate and participate in this effort when it occurs.

Thank you for the opportunity to comment on this report. If we can provide further information please feel free to contact us.

Sincerely,

Cora P. Babe  
Assistant Secretary  
(Administration)

Mr. William J. Anderson  
Director, General Government Division  
U.S. General Accounting Office  
Washington, D.C. 20548